

## **CALVARY CHAPEL OF TWIN FALLS, Inc.**

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**Flagship Station KAWZ-FM (Twin Falls, Idaho) & 21 Other FM Stations**

April 24, 2008

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: MB Docket No. 04-233  
"Broadcast Localism"

Dear Ms. Dortch:

On behalf of Calvary Chapel of Twin Falls, Inc. ("CCTF"), we offer these comments in response to the FCC's Report & Notice of Proposed Rulemaking in MB Docket No. 04-233. CCTF is the licensee of twenty-two FM radio stations, including flagship station KAWZ-FM at Twin Falls, Idaho. In the near future, CCTF will commence broadcast operations for six additional FM radio stations. Although many of CCTF's radio stations operate pursuant to a Main Studio Waiver, the matters at issue in this proceeding will have a significant impact on the CCTF radio stations that maintain a staffed Main Studio.

CCTF submits that, to a large degree, the proposals in this proceeding will essentially turn the clock back to the regulatory atmosphere that existed before 1987, which was a time where many broadcast entrepreneurs operated daytime AM stations and a select few had minimal nighttime power. It was also a time when broadcasters were required to complete program ascertainment forms, otherwise known as FCC Program Surveys, and submit them to the FCC.

During the last two decades there has been significant change in media competition with over 10,000 radio stations and robust competition from satellite radio, Internet radio and MP3 players, as well as cable TV, CD and DVD players and recorders. Listening to music and other programming on the radio is not what it used to be as the interests and needs of our audience continues to change with changing technology. Today the general public has far more ways to obtain music, entertainment, news and information than it did just ten years ago. The average person has at its disposal several outlets of communication, including wired, wireless and

traditional paper, and communications providers can now target their audience with far greater efficiency.

New technologies have changed the way all of us do business, but now the FCC proposes to ignore the benefits of these new technologies by requiring broadcast stations to be staffed twenty-four hours each day, and mandating that each station's main studios be located within the boundaries of the station's community of license, and further subject to local advisory committees to provide programming ideas for on-air broadcast. Reversing twenty years of progress will have a disastrous effect on many small and medium sized broadcasters. For the reasons explained below, we believe that none of these ideas are either realistic or justified as a way to improve broadcasting.

We submit that there is a fundamental oversight in the FCC's current quest to improve localism in broadcasting. Rather than reaching a general conclusion that local radio is not providing programming that is local in nature, the FCC must recognize that often it is the listener who decides what they want to hear in the limited free time they have available to listen. Few people today turn to just one outlet of communications for all their entertainment and information needs and interests. Therefore, no one radio station should be expected to be all things to all people within its service area.

In 1981, when the FCC concluded a two-year review of radio regulations, it was decided that when a broadcaster decides how to serve the needs of its community, it is not required to meet all community problems. The FCC concluded that a broadcaster may determine in good faith which problems merit treatment by its station, and in doing this the broadcaster may consider the particular format of its station, the composition of its audience, and the programming offered by other stations in its area. (Please refer to the 1981 Deregulation Order, released February 24, 1981, at paragraph 64.)

One year ago the FCC issued a number of letter rulings that essentially repeated the conclusions it reached in 1981. For example, with regard to a license renewal challenge filed against WSIA-FM at Staten Island, New York, the FCC's letter ruling of March 13, 2007 stated that "[l]icensees have a duty to respond to local needs and issues by choosing appropriate programming ..... [t]hey also have broad discretion to determine, in good faith, the issues they believe to be of concern to their communities and the manner in which to address those issues." This very same letter ruling stated that "it is also the Commission's general policy to leave format issues to the discretion of the licensee."

In a letter ruling issued one day earlier, on March 12, 2007, with regard to the license renewal challenges against KFBK-AM (Sacramento, California) and KSTE-FM (Rancho Cordova, California), the FCC was very firm in pointing out that "[t]he role of the Commission in overseeing program content is limited. The first Amendment to the United States Constitution and Section 326 of the (Communications) Act, prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights."

All in all, for decades the FCC has recognized the important role that ~~broadcasters play within the context of their right of good faith editorial discretion.~~ Although a few broadcasters out of the thousands that exist may have breached their duties to act in good faith, CCTF does not believe the record before the Commission justifies a wholesale, across-the-board and top-to-bottom overhaul of radio deregulation.

Any requirement to establish local advisory committees is likely to result in a hodge podge of ideas being submitted to each broadcaster with very little respect and recognition of the station's format or operating budget. Such a scenario would also produce unrealistic expectations within the community as to how many programming ideas will be adopted. Broadcasters should not be faced with a situation where they must look over their shoulder continuously. Newspapers need not do this, nor do other communications providers such as cable TV companies. We believe traditional market forces will ultimately produce the best results.

CCTF's radio stations are responsive to the unique interests of our largely religious-oriented audience. We believe that our programming is a great source for Bible teaching along with praise and worship music from around the world, the fruit of which is the many reports of decisions for Christ and people rededicating their lives to serve our Lord and Savior Jesus Christ. We receive letters and emails from our audience every week, and many of the ideas we receive are incorporated into our programming. We need not be told to do this. We learned long ago that such responsive programming builds up good will, which then results in more community support for our stations.

Therefore, with regard to the FCC's proposal to require broadcast stations to establish community advisory boards, we believe that less Draconian measures should be implemented. The Commission ruled long ago that each broadcast station need not tailor its programming to appease every segment of the listening audience. We believe that for any broadcaster to succeed, it must carefully balance the editorial judgment it is empowered with against the needs of its audience. To a large degree, market forces will tell us if we are succeeding or not, as a result of audience share and sponsorship revenue.

The proposal to require operators to be at the station 24 hours a day negates the advantages that modern technology gives us with the use of computers and automation systems. If we had to man our stations 24 hours a day, we would have to consider going dark at a certain time each evening because of the staffing issue. An around the clock staffing requirement not only challenges our budget from a personnel cost standpoint but also challenges our ability to find qualified people to work at night. And, if we were required to provide around the clock staffing, much of those added costs would drain our limited resources to develop or subscribe to programming of local interest. The FCC must be respectfully reminded that not all broadcasters have deep pockets.

In the past, many stations went dark at midnight because they did not have staffing. Many small market stations run with a staff of less than five employees. Being off the air at night would not serve our communities and would result in less local programming instead of more.

The Commission should be reminded of its own analysis from the October 23, 1995 "Report & Order" wherein overnight unattended operations was first approved: "there is general agreement that the technology exists to automate the monitoring and control of broadcast stations and that stations may be better served with constant (automated) technical monitoring than with human attendance. [This] would permit licensees to make more effective use of resources by implementing the operating and maintenance policies most appropriate for their stations. Money currently spent on operator expenses is seen as better spent on other aspects of station operation, and unattended operation should be extended to all classes of broadcast stations under all circumstances. (Paragraph No. 4 of the "Report & Order") The waiver appears further justified for reasons of efficiency, in order that our broadcast licensees can best decide how to allocate resources to ensure compliance. (Paragraph No. 7 of the "Report & Order").

All in all, with regard to the Commission's proposal to require main studio staffing 24 hours per day, 7 days each week, we respectfully submit that this is an overreaction to a few isolated instances. When the Commission adopted unattended operation in October 1995, the Order stated that there was general agreement that the technology exists to automate the monitoring and control of broadcast stations and that stations may be better served with constant (automated) technical monitoring than with human attendance. This would permit licensees to make more effective use of resources by implementing the operating and maintenance policies most appropriate for their stations. The FCC concluded that money otherwise spent on operator expense would be better spent on other aspects of station operation, and unattended operation should be extended to all classes of broadcast stations under all circumstances. CCTF believes that the logic adopted by the Commission in 1995 remains valid today.

With regard to the Commission's proposal to require broadcasters to locate their main studios in the city of license, this would not have an immediate negative impact on CCTF since most of its staffed radio stations are located within their respective communities of license. However, CCTF believes that there is much wisdom built into the current Main Studio Rule whereby broadcasters are provided some flexibility in locating their Main Studio. Such flexibility should be maintained.

On August 11, 1998, the FCC issued a "Report & Order" in MM Docket No. 97-137 (Review of the Main Studio & Public File Rules) where it was stated that "[w]e here conclude that it is possible to grant broadcast licensees additional flexibility in locating their main studios, together with their public files, and adhere to the original purpose underlying these rules: to maintain reasonable accessibility of station facilities, personnel and information to members of the station's community of license, which enables the residents of the community to monitor a station's performance, and

encourages a continuing dialogue between the station and its community. (Paragraph No. 1 of Report & Order).

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The Commission further stated that “the role of the main studio in the production of programming had diminished over the years, that community residents often communicate with stations by telephone or mail rather than visiting the studio, and that the growth of modern highways and mass transit systems had reduced travel times. We further observed that the revised rule would allow broadcasters to obtain certain efficiencies, such as co-locating a station's studio at its transmitter site or moving the studio to lower cost areas. These factors persuaded us that relaxing the rule would provide broadcasters greater flexibility while at the same time ensuring that their main studios continued to be reasonably accessible to the communities they serve. (Paragraph No. 3 of the Report & Order).

The Commission concluded that “[o]ur relaxation of the main studio location requirement takes into account the evidence in the record that more people use remote rather than face-to-face means of communication for routine contact with their local stations, and that permitting stations greater flexibility in locating their main studios should not unduly burden the public. (paragraph No. 8 of the Report & Order).

We believe that the Commission’s reasoned analysis and conclusions from 1998 remain valid today. Perhaps more so than ever before. CCTF strongly encourages the FCC not to adopt any drastic, across-the-board studio staffing or location rule changes simply because a select few broadcasters have abused the current rules and policies. The current Main Studio Rule is working nicely for the overwhelming majority of broadcasters.

If the FCC sees a need to revise the Main Studio Rule, such changes should not be applied retroactively. Most broadcasters have a substantial investment in their current studio locations, either as a result of owning or leasing their buildings, and any sudden requirement to relocate would result in a big economic “hit.”

On behalf of CCTF, please consider the foregoing comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Kestler", with a long horizontal flourish extending to the right.

Michael Kestler  
President