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April 28, 2008

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: MB Docket No. 04-233

Dear Ms. Dortch:

These comments are submitted by WFCR, Amherst, Massachusetts, a public radio station licensed to the University of Massachusetts, in response to the Report on Broadcast Localism and Notice of Proposed Rulemaking (the “Notice”) in MB Docket No. 04-233. Our comments are primarily intended to address the questions as they apply to public radio stations.

1. The Commission should not impose additional burdens on licensees that are now meeting local needs.

The Notice observes several times that many licensees are well informed about the needs and interests of their communities and offer good programming in response. Nevertheless, it proposes actions which treat *all* broadcasters as if they fail to do that. Since First Amendment rights of licensees are involved, legal principles require that such a burden be narrowly directed and not made widespread beyond where it is justified. The Commission should impose new regulations, if it does so, only on those licensees that are found not to broadcast programming

that meets local community needs, and not impose new and substantial burdens on all licensees for the perceived shortfalls of some.

2. The Commission should recognize the local-service orientation of public radio stations.

Public radio stations like WFCR place service to their local communities at the core of their mission. They are locally owned in ways that stations owned by large and distant corporations are not, and tightly integrated into their communities. New and costly regulatory burdens should not be imposed on this category of stations, which are closely linked to their communities and have a decades-long history of valued local service.

3. The cumulative effect of all the proposed regulations will increase the incentive for the sale of locally-owned stations.

WFCR shares the Commission's belief in the importance of local service, and suggests that these proposals may actually push the radio industry in the opposite direction. We hope the Commission will consider the *combined* effect of the individual new requirements, which will substantially increase the cost and difficulty of managing a radio station. Those stations operating within large radio clusters will be most able to absorb the new demands, while small, locally-owned stations will have the hardest time doing so. This will add to the incentives that the latter already have to leave the business and sell their stations to distant owners, and thus decrease the number of stations that feel a natural tie to their local communities.

4. The Enhanced Disclosure report should recognize all programming responsive to community interests and not disregard cultural programming.

The elements of an Enhanced Disclosure report listed in Paragraph 21 make no mention of one area of programming that many public stations (and a few commercial stations) devote many hours to in response to community needs and requests: the broadcast of music widely recognized for its artistic merit yet barely present on commercial radio, such as classical music and jazz. Listeners consider these broadcasts an important contribution to the cultural richness of their communities, and would say that, in a sea of programming that otherwise includes only the most commercially viable forms of music, the little classical music and jazz they can hear on the air is as much an important local service as news programs are.

WFCR broadcasts 54 hours of locally-produced classical music and jazz programs a week during daytime and evening hours.¹ The programs are very much a local service, for our announcers incorporate information about area musicians and performances into their programs, and play related music recordings, including those of local musicians, some of which we commission ourselves. Stations that devote themselves to their community's need for cultural programming and the musical arts should be given credit for those programs on an equal basis with news programs.

Additionally, by giving localism credit only for the program types listed in the Notice, the Commission would be directing stations toward officially-sanctioned types of programming and away from others that meet different community needs. Stations that wish to concentrate on classical music or jazz would be forced to disrupt their service for the program types the Commission favors, no matter whether they are compatible with the station's other programming

¹ Plus an additional 44 hours of classical music overnight acquired from an external source.

or the effectiveness of the change. Local radio services for music listeners and the arts community would be weakened. Steering programming this way is not an appropriate role for the Commission and raises questions about its role in influencing programming.

5. Enhanced Disclosure requirements must recognize all forms of radio news programming without at the same time overburdening licensees.

The Enhanced Disclosure requirements may either fail to give credit for some of the most important local reporting in radio today, or put an unmanageable administrative burden on the very stations that are most responsive to the community need for such programming.

Many public radio stations like WFCR present their primary local reporting as local segments within national programs, a very effective way to bring local news to listeners. It puts the broadcasts in radio prime time and within national programs with very high listenership. However, if the Enhanced Disclosure report is to include only “programs” in the traditional sense of distinct programs of a half-hour or longer, stations would receive no credit for these efforts. Perversely, stations which broadcast full-length public affairs programs at 6:00 on Sunday morning, when almost no one is listening, would meet the reporting requirement, while stations that produce extensive news programming for prime time segments within other programs would not.

At the same time, there is a contradictory problem. If stations must include on the form full information for *every* local news report they produce (whether by regulation or if they feel it prudent to do so), the record-keeping burden will be enormous, and it will fall heaviest on the broadcasters most committed to local news reporting.

WFCR, for example, maintains a news department of five full-time reporters, with a student internship program and story-sharing links with other public radio stations in our region. And we are expanding, with plans to add an additional reporter, an auxiliary news bureau in a nearby city, and new locally-produced programs. That is a large news department for a radio station these days, and an indication of this station's commitment to localism. (Many other public radio stations have similar local news and public affairs departments.)

The reporting that results – ten local news segments every weekday, five days a week, each containing multiple reports – should be recognized in an Enhanced Disclosure report. However, it will be difficult and costly to do so, given the requirements outlined in Paragraph 21 of the Notice (nine program types, four items of information for each qualifying “program,” plus information about community outreach and program creation). To characterize every local program segment in such detail (along with the reports included in network-produced programming that also address matters of local interest) will be overwhelming.

The contradiction points up the difficulties of delving so deeply and specifically into station programming. There is a problem if the new regime fails to recognize *all* forms of news and public affairs programming that address local issues, for stations would get no credit for their best efforts at local service. But there is a problem if credit can be secured only at the cost of massive recordkeeping. Stations would be pushed away from the local reporting that reaches the public most effectively and toward the programming that can most easily be included on a form. This would work against the Commission's goals by discouraging the only local reporting that remains in radio.

6. The proposals will draw the Commission into judging the programming choices of stations.

Notwithstanding the Commission's deference to the First Amendment freedom of licensees, any complaint that a certain programming decision "proves" that a particular station is unresponsive to community needs will force the Commission to rule on what programming best serves local interests. Since determining that will require assessing the actual programs at issue, the Commission will be unable to avoid making judgments about individual programs.

This will have a chilling effect on First Amendment rights. When programming choices or decisions arise, stations will begin to consider what they can defend to the Commission, when they should feel free to do what is best in their own professional judgment. Licensees will have an incentive to make the programming decisions that are easiest to justify to the government. The Commission should avoid creating a process that will cause it to become the arbiter of programming decisions that are more properly left to the stations.

7. Specific program types, quantities and time of broadcast should not be part of the license renewal process.

All the ideas outlined in Paragraph 124 of the Notice would put the Commission a step closer to being a government agency directing stations toward the programming most acceptable to it, overriding the judgment of professional broadcasters about programming. This could not be more inconsistent with the Commission's limited role in programming under the First Amendment and legal precedents.

Some of the specific proposals are especially inappropriate. No mandate of hours (or percentages of hours) can capture the varying quality of individual programs or the effect of

when they are scheduled. Indicating specific types of government-approved programming will drive stations toward the programming the government favors even when the station has good reason to do something else. (At the least, the Commission should make it clear that stations are not obligated to broadcast some of each and every type of favored programming every quarter, an assumption that some listeners, and some stations, may otherwise make.) A government agency could not effectively substitute its theoretical construction of a station schedule (by directing that “specific types of locally-oriented programming...be aired at particular times of the day”) for the years of training and experience that inform the careful construction of a public radio schedule that balances multiple local factors to meet listeners’ needs most beneficially. No consideration would be given to other programs in a station’s schedule and whether the government’s program schedule fits or clashes with it, nor whether the government’s schedule of program types will actually reach listeners more or less effectively than the station’s own choices. Nor is consideration given to other radio programming in the region. Listing locally produced programming is not an automatic indicator of programming that addresses local issues, since acquired programming from other sources may speak to local concerns as well or better,² and locally-produced programming may address broader concerns. Giving a license-renewal advantage to stations that conform to government programming preferences will enhance Commission power over programming choices it should not be involved with.

² One of the strengths of public radio’s national programs is how they enable listeners in one community to hear how people in similar communities elsewhere are addressing problems they have in common. Local programming is certainly important, but not the only vehicle for bringing information about community concerns to listeners.

8. Requiring every station to have a community advisory board is overly burdensome, intrudes too deeply into the management of stations, and unnecessary.

a. Community boards will supply no information that an alert station cannot ascertain in less burdensome ways. The major issues before any community are usually well known to any station staff that follows the news in other media (especially in today's vigorous Internet world) and maintains ordinary contact with the community. There is no reason to believe that a community advisory board will provide information not available through other, far less burdensome means.

b. Stations that have identified community needs (and are serving them) should not have additional requirements placed on them. Many stations already have a good grasp of what is needed by the community. Those that are meeting their local service obligations should not be forced to take on this additional burden just because some others may not be, especially as the number of deficient stations has not been quantified by neutral observers.³

c. Stations should be given the freest possible hand in determining the composition, recruitment methods, schedule and processes of their boards. If boards are required, stations should be held accountable for the outcome (whether they have identified a reasonable set of community needs), not for the intricacies of the process by

³ The limited value of some comments is illustrated by the cited comments of NY/PA Media Action and Binghamton Independent Media Center, criticizing public broadcasters for barring access by independent producers, removing "activists" from boards and closing meetings to the public. Not considered is whether those independent productions were actually good radio or television programs, who decided what "activists" ought to sit on those boards and whether there were valid reasons they were not selected, and whether the meetings were properly closed under the relevant laws and policies. This would be a minor matter except that proposals concerning the composition of community boards and the broadcast of independent productions are elements of the Notice. Such one-sided allegations should not be the basis for forming federal policy.

which the information is acquired. Using any boards that have a mandate to comment on programming should be permitted so as to limit the additional workload put on stations for the recruitment of members and the management support such boards require, which NCE stations with existing advisory boards know is considerable.

If the Commission were to specify in detail what the composition of the boards would be, how their members are selected,⁴ and how they are to fulfill their advisory role, the Commission would become the judge of all those matters for the community board of every station that is challenged in any way.

Similarly, the Commission should not mandate any of the “additional, informal efforts” it cites in Paragraph 27 (sitting on commissions and councils, having certain types of meetings and surveys, etc.). Doing so would be unduly intrusive into the management of stations.⁵

d. The Commission should consider the operational differences between large clusters of stations and those owned individually or in small groups. The burden will fall unequally on each, since the larger group owners have administrative staffs that small stations do not. Would a cluster of eight stations have eight advisory boards? Even the largest corporation may find that excessive and of questionable value, since the separate boards are likely to report essentially the same community issues. On

⁴ The suggestion that community advisory boards be elected is unworkable. Who would vote? Although non-commercial stations maintain lists of donors (often referred to as “members,” although the meaning of that term is imprecise), that tells them only who has contributed, not who listens. And commercial stations have nothing comparable.

⁵ One should be particularly wary of “*ad hoc* listener or viewer surveys.” There is a science to surveying, and even professional surveys can yield uncertain results. Informal, *ad hoc* surveys are notoriously untrustworthy, and not the basis for sound decision-making. On a separate item, some stations may feel it compromises their journalistic independence to have staff serving on other commissions and councils.

the other hand, combining boards for clustered stations, something not possible for stand-alone stations, will increase the disproportionate way the management problems fall on small owners (including NCE stations, many of which are individually operated), the very stations that often have the local ties the Commission seeks.

e. There is no need to meet quarterly. Community issues do not change so rapidly as to require this. The individual events or developments that warrant news coverage come and go, but the broad issues before a community evolve more slowly. In addition, the management of boards is a major administrative task, and having them meet so frequently will greatly increase the burden without providing a significant amount of new information.

f. The mad scramble to sign up participants. There are more than 40 stations licensed to operate in the two-state region that WFCR primarily serves. The pool of community leaders is limited, and it seems predictable what will follow: Every community leader will be approached by dozens of stations to sit on the boards, the leaders will be able to accept only a few requests, and a fierce competition will ensue to sign up willing participants. Stations will find it difficult to recruit board members, and the community leaders will quickly come to resent the whole process. It all seems unworkable.

9. Prohibiting unattended operation of stations will cause an immediate loss of valuable programming.

NCE stations operating on limited budgets must rely on unattended operation where possible, to conserve money for program production at other times of the week. This supports

localism, for it allows the most resources to be directed to the programming the Commission encourages.

One possible outcome of staffing mandates is that locally-responsive programming will be *decreased* due to the necessary redirection of finite funds away from local news production. Alternatively, the public will lose hours of programming it now has. For example, WFCR uses program automation for an overnight music service. Since we could not afford to stay on the air during hours of low listenership if the station had to be fully staffed, the community would lose many hours of classical music programming.

In addition, with an active emergency warning system in place and staff available via electronic means of contact and communication, staffing the station at all hours is not the only pathway to insure local responsiveness.

10. Returning to the pre-1987 main studio rule will reduce service to certain local communities.

An example from our own experience: In the recent open window for NCE applications, WFCR applied for two channels in small towns some 40 miles from our main studio, in the far western part of our state of Massachusetts. One town has a population of 7,527 people, and the other 2,276 people (2000 U.S. Census). A fully local, fully-staffed station could not be operated in towns that small, or in any of thousands like them around the country. But through remote operation, WFCR can bring a high-quality NCE service to those communities. In addition to the classical music and jazz now barely available on the air, the programming will include news of our state in general and its western region in particular, which we share with those towns.

This is the only way this can work. Towns that are too small or too distant from population centers to support their own NCE stations can benefit from an existing service of proven quality. Such efforts should be encouraged, not discouraged, in the adoption of new rules.

11. Not having the main studio within a certain geographic area does not impede robust communication between a broadcast station and its community of service.

The flow of information into a station comes primarily via the Internet and e-mail these days, not through personal visits, which are quite rare. Personal contact is nice, but it is not necessary for a station to have a local studio for it to be in touch with members of the community.

In reality, stations already serve listeners without having a studio in every home town. This may be more of a factor in rural and semi-rural areas than in big cities. For example, WFCR's studio *is* located in its community of license, but only five percent of our listeners live in this small town (according to Arbitron data), meaning that 95% live elsewhere in the region. While the regulations may concentrate on a specific city of license, stations commonly serve listeners in distant towns that do not house the main studio and would not do so under any rule, new or old. In this day of free-flowing information, there is no need to restrict a main studio to a small geographic area when the ability to learn of community needs and respond to them is available through other means.

Additionally, the unequal size of communities of license would make this an unequal rule. A station licensed to Los Angeles has a vast area available within its community

boundaries, in contrast to stations in small towns like our own. (As for accessibility, it's easier to get to any studio anywhere in our region than it is to travel within the city of Los Angeles.)

12. Any restrictions on voice-tracking should be narrowly drawn so as not to limit the reasonable use of network programming.

WFCR has no experience with the kinds of voice-tracking techniques the Notice describes, and will leave that aside. However, many public radio stations have found that the only way to afford to broadcast extended hours of classical music and jazz is through the use of networked programming created for that purpose.

WFCR provides a mixture of locally-produced music programming during daytime and evening hours when most people listen and acquired music programming during the overnight hours. Some public stations make even greater use of networked music programs if that's the only way their budget will allow them to bring cultural programming to their listeners. Any limitations imposed on voice-tracking practices should not make it impossible for NCE stations to do that. If forced to discontinue programs provided by external producers, classical music and jazz broadcasts will be even rarer than they already are, and some stations will just turn off their transmitters at midnight.

Conclusion

WFCR is committed to local service and joins with the Commission in hoping it can be strengthened. However, we believe that many of these specific proposals are an excessive solution to the problem, bringing the Commission much too close to program decision making, burdening stations beyond what is justified, and not necessarily leading to the outcomes the Commission seeks. We respectfully urge they be reconsidered.

Respectfully submitted,

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