

quantifiable manner to ensure that broadcasters are appropriately addressing the needs of their local communities, while preserving the First Amendment rights enjoyed by broadcasters.

I. The Commission Should Adopt Minimum Public Affairs Programming Guidelines

Localism is one of the three pillars of the Commission's "public interest" standard, the other two being competition and diversity.⁵ Locally produced programming is at the heart of localism. Such programming differentiates broadcasters from the networks and from cable and satellite channels. Local news, sports, weather, politics, civic affairs, music, children's programming and other entertainment define a station's relationship with its local community. Broadcasters choose different types of programming to serve local needs, as befits their ascertainment of the community's needs. However, the Commission and the public to date has lacked a means of quantifying each broadcaster's efforts to fulfill those needs.

Capitol acknowledges the Commission's decision to adopt new FCC Form 355, the enhanced disclosure form for television broadcasters. This form will allow television broadcasters to demonstrate, in a quantifiable manner, the amount of local programming they offer each quarter.

Capitol also appreciates the Commission's tentative conclusion to reintroduce renewal application processing guidelines that will ensure that all broadcasters provide some locally-oriented programming.⁶ While many broadcasters already provide significant amounts of local affairs programming, it can be readily assumed from comments made at the Localism hearings that many others do not. In order to more fully ensure that broadcasters are serving the local

⁵ See, e.g., *2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, ¶¶ 76, 81 (rel. July 2, 2003) (subsequent history omitted).

⁶ *NPRM* ¶ 40.

needs of their communities, Capitol believes that the Commission should take the additional step of adopting minimum local public affairs programming guidelines.

Specifically, *these guidelines should instruct all broadcasters to air a minimum of two hours of local public affairs programming per week.* These guidelines could be phased in over time; for example, within six months of adoption, broadcasters would be instructed to air one half-hour of local public affairs programming per week. Between a year and 18 months after adoption, the guidelines would increase to one hour of such programming per week. Eighteen months after adoption and thereafter, broadcasters would be instructed to air a minimum of two hours per week of such programming.⁷

Once the two hour guidelines are fully implemented, at least one hour of that programming should be locally produced and should run between the hours of 6 p.m. and 11 p.m. News programs, whether or not locally produced, would not be eligible for satisfying the two hour requirement. However, local public affairs programming provided on a multicast channel would count toward the 2 hour requirement.

Within 30 days of a primary election (federal, state or local), and within 60 days of a general election (federal, state or local), at least one hour of local public affairs programming should focus on candidate-centered election issues. As an alternative, during these pre-election periods broadcasters could provide free air time to legally qualified candidates in order to satisfy the local public affairs programming guidelines.

Under the approach proposed herein, a broadcaster would be requested to certify in its license renewal application that it has satisfied these objective minimum local public affairs programming guidelines. To the extent that a broadcaster is unable to make such a certification

⁷ The programming need not be in a contiguous block of time, but could be spread out, for example, over four half-hour periods.

in its license renewal application, the Commission should treat the renewal application in the same manner it does currently when a licensee is unable to certify that it has provided the minimum amount of children's programming.⁸

Because the Commission would not (and could not) dictate the specific local public affairs programming to be aired by the broadcaster, broadcasters' First Amendment rights would not be impinged by the adoption of this proposal. This proposal essentially would be a processing guideline to measure objectively the ways in which broadcasters have met their local public interest obligations.

II. The Commission Should Adopt a Flexible Approach to Any Community Board Requirements

The Commission has tentatively concluded that broadcasters should be required to meet on a quarterly basis with a permanent board of community advisors comprised of local officials and other community leaders.⁹ Capitol believes that community boards, while helpful in determining a community's needs, should not consist of permanent board members. It is better for broadcasters to meet with a wide cross-section of the community as opposed to one group of individuals on a regular basis. Therefore, Capitol submits that broadcasters should be given the flexibility to create a rotating board of community advisors, with advisors appointed for no more than six (6) months each. Advisors should be appointed by the broadcaster with input from community leaders. Licensees should be required to certify in their license renewal applications that they have established such an advisory board and have met regularly with that board at least every six (6) months during the relevant license period.

⁸ See 47 C.F.R. § 73.671(d)-(e).

⁹ *NPRM* ¶¶ 25-27.

In addition, Capitol believes that the Commission should be open to methods for determining a community's needs other than the establishment of community boards. There is no "one-size-fits-all" method for receiving community input. As noted in the *NPRM*, some broadcasters already have formal groups in place with whom they consult to determine the needs of their community.¹⁰ Broadcasters that have established such groups should be permitted to certify compliance in their license renewal applications. In addition, Capitol believes that the sponsoring of regular town hall meetings or web casts, and/or the meaningful and verifiable participation of station management on an already-established community board, should demonstrate sufficient efforts by the broadcaster to allow it to certify compliance with the advisory board requirement. These other activities should be viewed as equal to the establishment of a community board in light of the fact that stations may face different circumstances. This balanced approach will allow broadcasters the flexibility to determine how best to interact with members of their communities.

III. Broadcasters Should Have the Flexibility to Locate Main Studios in Areas Outside their Community of License

The Commission is seeking comment on whether to return to its pre-1987 requirement that broadcasters maintain their main studios in their communities of license.¹¹ Capitol believes that such a requirement may end up frustrating a broadcasters' efforts to serve their communities. For example, it is quite possible that no suitable real property is available for a broadcaster's main studio within its community of license, particularly if the community of license is geographically small. Moreover, a return to the pre-1987 rule could severely impact private contractual negotiations made by broadcasters for the long-term lease of their main studio

¹⁰ *Id.* ¶ 26.

¹¹ *NPRM* ¶ 41.

property from property owners. Furthermore, because television broadcasters will soon place most of the contents of their public inspection file online, there is a reduced need for members of the viewing public to visit the main studio to view the station's public inspection file. For all of these reasons, Capitol does not believe that a return to the pre-1987 rule is necessary presuming the other localism proposals supported herein are adopted.

IV. Local Stations Must Be Provided Sufficient Time to Preview Network Programming

In order to serve the needs of their local communities, local network affiliates must be given the opportunity to preview network programming before it airs. Absent the ability to preview all of the programming that it airs, including network programming, a local station is forced to ignore its obligation to its community. While some local stations have sufficient means to address this issue contractually with the networks, other local stations, particularly in small and rural markets, may not have sufficient leverage to negotiate the ability to preview network programming.

Accordingly, Capitol recommends that the Commission adopt rules supporting an affiliate's right to preview all of the programming that it airs, including network programming. Correspondingly, Commission rules should prohibit a local affiliate from abdicating its localism obligations by contractually waiving its right to advance review of network programming.

In order to have sufficient time for a meaningful preview of network programming and to determine whether preemption is necessary in a particular instance, a local station should be afforded at least 48 hours advance review time, except in exigent circumstances such as breaking news and live events.

Capitol believes that the Commission has sufficient statutory authority to adopt these recommendations in light of Section 303(i) of the Communications Act of 1934, as amended (the

“Act”), which authorizes the Commission to adopt “special regulations” for stations engaged in “chain broadcasting,” i.e., networks and network affiliated stations.¹² In addition, localism is one of the key elements to determining whether a broadcaster has operated in the public interest. A broadcaster is unable to fulfill the localism requirement completely if it is unable to preview all programming prior to broadcast. Therefore, absent these proposed rules, the Commission is unable to fully assess whether a broadcaster has operated in the public interest as required by Section 309(a) of the Act.

V. LPTV Stations Should Be Permitted to Upgrade to Class A Status

The Commission also tentatively concluded that it should allow qualified low power TV (“LPTV”) stations to be granted Class A status.¹³ Capitol supports this proposal. As noted by the Commission, such a measure will advance the goal of localism because Class A TV stations are required to provide locally produced programming. Capitol suggests that LPTV stations that wish to be granted Class A status must agree to abide by all of the localism requirements discussed herein, as well as the other requirements with which Class A TV stations must comply.

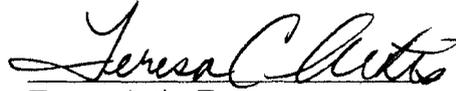
To determine whether an LPTV station is qualified to be granted Class A status, Capitol recommends that the Commission use the eligibility criteria set forth in the Community Broadcasters Protection Act of 1999, codified at 47 U.S.C. § 336(f). Specifically, to be eligible for Class A TV status, the LPTV station must: 1) broadcast at least 18 hours per day; 2) broadcast an average of at least three hours per week of locally produced programming; and 3) certify compliance with all applicable full-power TV and LPTV rules. Capitol submits that statutory authority for adopting this proposal may be found in Sections 4(i) and 303(a) of the Act.

¹² See also *National Broadcasting Co., Inc. v. United States*, 319 U.S. 190 (1943).

¹³ *NPRM* ¶ 141.

Respectfully submitted,

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