

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Broadcast Localism

)
)
)
)

MB Docket No. 04-233

JOINT COMMENTS
OF
PUBLIC BROADCASTERS

Lawrence M. Miller
Steven C. Schaffer
Malcolm G. Stevenson
SCHWARTZ, WOODS & MILLER
Suite 610, The Lion Building
1233 20th Street, NW
Washington, DC 20036
202-833-1700

April 28, 2008

TABLE OF CONTENTS

Summary	i
A. Introduction	2
B. If the Commission Adopts CAB Requirements It Should Not Apply Them to Public Broadcast Licensees	7
C. Public Broadcasters Already Engage in Myriad Outreach Activities That Assure Communication with Their Audiences.....	9
D. The Proposed “Physical Presence” Requirement is an Outmoded Concept that Would be Unproductive and in Many Cases Impose an Overwhelming Financial Burden on Public Broadcast Licensees	10
E. A Return to the Main Studio Rule of Yore Would be Unwarranted and Unwise	15
F. Public Broadcasters Should Not Be Subject to Program Processing Guidelines In View of Their Manifest Satisfaction of Any Such Guidelines the FCC Might Adopt.....	19
G. The Joint Commenters Support Enhanced Renewal Announcements That Use Today’s Communications Means to Provide Greater Public Access.....	24
H. Conclusion.....	25

Summary

The Joint Commenters file these Comments in response to the Commission's Report on Broadcast Localism and Notice of Proposed Rulemaking ("Notice") in MM Docket No. 04-233.

The Joint Commenters are licensees of public broadcast stations serving states and communities throughout the country. They include every type of public broadcasting licensee, including school boards, universities and colleges, state authorities, and nonprofit community groups, and many of them operate combined TV-radio facilities. The sole mission of these stations is to provide programming responsive to community needs. There is no tension between their mission and their public service obligations, including their inherent responsiveness to local needs, and they have collectively provided cardinal public broadcast service to tens of millions of Americans.

The Commission's proposes to require that every licensee: (1) establish a community advisory board (CAB); (2) engage in specified formal outreach activities; (3) maintain staff presence at each station during all hours of operation; (4) satisfy specified "public interest minimums" for non-entertainment programming; and (5) maintain its main studio in its community of license. These proposals are premised on the propositions that: (1) the current level of licensees' disclosure to and communication with their local communities is inadequate; (2) not all stations provide significant levels of issue-responsive programming; and (3) licensees have become distant from the communities they serve.

As amply demonstrated in the Joint Comments, the Commission's premises are wholly inapposite with regard to the public broadcast industry. A cursory review of the Joint Commenters' activities confirms that the industry engages in extensive outreach activities to determine the needs of their constituents and provides a wealth of responsive national, regional and local non-entertainment programming far in excess of any "minimum" the Commission might prescribe. There are already in place a number of statutory and regulatory elements, including certain provisions of the Communications Act requiring most of the industry's licensees to maintain Community Advisory Boards, the FCC's existing licensing scheme and the fundamental purposes of individual public broadcasting licensees reflected in their respective charters, that guarantee public broadcasters' operations in service to local public needs. Indeed, if implemented, the agency's proposals would force licensees to redirect enormous resources away from the very programming that is the touchstone of their service and the ostensible goal of the proceeding – assuring programming responsive to local needs and interests -- contrary to the public interest.

Accordingly, the Joint Commenters urge the Commission: (1) not to apply CAB requirements to the industry across the board; (2) not to reimpose physical staffing requirements of decades past; (3) not to change the current main studio rule; (4) not to subject public broadcasters to program processing guidelines. At the same time, the Joint Commenters support the Commission's proposal regarding enhanced renewal announcements, which properly takes into account the rapid expansion of the Internet as a means of communication.

Notice of Proposed Rulemaking (“Notice”), FCC 07-218, released January 24, 2008.² In support thereof, the following is shown:

A. Introduction

1. The Joint Commenters are licensees of public broadcast stations serving states and communities throughout the country. They include every type of public broadcasting licensee, including school boards, universities and colleges, state authorities, and nonprofit community groups, and many of them operate combined TV-radio facilities. The governmental units are expressly chartered by law to provide a noncommercial educational program service. The local organizations are all organized to provide a noncommercial educational program service and, as required by the Commission in the case of public television licensees, have governing boards that are representative of their communities. All of these licensees are qualified for grants by the Corporation for Public Broadcasting (CPB). The nongovernmental licensees by law must therefore maintain Community Advisory Boards.³ Those boards advise the governing body of the station with respect to whether the programming and other policies of the station are meeting the specialized educational and cultural needs of the communities served by the station. In addition, all of these licensees engage in a variety of outreach activities that assure responsiveness to the concerns of their audiences.

² By Public Notice released March 6, 2008 (DA 08-515), the comment and reply comment dates were extended to April 28, 2008 and June 11, 2008, respectively.

³ 47 U.S.C. Section 396(k)(8)

2. In short, the sole mission of these stations is to provide programming responsive to community needs. There is no tension between their mission and their public service obligations, including their inherent responsiveness to local needs, and they have collectively provided cardinal public broadcast service to tens of millions of Americans.

3. In the Notice, the Commission has proposed to require that every licensee: (1) establish a community advisory board (CAB); (2) engage in specified formal outreach activities; (3) maintain staff presence at each station during all hours of operation; (4) satisfy specified “public interest minimums” for the provision of public affairs and political programming as well as public service announcements; and (5) maintain its main studio in its community of license. These proposals are premised on the propositions that: (1) the current level of licensees’ disclosure to and communication with their local communities is inadequate; (2) not all stations provide significant levels of issue-responsive programming; and (3) licensees have become distant from the communities they serve.

4. As demonstrated below, the Commission’s premises that are the basis of its proposals are wholly inapposite with regard to the Joint Commenters and the public broadcast industry generally. Implementation of at least some of the proposals would impose substantial, costly new burdens on public broadcasters at a time when they face economic challenges and in the absence of any evidence that they are not fully responsive to their constituents. In large measure, the FCC’s proposal seeks to turn the clock back by reviving a regulatory

approach to broadcasters' programming efforts that was largely discarded in the 1980s and reinstating engineering requirements that were expressly eliminated due to advances in technology. In these lean economic times, the resources necessary to comply with the Commission's proposals are simply not available unless other services, particularly programming, are substantially reduced. Even in flush economic times, the proposals if applied to public broadcasters would not serve the public interest because they constitute a solution in search of a problem with no countervailing public benefit.

5. The Commission's proposals reflect a well-intentioned desire to secure the responsiveness and accountability of licensees to the communities they serve. Much of the Notice is devoted to a review of the practices of commercial licensees. The proposals appear to be motivated by the Commission's conclusion that the commercial broadcast industry as a whole has drifted away from locally-oriented service. The Joint Commenters voice no opinion on this conclusion. However, they strenuously resist the notion that commercial and public broadcasters should be viewed alike in this proceeding.

6. Commercial and public broadcasting each fill vital roles in the nation's communications. Public broadcasting is fundamentally committed to providing public interest programming, and there is no lack of public communications as to what it does. The bottom line is that public broadcasting's non-profit educational mission is entirely different from that of its commercial counterpart. Yet the Commission's rationale for its proposals set forth in the Notice did not consider at all these substantial differences. Public broadcast licensees are subject to entirely

different eligibility standards than commercial broadcasters. Licensing turns on a showing that the station will be “used primarily to serve the educational needs of the community, for the advancement of educational programs, and to furnish a nonprofit and noncommercial service.”⁴ Nonprofit organizations applying for public television construction permits are eligible only if the applicant’s leaders are representative of a broad cross section of community elements.⁵ These distinctive elements in the eligibility and mission of public broadcasters form the basis for myriad logical regulatory distinctions. For example, public broadcasters, which are locally oriented, are not subject to the multiple ownership rules.⁶ There are separate public file rules reflecting the varying operations of public and commercial stations.⁷ There are starkly different rules governing on-air announcements of program support.⁸

7. Congress has already imposed detailed requirements to assure that public broadcasting licensees that receive CPB grants provide information concerning operations to the community and interact with the community. The Communications Act of 1934, 47 U.S.C. 396, *et seq.*, as amended (“Act”), requires that the Joint Commenters and all other recipients of CPB station grants certify annually their continued compliance in five specific areas: they must open meetings of the government board and committees to the public (Section

⁴ See Section 73.621.

⁵ See Form 340, Section II, Item 3 and accompanying Worksheet #2.

⁶ See Section 73.3555(f).

⁷ Cf., Sections 73.3526 and 73.3527.

⁸ Cf., Sections 73.1212 and 73.621(e).

396(k)(4)); they must make specified financial information available to the public (Section 396(k)(5)); certain licensees must establish community advisory boards (Section 396(k)(8)); licensees must comply with equal employment opportunity (“EEO”) regulations and reporting requirements (Section 396(k)(11)); and they must observe restrictions on the use of donor lists and political activities (Section 396(k)(12)). CPB requires station grant recipients to certify their compliance with these requirements prior to receiving any grant funds and on an annual basis.⁹

8. The public broadcast industry for decades has manifestly achieved the goals articulated by the Commission in this proceeding. Licensees are either governmental units that are by definition representative of and responsive to the citizens of their jurisdictions or else non-profit organizations that exist solely for public service. The licensees maintain websites that provide extensive information on their programming and outreach activities. They generally publish annual reports to their communities and post them on their websites. Their tax returns are a matter of public record. The governmental licensees are the subject of oversight and budgetary determinations. While the industry has been the beneficiary of Commission deregulation relaxing certain rules in light of developments in technology and the means by which the public can access information, the ultimate beneficiary of this evolution has been the public. As public broadcast licensees have been freed from unnecessary requirements, they have been able to devote greater resources to programming, the touchstone of their service. The Joint Commenters accordingly urge the Commission not to adopt its proposals

⁹ CPB has developed extensive requirements and guidelines for compliance with these statutory requirements. See http://www.cpb.org/stations/certification/cpb_certification_req.pdf.

regarding CABs, specified outreach and renewal application processing guidelines, staffed transmitters, and main studio locations.

B. If the Commission Adopts CAB Requirements It Should Not Apply Them to Public Broadcast Licensees

9. Most of the Joint Commenters and other public broadcast licensees already maintain CABs. Although not acknowledged in the Notice, the CPB provisions of the Communications Act of 1934, as amended, require that:

Funds may not be distributed pursuant to this subpart to any public broadcast station (other than any station which is owned and operated by a State, a political or special purpose subdivision of a State, or a public agency) unless such station establishes a community advisory board. Any such station shall undertake good faith efforts to assure that (i) its advisory board meets at regular intervals; (ii) the members of its advisory board regularly attend the meetings of the advisory board; and (iii) the composition of its advisory board are [sic] reasonably representative of the diverse needs and interests of the communities served by such station.

47 U.S.C. §396(k)(8)(A). Thus, if a station is privately owned by a community group, private university or other private organization, the licensee must, without exception, comply with these provisions to establish and maintain CPB qualification. CPB has issued four pages of detailed mandates, suggestions, documentation requirements and certification procedures to comply with this subsection.¹⁰ The statute originally required all public broadcasting licensees to maintain CABs. However, Congress amended the statute in 1981 to eliminate the requirement with respect to governmental licensees.¹¹ A decision by the Commission to require all public licensees to maintain CABs would needlessly

¹⁰ Ibid.

¹¹ Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, Section 1227(g)(1).

overlap with the statutory requirement and detailed implementing CPB regulations for CPB-qualified nongovernmental stations and would directly contradict the judgment of Congress with respect to stations licensed to governmental units.

10. Public broadcasting is structurally designed to involve the community in its operations. Various governmental and some private licensees include board members who serve by virtue of the primary office they hold, either by statute or charter. For example, the New Jersey Public Broadcasting Authority (NJPBA) includes among its *ex officio* board members the Commissioner of Education, the Chancellor of Higher Education and the Commissioner of Community Affairs. Similarly, the Mississippi Authority for Educational Television (MAET) includes on its governing board representatives of the State Board for Community Colleges, the State Superintendent of Public Education and the State's Institutions of Higher Learning. In this manner, licensees receive input regarding issues of interest and concern from governmental officials and agencies responsible for various areas of civic life. When viewed in conjunction with the input of appointed board members, these agencies have extensive ties with the State's varied communities, are mandated to serve their informational, educational and cultural needs and are uniquely positioned to provide input assuring that the licensee responds to articulated concerns.¹² In addition, all public television nonprofit organization licensee boards are required by the FCC to be broadly representative of the communities they serve. Moreover, in many cases, the boards of community licensees number in the dozens of members,

¹² It should be noted that some governmental licensees have voluntarily chosen to maintain community advisory boards although the statute expressly does not require them to do so.

assuring that the licensee has access to a wide variety of views encompassing a range of interests in the community. In short, statutory provisions, the Commission's licensing scheme for public broadcasting and basic industry structure already assure for CPB-qualified licensees a level of licensee responsiveness to community interests above and beyond what the Commission appears to seek in the Notice.

C. Public Broadcasters Already Engage in Myriad Outreach Activities That Assure Communication with Their Audiences

11. The Joint Commenters collectively use a variety of outreach mechanisms to gather input from their audiences that animates their operations. These efforts include viewer surveys, "town hall" meetings, participation by station management on local committees and boards, and dedicated phone lines to receive audience feedback and informative websites that provide ready access to station management for the expression of audience concerns.¹³

12. In this regard, the Joint Commenters are familiar with and support the Comments being filed herein by the Association of Public Television Stations (APTS) and National Public Radio, which each conducted a survey of their station constituents for the purpose of providing information to the Commission in

¹³ One representative example of this activity is "The Listening Project" conducted by ideastream. In order to create media content that is relevant to its audience, the licensee has taken the community's temperature every year for six consecutive years by listening to what well over 10,000 people from all over the northeast Ohio region have to say about the challenges and assets of the region and the role that ideastream can play as a broadcaster and media resource. These efforts have involved town meetings, broadcast forums, listener/viewer facilitated discussions, on-line surveys, telephone co-incidental calls, "civic leadership" meetings and membership mailings; together, they have provided a wealth of information about community needs and interests that is subsequently used by the licensee for program planning purposes.

this proceeding. Those comments set forth with specificity the outreach activities undertaken voluntarily by the public broadcast industry.

13. For every public broadcast station there is a wealth of readily available program information available to the public, and any interested member of the public can easily contact station management to voice any concerns. Moreover, as shown below, public broadcasters are providing very substantial programming responsive to local interests and concerns. The record is abundantly clear – the current regulatory regime governing public broadcasting works just fine. As applied to the public broadcast industry, the Commission’s proposal to require specific forms of outreach is unnecessary.

D. The Proposed “Physical Presence” Requirement is an Outmoded Concept that Would be Unproductive and in Many Cases Impose an Overwhelming Financial Burden on Public Broadcast Licensees

14. The Notice is not clear as to whether the Commission contemplates full-time staffing of studios or transmitter sites. Further, while it indicates that the issue has already been joined in a pending proceeding regarding the public interest obligations of digital radio broadcasters,¹⁴ many of the Joint Commenters are joint radio-TV licensees, so that any requirement, be it applicable to TV only, radio only or both TV and radio, will have a substantial impact on their operations. In any event, the proposal is anathema to public broadcasting. A requirement that licensees maintain a staff presence at each station during all hours of operation is generally onerous and especially so for public broadcast state and

¹⁴ See Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking in MM Docket No. 99-325, 22 FCC Rcd 10344 (2007).

regional network satellite stations. As the Commission observes (Notice, para. 28), stations have been authorized to operate unattended for over 10 years. This change was implemented in the light of advances in the reliability of transmission equipment and related monitoring systems that obviated the necessity of a staff presence at the point of transmission.¹⁵ It was a natural and productive regulatory response to the changing technical environment and made it economically feasible for many public broadcast licensees to expand to 24-hours-a-day operations. In addition, the Notice does not acknowledge that the Commission has for decades, on an appropriate showing, waived the main studio rule for satellite stations in state and regional television and radio networks. Those waivers permit provision of service to rural areas that otherwise could not support a full-service public radio or television station as well as to urban areas to which it would otherwise be uneconomical to provide high-quality service. For example, state network Joint Commenters serve communities such as Lakeview, Oregon, population 1,821; Enterprise, Oregon, population 1,895; Manahawkin, New Jersey, population 2,004; Berlin, New Jersey, population 6,149; Booneville, Mississippi, population 8,625; Bude, Mississippi, population 1,037; and Ackerman, Mississippi, population 1,696. Such main studio waivers are routinely accompanied by conditions that assure that the residents of the communities served by satellite stations have access to the licensee and that the issues they face are reflected in station programming. The Commission now

¹⁵ See Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operations of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements, Report and Order in MM Docket No. 94-130, 10 FCC Rcd 11479 (1995).

opines (Notice, para. 29) that a staff presence at a station during all hours of operation will enhance station communication with the public, particularly during emergencies such as severe weather. This reasoning is faulty and, moreover, ignores the special situation of public broadcasting.

15. The fact is that, to the extent that they look to their local broadcaster for guidance during an emergency, listeners almost uniformly watch for Emergency Alert System (EAS) messages broadcast by local stations; they do not contact transmitting facilities. However, it is the sense of the Joint Commenters that even regular public television and radio audience members typically tune to commercial stations for emergency information. Governmental officials that wish to contact public television station licensees to coordinate emergency responses know how to do so. Moreover, the type of technical personnel who would be hired to staff transmitting facilities would not have the kind of qualifications that would make them appropriate liaisons with the public or governmental officials during times of emergency. The Commission's proposal, though well-intentioned, simply would not productively enhance communications between the public and licensees.

16. Further, the costs of compliance with this proposal would be enormous and would undoubtedly result in a reduction of daily operating hours or evisceration of programming by many licensees. The response of many of the Joint Commenters to the APTS survey mentioned above reveals the enormous costs to state networks that would be incurred in complying with the Commission's initiative. For example, the University of New Hampshire (NHT) estimates

that full-time staffing of its transmitters would require an additional 20 transmitter engineers for transmitters that are located on mountaintops as well as various capital improvements to house them. Compliance would cost many hundreds of thousands of dollars and the licensee without question would have to curtail its program service, which currently airs 24 hours a day. Similarly, MAET (MAET), which operates 16 TV and radio transmitters, estimates that it would require 33 additional employees at an estimated annual cost of over \$1,470,000.00 to comply with the staffing requirement. By way of comparison, MAET currently employs one technician per transmitter site; again, compliance with the proposed requirement would result in a substantial reduction in broadcast operations. In a time of severe budgetary limits, there is no realistic prospect that these licensees could secure funding to inflate its staff to meet the Commission's proposed requirement, so the only alternative would be a reduction of service to the public, in the form either of reduced operating hours or cutbacks in local program production.¹⁶

17. The compliance costs for non-network licensees would also be substantial. For example, Detroit Educational Television Foundation (Detroit Public Television) estimates that compliance would require an additional 2.5 full-time employees; to fund this cost, the licensee, rather than cut back hours of operation, would choose to cut production of local programs to redirect

¹⁶ And, too, licensees with modest regional networks would face costs that would undermine the feasibility of their continued operation. So, for example, Mid-South Public Communications Foundation (Mid-South) estimates that it would require four fulltime employees and one part-time employee at an estimated cost of \$125,000 to staff the transmitter of its Station WKNP-FM, Jackson, Tennessee, which operates as a satellite of flagship Station WKNO-FM, Memphis, Tennessee.

technicians from studios to master control/transmitter monitoring. The Board of Regents of the University of Oklahoma/Rogers State University (Rogers State University) is pleased to report that it is joining the world of 24/7 operations beginning May 1, 2008. This expansion of program service for a small station on a tight budget is made entirely possible by the current rules permitting automated overnight operation; the licensee's budget simply does not have available funding to add additional staff to cover overnight operation at an annual cost of over \$20,000. South Texas Public Broadcasting System, Inc., a joint radio-TV licensee which currently operates 24 hours a day, would have to reduce the number of local television and radio programs produced by the licensee in order to use that production staff to cover overnight shifts, effectively erasing efficiency gains enable by the advancement of broadcast technology over the past 25 years and the adoption of reasonable Commission regulation approving automated operations. In short, adoption of the Commission's proposal would have the opposite impact of its stated goal by decreasing locally responsive programming produced and aired by this licensee.

18. The Joint Commenters submit that adoption of this onerous staffing requirement would achieve a result – reduced broadcast service, reduced EAS alerts, and reduced communications between licensees and their audiences – that is exactly opposite of that envisioned by the Commission. In fact, the Joint Commenters do not believe that there would be a single public benefit from this proposed requirement, which is simply out of step with the realities of today's

broadcast operations. For these reasons, the Commission should abandon this proposal.

E. A Return to the Main Studio Rule of Yore Would be Unwarranted and Unwise

19. The Commission's proposal to reinstitute the requirement, abandoned decades ago, that broadcasters maintain their main studios in their communities of licensee is ill-advised. For many public broadcasters the proposal simply could not be implemented in light of inherent financial constraints. As to this issue, there are three distinct groups of licensees – statewide network operations that for years have operated “flagship-satellite” configurations entailing waiver of the main studio rule, regional operations that have some network characteristics and, finally, radio, TV or combination radio/TV operations licensed to a single community. In any of these cases, the cost of compliance with the Commission's proposal could be enormous and there is simply no evidence that a restrictive main studio rule will enhance public access to stations or increase the responsive programming provided by stations; indeed, the staggering cost of such compliance would have precisely the opposite result.

20. Preliminarily, the Joint Commenters observe that the current main studio rule, which permits some flexibility in the locating of studio facilities, as well as the current policy allowing network licensees to be granted waivers to operate satellite stations from a single flagship studio facility, in fact have enabled dedication of greater financial resources to the hardware and staffing that maximizes the value of a studio facility. Standalone licensees have been able to conserve scarce resources by locating facilities in more accessible or in

less expensive, though entirely accessible areas. Network operations have been able to provide vital public service through their flagship studio operations, which allow dedication of funds to program service rather than to redundant hardware.

21. Moreover, the Joint Commenters see no evidence that the location of their studio facilities either encourages the production of local programming or increases interaction between stations and their audiences. In the Joint Commenters' collective experience, members of the public rarely visit studio facilities regardless of whether those facilities are located within the community of licensee or at some other location that complies with the current rule.¹⁷

22. Of course, public radio and television state network operations would face the largest costs of complying with a requirement that every station have a main studio in its community of license that would perhaps have to be staffed during all hours of operation. And make no mistake: these costs would be prohibitive, particularly as the industry moves to all-digital operation that is considerably more costly than current analog operation. For example, NHT estimates that it would cost \$3.6 - 4.0 million to build additional studios at its satellite transmitter sites. MAET estimates that it would cost approximately \$18.9 million to establish seven new studios and there would then be annual operating expenses of \$750,000 per studio. Licensees like NJPBA and the Maryland Public Broadcasting Commission (MPB) would face similarly staggering costs in

¹⁷ In this connection, the majority of the Joint Commenters have never had requests to examine their local public inspection files except by FCC inspectors, "mock inspectors" provided as a service of state broadcasters organizations, and their own counsel. Inspection requests to the other licensees have occurred only sporadically. This circumstance appears unrelated to the physical presence of the file; that is, there is no correlation between the location of the file vis-à-vis the community and requests to examine it. Moreover, with the new requirement adopted in the Enhanced Disclosure proceeding to post public files online this consideration has become far less important.

building operating individual studio facilities in connection with its four full-service television and seven full-service radio facilities to achieve compliance. These licensees have operated for decades in a manner responsive to the public interest. Imposing redundant studio requirements on them simply makes no sense. Under the circumstances, the Joint Commenters urge the Commission to take this opportunity to affirm the efficacy of network “flagship-satellite” operations and specifically endorse their continuing operation as routine.

23. The compliance cost to standalone radio or TV licensees could also be substantial. For example, Detroit Public Television will be relocating its combined TV operations this summer to new state-of-the-art facilities located in a readily accessible suburb of the City of Detroit. It is now operating out of a 53-year-old building that is terribly inefficient in broadcast operations and energy usage and would require significant additional expense to retrofit for digital operation compared with new facilities. The licensee tried for nearly a decade to find a new location in the city of Detroit but could not locate a suitable location at an affordable price or in any real estate development that would allow it to pay as the money was raised through a capital campaign. It finally determined that the best course was to acquire the seven-year-old building of a suburban communications company that had gone out of business at a price that cut \$6 million off the cost of its capital campaign and to acquire a mobile production unit for its productions in Detroit. It would have cost approximately \$17 million to renovate the old building within the city that currently houses the licensee’s operations, and the building would still be far inferior to the new one acquired for

\$11 million. This relocation decision by Detroit Public Television should be welcomed by the Commission. It reflects a decade of careful planning, fully complies with the main studio location rules that have been in effect for many years, and promises vastly more efficient public service. Moreover the decision was made by 47 trustees representing various facets of the Detroit community who volunteer their time and expertise out of a sense of duty and concern for the community, not by fiat in Washington 500 miles away. Similarly, Northwest Indiana Public Broadcasting, Inc. (NIPB) operates public television Station WYIN, Gary, Indiana, from studios located in readily accessible Merrillville, Indiana, only a few miles away. From these facilities, the licensee produces a wealth of local non-entertainment programming (see paras. 27-28, infra). Merrillville is part of Greater Gary. It is the retail and business center of the region with easy access for everyone including the residents of Gary. It has immediate access to major highways (U.S. 30 and I-65) as well. Gary does not have a financial or business center. In fact, Merrillville is the crossroad community of the region. From a technical standpoint, the station is located on a high point within easy microwave range of the licensee's tower located in Cedar Lake, Indiana. Relocation of this facility has been estimated at the cost of \$9.78 million for a 43,000 square-foot building, a staggering sum of money that the licensee simply cannot afford.

24. Stations with satellite operations of any kind would face substantial additional expenses that would undoubtedly compromise overall program service. For example, Mid-South estimates that the cost of establishing a studio facility for satellite Station WKNP-FM, Jackson, Tennessee would exceed

\$250,000, including annual staffing costs of approximately \$165,000 and an initial capital outlay of approximately \$100,000; notably, this estimate does not include the necessary cost of renting appropriate studio space.

25. The foregoing situations are entirely representative of the industry. The current flexibility accorded in studio location maximizes public broadcasters' options to build superior facilities without compromising public access or licensee responsiveness to audience concerns. Vast amounts of capital have been expended to construct studios in reliance on the Commission's main studio location rules. The Joint Commenters urge the Commission not to reinstate the old main studio rule or adopt some more restrictive version of the current rule.¹⁸

F. Public Broadcasters Should Not Be Subject to Program Processing Guidelines In View of Their Manifest Satisfaction of Any Such Guidelines the FCC Might Adopt

26. Preliminarily, it should be emphasized that while the Commission proposes (Notice, para. 124) to "reintroduce specific procedural guidelines for the processing of renewal applications" that were in effect prior to 1984, in fact public broadcasters have never been subject to such guidelines regarding amounts or types of non-entertainment programming.¹⁹ Manifestly, public broadcasters provide a level of non-entertainment programming far in excess of any standard the Commission might adopt. Under the circumstances, application of renewal

¹⁸ Because there is no evidence of a problem resulting from public broadcasters' location of their studios, the Joint Commenters submit that mere grandfathering of existing operations would be inappropriate because future operations that comply with the current rule should be permitted and, indeed, encouraged to the extent that they result in construction of superior technical facilities.

¹⁹ See In re Revision of Programming Policies and Reporting Requirements Related to Public Broadcasting Licensees, 87 FCC 2d 716, 726 (1981).

processing guidelines to the public broadcast industry would be unwarranted and unwise.

27. In a Petition for Reconsideration filed on April 14, 2008 in MM Docket 00-168, many of the Joint Commenters herein requested relief from the onerous quarterly program reporting requirements that the Commission has imposed on all television licensees. In support of that request, the petitioners therein proffered a wealth of information demonstrating that public television licensees provide a level of commercial-free public affairs and other non-entertainment program fare that far exceeds any standard the Commission might adopt in this proceeding. Such programming includes cardinal national programs like *The NewsHour with Jim Lehrer*; *Washington Week*; *The McLaughlin Group*; *BBC World News*; *Bill Moyers Journal*; *Charlie Rose*; *Nightly Business Report*; *Frontline*; *Now on PBS*; *Religion and Ethics Newsweekly*; and *Tony Brown's Journal*. In addition to this unique national program fare, some of the Joint Commenters produce issue-responsive statewide, regional or local programming. Further, most of the Joint Commenters produce local issue-oriented public television programs for their discrete audiences. For example, Detroit Public Television has produced programs such as *Get Up! Get Out!*, addressing childhood obesity; *Bridging the Racial Divide*, addressing cultural, social, and economic issues facing the community; *American Black Journal*, offering in-depth interviews with people in the news; *Am I Right?*, reviewing the week's events from conservative and liberal perspectives; *Leaders on Leadership*, featuring in-depth interviews with CEOs and other successful leaders; and *Detroit Economic Club Presents*, covering speeches from one of the nation's most

prestigious speaking venues. MPB produces, among other programs, *Public Square*, a nightly program series exploring the day-to-day issues affecting the diverse communities that make up the State, such as the environment, economic development and legislative developments. It also provided comprehensive coverage of the 2006 elections, including live debates, as well as coverage of Chesapeake Bay Week, focusing on the issues affecting this unique local resource. NJPBA produces a variety of public affairs programs, including *On the Record* and *Reporters Roundtable with Michael Aron*, gubernatorial debates and Election Night coverage, *Due Process*, addressing legal issues, *Another View* focusing on the African American community, and *Images/Imagenes*, focusing on New Jersey's Hispanic Community. MAET has produced many hours of local issue-oriented programming covering subjects such as Hurricane Katrina, race relations in Mississippi, health and business, as well as political coverage of the Governor's State of the State Address and the opposition party's response. Rogers State University produces *Green Country Perspectives*, a weekly program that addresses a variety of issues of local importance, as well as periodic live call-in programs addressing issues of local interest. Florida West Coast Public Broadcasting, Inc., produces *Gulf Coast Journal*, a public-affairs program that highlights issues of importance to the community, as well as *Florida This Week*, a live weekly political roundtable discussion program. NIPB produces *Lakeshore Focus*, a weekly half-hour magazine-style program addressing issues of local interest, the Indiana Governor's State of the State Message and a variety of documentaries covering issues such as recycling, agriculture; its current plans in

this regard including a proposed documentary on the steel industry that was the heart of Gary for decades.

28. And, too, a number of public television licensees, like NJPBA, ideastream and NIPB, produce news programming that provides its constituents with information uniquely tailored to their needs and interests. NJPBA's news program is a weekday one-half hour newscast. ideastream operates the Statehouse News Bureau on behalf of Ohio Public TV stations; the bureau is located in the State Capitol Building and produces various programs for all Ohio public television stations and for individual groups of stations as well. NIPB produces *Lakeshore News Tonight*, a half-hour nightly news program, *Lakeshore News Review*, a weekend wrap up of the weekly news, as well as *Statehouse This Week*, providing reports on the State legislature for use by all Indiana public television stations.

29. This is just a summary of the extensive variety of public affairs programming uniquely responsive to the problems, needs and interests of local communities produced and/or aired by the Joint Commenters. Needless to say, moreover, all of these stations air thousands of public service announcements annually in response to local needs.

30. The situation is no different in radio. The Joint Commenters herein that operate radio facilities provide a wealth of award-winning public affairs and other non-entertainment programming. This programming includes such national fare as *Morning Edition*, *All Things Considered* and *Fresh Air*, that provide commercial-free news and information unique in the mass media. On the local

level, stations supplement the robust national public radio schedule with a variety of local public affairs programming responsive to their distinct local audiences and, as in the case of television stations, air thousands of public service announcements annually in response to local needs. For example, Isothermal Community College (Isothermal) produces and/or airs local and regional headlines after NPR and BBC news programming; non-NPR syndicated programming such as *The Health Show and 51%*; *The State of Things* providing state and regional coverage from North Carolina Public Radio; *Our Southern Community*, exploring the issues of the environment, energy and economics in the region; *Our Ocean World* (a daily feature covering issues related to the ocean); and *Southern Appalachian Creature Feature*, a cooperative production of Isothermal and the U.S. Fish & Wildlife Service. Oregon Public Broadcasting likewise supplements national news and public affairs programming with *Think Out Loud*, a new daily talk show that includes a listener call-in component. This local program covers local issues – recent episodes have included a conversation with the candidates for Oregon Attorney General, discussion concerning Oregon’s future water supply and demand, discussion of Oregon agriculture and a conversation with a female member of the Oregon National Guard and the female Iraqi interpreter whom she helped bring to the United States. Joint Commenter ideastream, licensee of Station WCPN(FM), Cleveland, Ohio, provides an extensive array of local news and public affairs programming. This fare includes nine hours of programming weekly targeted toward the needs of discrete ethnic populations in Northeast Ohio produced by local representatives from the German, British, Irish, Slovenian,

Slovakian, Hungarian, Lithuanian, Serbian, Polish and Ukrainian communities; special local programming associated with Ramadan, Solstice, Kwanzaa, Chanukah, Rosh Hashanah and Yom Kippur; and special local fare associated with Black History Month. In addition, the licensee airs five days a week *The Sound of Ideas*, a one-hour public affairs call-in program focused on local and regional issues; among other things, the program engages elected officials and other leaders in public conversation on a routine basis.

31. The examples above are but a representative sample of the nature and scope of public service programming provided by noncommercial educational broadcasters, consistent with their local, state and federal mandate. Indeed, the Commission itself acknowledges that public stations provide substantial amounts of community-responsive programming.²⁰ On its face, there can be no doubt that these licensees provide public affairs and other non-entertainment programming far in excess of any processing standard the Commission could reasonably establish. Under all of these circumstances, the Joint Commenters urge the Commission not to apply any program processing guidelines to public broadcasters.

G. The Joint Commenters Support Enhanced Renewal Announcements That Use Today's Communications Means to Provide Greater Public Access

32. The Joint Commenters believe that the Commission's proposal (Notice, para. 24) to require that licensee renewal announcements be posted on licensee websites and be revised to direct the public to the FCC's website are

²⁰ See Notice, para. 38, where the Commission refers to an independent study concluding that, in contrast to commercial stations, "90 percent of the public stations surveyed aired some local public affairs programming — 3.5 hours per week, on average."

eminently reasonable. With the rapid expansion of Internet communication, the FCC would be remiss to ignore it as a resource for public access to the renewal process.

H. Conclusion

33. The record reveals that public radio and television broadcasters for decades have provided a wealth of national and local public affairs and other non-entertainment program fare responsive to the needs and interests of their audiences. They are locally oriented operations structured and licensed to assure local input in their operations. In collectively establishing a premier program service, they have availed themselves of sensible changes in the Commission's rules to provide flexibility in their physical configurations that permits the dedication of additional resources to programming without compromising local access or responsiveness to local needs. The Commission should recognize this record of service by declining to adopt proposals that will burden public broadcasters with unwarranted financially crippling requirements resulting in a reduction of service to the public.

JOINT COMMENTERS

By: _____ /s/_____
 Lawrence M. Miller
 Steven C. Schaffer
 Malcolm G. Stevenson

SCHWARTZ, WOODS & MILLER
 Suite 610, The Lion Building
 1233 20th Street, N.W.
 Washington, D.C. 20036-7322
 Telephone: 202-833-1700
 Their Attorneys

April 28, 2008

JOINT COMMENTERS
DOCKET NO. 04-233

BOARD OF REGENTS OF THE UNIVERSITY OF OKLAHOMA/
ROGERS STATE UNIVERSITY

KRSC-TV, Claremore, Oklahoma
KRSC-FM, Claremore, Oklahoma

BOARD OF TRUSTEES, FLORIDA GULF COAST UNIVERSITY

WGCU(TV), Ft. Myers, Florida
WGCU-FM, Ft. Myers, Florida
WMKO(FM), Marco, Florida

CONNECTICUT PUBLIC BROADCASTING, INC.

WEDH(TV), Hartford, Connecticut
WEDN(TV), Norwich, Connecticut
WEDW(TV), Bridgeport, Connecticut
WEDY(TV), New Haven, Connecticut
WEDW(FM), Stamford, Connecticut
WNPR(FM), Norwich, Connecticut
WPKT(FM), Meriden, Connecticut
WRLI(FM), Southampton, New York

DETROIT EDUCATIONAL TELEVISION FOUNDATION

WTVS(TV), Detroit, Michigan

FLORIDA WEST COAST PUBLIC BROADCASTING, INC.

WEDU(TV), Orlando, Florida

IDEASTREAM

WVIZ(TV), Cleveland, Ohio
WCPN(FM), Cleveland, Ohio

ISOTHERMAL COMMUNITY COLLEGE

WNCW(FM), Spindale, North Carolina

LOUISIANA EDUCATIONAL TELEVISION AUTHORITY

WLPB-TV, Baton Rouge, Louisiana
KLPA-TV, Alexandria, Louisiana
KLPB-TV, Lafayette, Louisiana
KLTL-TV, Lake Charles, Louisiana
KLTM-TV, Monroe, Louisiana
KLTS-TV, Shreveport, Louisiana

MARYLAND PUBLIC BROADCASTING COMMISSION

WMPB(TV), Baltimore, Maryland
WMPT(TV), Annapolis, Maryland
WCPB(TV), Salisbury, Maryland

WFPT(TV), Frederick, Maryland
 WGPT(TV), Oakland, Maryland
 WWPB(TV), Hagerstown, Maryland

MID-SOUTH PUBLIC COMMUNICATIONS FOUNDATION

WKNO(TV), Memphis, Tennessee
 WKNA(FM), Senatobia, MS
 WKNP(FM), Jackson, TN
 WKNO-FM, Memphis, TN

MISSISSIPPI AUTHORITY FOR EDUCATIONAL TELEVISION

WMPN-TV, Jackson, Mississippi
 WMAB-TV, Mississippi State, Mississippi
 WMAE-TV, Booneville, Mississippi
 WMAH-TV, Biloxi, Mississippi
 WMAO-TV, Greenwood, Mississippi
 WMAU-TV, Bude, Mississippi
 WMAV-TV, Oxford, Mississippi
 WMAW-TV, Meridian, Mississippi
 WMAB-FM, Ackerman, Mississippi
 WMAE-FM, Booneville, Mississippi
 WMAH-FM, Biloxi, Mississippi
 WMAO-FM, Greenwood, Mississippi
 WMAU-FM, Bude, Mississippi
 WMAV-FM, Oxford, Mississippi
 WMAW-FM, Meridian, Mississippi
 WMPN-FM, Jackson, Mississippi

NEW JERSEY PUBLIC BROADCASTING AUTHORITY

WNJB(TV), New Brunswick, New Jersey
 WNJN(TV), Montclair, New Jersey
 WNJS(TV), Camden, New Jersey
 WNJT(TV), Trenton, New Jersey
 WNJM(FM), Manahawkin, New Jersey
 WNJN-FM, Atlantic City, New Jersey
 WNJP(FM), Sussex, New Jersey
 WNJS-FM, Berlin, New Jersey
 WNJT-FM, Trenton, New Jersey
 WNJZ(FM), Cape May Court House, New Jersey

NORTHWEST INDIANA PUBLIC BROADCASTING

WYIN(TV), Gary, Indiana

OREGON PUBLIC BROADCASTING

KOPB-TV, Portland, Oregon
 KEPB-TV, Eugene, Oregon
 KOAB-TV, Bend, Oregon
 KTVR-TV, LaGrande, Oregon
 KOAC-TV, Corvallis, Oregon
 KOAB(FM), Bend, Oregon
 KOAC(AM), Corvallis, Oregon
 KOAP(FM), Lakeview, Oregon

KOBK (FM), Baker City, Oregon
KOBN (FM), Burns, Oregon
KOGL (FM), Gleneden Beach, Oregon
KOPB (AM), Eugene, Oregon
KOPB-FM, Portland, Oregon
KOTD (FM), The Dalles, Oregon
KTMK (FM), Tillamook, Oregon
KTVR-FM, La Grande, Oregon

SOUTH TEXAS PUBLIC BROADCASTING SYSTEM, INC.

KEDT(TV), Corpus Christi, Texas
KEDT(FM), Corpus Christi, Texas
KVRT(FM), Victoria, Texas

UNIVERSITY OF NEW HAMPSHIRE

WENH-TV, Durham, New Hampshire
WEKW-TV, Keene, New Hampshire
WLED-TV, Littleton, New Hampshire
WUNH(FM), Durham, New Hampshire

WEST TENNESSEE PUBLIC TELEVISION COUNCIL, INC.

WLJT(TV), Lexington, Tennessee