

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

To: The Commission

JOINT COMMENTS OF BROADCAST LICENSEES

**Airen Broadcasting Company
All Pro Broadcasting, Inc.
Americom Las Vegas Limited Partnership
Americom, L.P.
Beacon Broadcasting LLC
Beasley Broadcast Group, Inc.
Bravo Mic Communications, LLC
Bravo Mic Communications II, LLC
Chet-5 Broadcasting, L.P.
Citadel Broadcasting Corporation
Clarity Communications, Inc.
Davis Television Wausau, LLC
Eagle Creek Broadcasting of Laredo, LLC
Eagle Creek Broadcasting of Corpus Christi, LLC
East Tennessee Radio Group, L.P.
Entercom Communications Corp.
Evangel Ministries, Inc.
Galaxy Communications, L.P.
Golden Isles Broadcasting, LLC
Great Scott Broadcasting
Greater Media, Inc.
HEH Communications, LLC**

**HJV Limited Partnership
Irie Radio Inc.
Journal Broadcast Corporation
Jubilation Ministries, Inc.
Kirkman Broadcasting, Inc.
M. Belmont VerStandig, Inc.
Milwaukee Radio Alliance, LLC
Multicultural Radio Broadcasting, Inc.
Multicultural Television Broadcasting, LLC
Noalmark Broadcasting Corporation
North Georgia Radio Group, L.P.
Northwest Broadcasting, Inc.
Port St. Lucie Broadcasters, Inc.
Ramar Communications II, Ltd.
Rocky Mountain Broadcasting Company
San Luis Obispo Broadcasting, Inc.
Sarkes Tarzian, Inc.
Shooting Star Broadcasting of New England, LLC
Sky Television, L.L.C.
Treasure Coast Broadcasters, Inc.
Western Kentucky University
Wolfhouse Radio Group, Inc.**

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April 28, 2008

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SUMMARY

In its Notice of Proposed Rulemaking (“*NPRM*”) in this proceeding, the Federal Communications Commission seeks comment on a sweeping series of potentially devastating “turn back the clock” re-regulatory proposals. On the basis of little more than anecdote, these proposals would reinstate overnight a slate of intensive regulations that, over the period of the last 25 years, the FCC has thoughtfully and incrementally reshaped, or discarded altogether, in multiple decisions amply supported by compelling facts and sound policy rationales. If adopted, these proposals would visit unprecedented, lasting harm on broadcasters, who today operate in a complex, fiercely competitive landscape. Broadcast Licensees, a broadly representative group of more than 600 radio and television stations nationwide, owned by companies that can be variously described (small, medium, and large; privately owned and publicly traded; commercial, noncommercial and religious; radio only, television only, and combined television and radio; standalone proprietor, single-market cluster owner, and multiple-market operator) strongly urge the Commission to reject the proposals that would: require main studios in all communities of license; require that stations be attended during all hours of operation; mandate that broadcasters meet every calendar quarter with local Community Advisory Boards; and reinstate renewal program processing guidelines.

The FCC seeks comment on a proposed reversion to the main studio rule as it existed in 1986, before the agency revised it in 1987, and again in 1998. In each of the preceding rulemaking proceedings, the FCC moved carefully and deliberately to change this rule, on the basis of comprehensive evidentiary records. Now, the FCC proposes a return to the past on the strength of nothing more substantial than the subjective desire of individual commenters to bring broadcaster “bricks and mortar” back into each station's “neighborhood.” As these

comments cogently demonstrate – through multiple, specific examples – implementation of this proposal would have a draconian, potentially debilitating, financial impact on many Broadcast Licensees. The costs of complying with this proposal would be staggering, running well into the collective millions of dollars, and dwarfing any projected, illusory benefits. The Commission should do nothing to disturb lawfully implemented main studio business plans that have helped broadcasters try to stay competitive with “rootless” non-local competition in the modern communications age.

A similar analysis obtains with respect to the proposed reinstatement of the discarded requirement that broadcast stations be attended during all hours of operation. As these comments show, broadcasters reasonably rely on the unattended operations rule to extend their service to the public during different dayparts, particularly late night. An end to unattended operations will almost certainly result in a net loss of service, given the unjustifiable costs that would be imposed on broadcasters. At most, the *NPRM* articulates a vague concern over the responsiveness of broadcasters to emergency situations. Any such issues should be addressed through attention to the existing Emergency Alert System, but without mandating that every broadcast station nationwide incur the high costs of paying staff to be on duty at all hours of operation.

Requiring each station to meet with a Community Advisory Board, broadly representative of “all segments” of the local community population, at least four times a year, would be without factual support and contrary to well-reasoned deregulatory FCC decisions of many years' standing. Fundamental questions abound concerning how the composition of these boards will be established, and the boards themselves are a thinly disguised, ill-advised attempt to return to yet another vestige of a bygone era – ascertainment by a methodology mandated by

the government. There has been no showing that the FCC should embark again on a regulatory path deliberately abandoned many years ago for well articulated reasons. Licensees should continue to be allowed to ascertain local problems, needs, and interests in their good faith discretion.

Finally, a return to renewal processing guidelines would reintroduce government content regulation in the form of a “raised eyebrow” that is clearly disfavored under the First Amendment. There has been no showing of the kind of systematic marketplace failure that would allow the Commission to even consider re-engaging in such a Constitutionally sensitive area of regulation.

For these reasons, Broadcast Licensees ask the Commission to step back from the re-regulatory precipice and instead focus on finding ways to help broadcasters survive, and indeed thrive, in the increasingly intense modern competitive arena.

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The broadcast station licensees identified on Schedule A hereto (“Broadcast Licensees”), collectively the owners of a diverse group of more than 600 radio and television stations nationwide, by their attorneys and pursuant to the Commission’s Rules, hereby submit these joint comments in response to the *Notice of Proposed Rulemaking* (“NPRM”) in this proceeding.¹ The *NPRM* proposes “changes [to Commission rules, policies, and practices] intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and public affairs matter.”² Among other proposals, it seeks comment on rules that would: (1) mandate the location of each broadcast station main studio within the political boundaries of the community of license to which each station is assigned;³ (2) require each station to maintain “a physical presence” at the studio during all hours of operation;⁴ (3) “reintroduce specific procedural guidelines for the processing of renewal

¹ In the Matter of Broadcast Localism, *Report on Broadcast Localism and Notice of Proposed Rulemaking*, MB Docket No. 04-233 (rel. Jan. 24, 2008) (“NPRM”).

² *Id.* at ¶ 3.

³ *Id.* at ¶ 41.

⁴ *Id.* at ¶ 87.

applications for stations based on their localism programming performance;”⁵ and (4) mandate that each licensee “convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station.”⁶ These Joint Comments will focus principally on these proposals.

I. INTRODUCTION.

There is an intense and stark disconnect between the “re-regulatory” objectives of the proposals now advanced in this proceeding, on the one hand, and well-reasoned, longstanding precedential decisions made by the FCC after lengthy, deliberative rulemaking proceedings, on the other. For example, more than two decades ago, the Commission resolutely rejected limiting main studio location to the “political boundaries” of a community of license.⁷ Thirteen years ago, it recognized the advance of highly accurate broadcast monitoring and automation equipment, and permitted development of unattended station operation.⁸ The use of programming guidelines for commercial radio, in the context of renewal applications, was

⁵ *Id.* at ¶ 124.

⁶ *Id.* at ¶ 26. For certain areas of concern raised in the *NPRM*, the *NPRM* suggests that such issues are being considered in other, separate proceedings. *See, e.g.*, discussion of unattended operation at radio stations at *NPRM*, ¶ 29. Broadcast Licensees respectfully submit that interspersing multiple interrelated concepts across several proceedings is inefficient and counterproductive, and introduces unnecessary complexity into the rulemaking process. They respectfully submit that consolidation of these topics into one docket would promote reasoned deliberation of all of them. Where appropriate, Broadcast Licensees will provide comments relevant to such issues in this proceeding and, to the extent necessary, request leave to do so.

⁷ Amendment of Sections 73.1125 and 73.1120 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, *Report and Order*, 2 FCC Rcd 3215, 3218 (1987) (“1987 Order”).

⁸ *See* In the Matter of Amendment of Parts 73 and 74 of the Commission’s Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements, *Report and Order*, 10 FCC Rcd. 11479 (1995) (“1995 Order”).

discredited by the Commission in 1981 as a mere “numbers game”⁹ with “no substantial utility.”¹⁰ Numerical programming guidelines for television were abandoned in 1984 because they had “no impact on the levels of informational (news and public affairs) programming”¹¹ ultimately broadcast by stations. The requirement of formal consultation with advisory boards in the “ritual of ascertainment”¹² for radio was viewed by the Commission in 1981 as a “methodological approach . . . [that] only obscures the issue of responsiveness and exhausts otherwise valuable resources in meaningless minutiae.”¹³ Strict ascertainment procedures for television were discarded in 1984 because there was “no evidence that these procedures” have “positively influenc[ed] the programming performance of stations.”¹⁴ In the absence of demonstrable industry failure, blanket reinstatement today of regulatory processes rejected decades ago as poorly suited for their intended purposes is retrogressive and ill-conceived.

The record in this proceeding establishes that broadcast stations are providing substantial amounts of issue-responsive, localized programming and public service activities. A number of the Broadcast Licensees have participated throughout this proceeding, and are perplexed that the Commission has apparently chosen not to give considerable weight to the many filings from their stations and others in the industry detailing the substantial amount of local, issue-responsive

⁹ Deregulation of Radio, *Report and Order*, 84 FCC 2d 968, 991 (1981) (“*1981 Deregulation Order*”).

¹⁰ *Id.* at 977.

¹¹ The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, *Report and Order*, 98 FCC 2d 1076, 1085 n.28 (1984) (“*1984 Deregulation Order*”).

¹² *1981 Deregulation Order* at 993.

¹³ *Id.*

¹⁴ *1984 Deregulation Order* at 1098.

programming they regularly carry.¹⁵ Instead, the FCC has “intuited” that there is a need for more such programming on the basis of testimony of selective witnesses at the field hearings held by the Commission. The Commission’s tentative conclusions to reimpose burdensome regulations lend undue significance to scattershot, anecdotal evidence, and to the comments of special interest group representatives and academics in occasional “open microphone” sessions, while marginalizing the importance of FCC findings in numerous past rulemaking proceedings and extensive and impressive current showings of exemplary day-to-day broadcaster community service.

The Commission simply cannot ignore precedent directly on point, or the full “voluminous record” in this proceeding. Where an administrative agency has already charted a regulatory course, as the FCC has done here,

an agency changing [that] course must supply a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored, and if an agency glosses over or swerves from prior precedents without discussion it may cross the line from the tolerably terse to the intolerably mute.¹⁶

Agency action that alters an existing regulatory scheme will be deemed arbitrary and capricious unless the agency can demonstrate it “has examined the relevant data and articulated a reasoned explanation for its action including a rational connection between the facts found and the choice made.”¹⁷ Given the FCC’s abundant precedent bearing directly on the issues in this proceeding, as well as a record that reveals no failure of the current regulatory scheme, the reimplementation

¹⁵ See, e.g., Comments of Citadel Broadcasting Company (Nov. 1, 2004); Comments of the licensee subsidiaries of Entercom Communications Corp. listed on Schedule A (Nov. 1, 2004); and Comments of Sarkes Tarzian, Inc. (Nov. 1, 2004).

¹⁶ *Greater Boston Television Corp. v. FCC*, 433 F.2d 841, 852 (D.C. Cir. 1970).

¹⁷ *Farmers Union Cent. Exch., Inc. v. FERC*, 734 F.2d 1486, 1499 (D.C. Cir. 1984) (internal quotes and citations omitted).

of obsolete rules the Commission itself long ago rejected would strain to the breaking point any notion of “reasoned rulemaking.”¹⁸

Wholesale re-regulation of the broadcasting industry, of the nature and scope contemplated by the *NPRM*, will visit severe negative consequences on broadcasters. It would be virtually certain to lead to an overall reduction in free, over-the-air broadcast service. For instance, certain economically strained broadcasters, forced to relocate their main studios, and without the option of unattended operation, would need to cease service during certain dayparts, make drastic operating budget cuts, and perhaps shutter their operations altogether. Many broadcasters, who have chosen to colocate studios of two or more stations in full compliance with Commission rules and standards, would have to acquire and outfit new physical plants at substantial costs, and without the reasonable expectation of any countervailing benefit to the public. Reinstatement of burdensome regulation at a time when broadcasters face intense competition from new services with operational platforms not even in existence when the Commission last investigated and eliminated the rules under consideration now, and without a demonstration of market failure, would contravene the public interest, and work a gross disservice on the broadcasting industry and the viewing and listening public.¹⁹

¹⁸ *Id.* at 1500.

¹⁹ According to a letter to the Chairman of the Commission, signed by more than 120 Members of Congress, “the stated goal of the re-regulation, namely ‘to encourage broadcasters to produce locally originated programming,’ requires a logical leap that has no place in government regulation, and is a thinly guised method of controlling broadcast content.” Letter of Rep. Mike Ross, *et al.* to The Honorable Kevin J. Martin, Chairman (April 15, 2008).

II. COMPELLING FACTS AND POLICY CONSIDERATIONS MANDATE RETENTION OF THE CURRENT MAIN STUDIO RULE.

A. The Commission Long Ago Decided That the Public Interest Would Be Served By Providing Licensees With Flexibility in Main Studio Siting.

The *NPRM* proposes the resurrection of a requirement that each station locate its main studio within the boundaries of its designated community of license, a rule last in effect 21 years ago (the “1986 Rule”).²⁰ In 1987, the Commission carefully deliberated and found that old rule to be “unduly restrictive,” replacing it with a measured set of modern guidelines, further refined in 1998, that were found to “strike an appropriate balance between ensuring that the public has reasonable access to each station’s main studio . . . and minimizing burdens on licensees.”²¹ The Commission now contemplates abrupt reimposition of the obsolete 1986 Rule, on the supposition that its restoration would “encourage broadcasters to produce locally originated programming,”²² provide listeners and viewers “greater access to locally responsive programming,”²³ and further “interaction between the broadcast station and the community of service.”²⁴ But the Commission has already considered all of the various factors at issue here, and concluded that physical siting of a main studio does not affect how well a station interacts with its community. Nothing in the past 21 years suggests that these conclusions are now outdated.

²⁰ See *1987 Order*.

²¹ In the Matter of Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, *Report and Order*, 13 FCC Rcd 15691, 15693 (1998) (“*1998 Order*”), *recon. granted in part*, 14 FCC Rcd 11113 (1999) (“*1999 Order*”).

²² *NPRM* at ¶ 41.

²³ *Id.* at ¶ 3.

²⁴ *Id.* at ¶ 41.

In its 1987 proceeding, the Commission concluded that, “in light of current broadcast station operations,”²⁵ in which “the main studio does not necessarily play [a] central role in the production of a station’s programming,”²⁶ the rule requiring that every broadcast station maintain its main studio in its community of license could be relaxed significantly “without affecting the station’s ability to serve its community of license.”²⁷ Of special relevance to the inquiry here – whether reimposition of the 1986 Rule would likely encourage additional production of “locally originated programming” – the Commission found in 1987 that “main studio facilities *within the political boundaries of the community of license [do not] necessarily promote responsive programming.*”²⁸ Technological developments permitted, and marketplace pressures often dictated, that all forms of programming could originate from outside the community of license, and in fact, from outside the main studio itself.²⁹ Based on this record, the Commission revised the 1986 Rule in 1987 to permit broadcast stations to locate their main studios anywhere within their principal community service contours, not just within the boundaries of their designated communities of license.

In 1998, the Commission reexamined these changes to the main studio rule, and after additional careful assessment, revised it further to allow each station to locate its main studio up to 25 miles from the center of its assigned community of license, and, in some instances,

²⁵ *1987 Order* at 3219.

²⁶ *Id.* at 3218.

²⁷ *Id.*

²⁸ *Id.* at 3219 (*emphasis added*).

²⁹ The *1987 Order* recognized that “[m]obile units and remote studios, connected to stations through microwave and satellite links, are used to offer programming that includes live feeds from distant points covering events of national or regional significance.” *Id.* at 3218.

farther.³⁰ It concluded that this additional flexibility in siting a main studio still afforded adequate public accessibility, and allowed the areas serviced by a station to continue to monitor adequately the station's operation and to stay in contact with the licensee.

The present day recognition that the manner in which a station produces and obtains programming does not limit its ability to satisfy its “‘bedrock obligation’ . . . to serve the needs and interests of its community,”³¹ reflects a proper understanding of significant changes in technology and commerce and how those developments affect the broadcast industry. The Commission has acknowledged that a licensee's understanding of the needs and concerns of its station's audience – not the physical location of its studio – promotes the broadcast of issue-responsive programming. The Commission concluded in 1987 that “the main studio no longer plays the central role in the production of a station's programming and *programming originated from within the political boundaries of the community is not necessarily responsive to the needs and interests of the community*,”³² and then tested its findings eleven years later against the backdrop of the intervening years' “real world” experience, after which it not only reaffirmed its prior findings and rationale, but provided additional flexibility in licensees' selection of main studio locations.

³⁰ See *1998 Order*, Appendix C. Section 73.1125 of the Commission's rules was amended to provide that, in addition to locating a main studio “within twenty-five miles from the reference coordinates of the center of [the station's] community of license,” a station could also locate its main studio “at any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license.” *Id.* The principal community contour of some broadcast stations extends significantly beyond a 25 mile radius.

³¹ *Id.* at 15693.

³² *1987 Order* at 3219.

The Commission also frames the question as “whether accessibility of the main studio increases interaction between the broadcast station and the community of service.”³³ And, again, twice before, the Commission has unwaveringly answered “no.” In 1987, it determined that a broadcast studio in the community of license is not “required to assure that a station is physically accessible to residents.”³⁴ In fact, “[a] studio located outside a community may be *as accessible to residents as a facility within the community*.”³⁵ These conclusions reflected the plain understanding that “[r]esidents generally communicate with a station by telephone or mail, neither avenue dependent on locale,”³⁶ and that “[t]ravel time has been reduced in many areas due to the growth of modern highways and mass transit systems.”³⁷ Based on their experience, Broadcast Licensees reconfirm that viewers and listeners rarely, if ever, visit main studios.³⁸

With the advent of faxes, cellular telephones, the Internet, and e-mail – new tools available to interested listeners and viewers – public/citizen interaction with a station today is more than ever accomplished outside the physical confines of a main studio. To regress now to an outmoded rule, and force the relocation of many hundreds of broadcast studios, at a huge cost,

³³ *NPRM* at ¶ 41.

³⁴ *1987 Order* at 3218.

³⁵ *Id.* (*emphasis added*). In 1998, the Commission reaffirmed and extended this logic, adopting the main studio rule currently in effect, concluding that traveling as much as 50 miles “*is a reasonably accessible distance to expect members of the public to travel*, given today’s modern transportation and good roads.” *1998 Order* at 15697 (*emphasis added*).

³⁶ *Id.* Comments from the National Association of Broadcasters cited in the *1987 Order* indicated that community residents “rarely, if ever, visit the main studio.” *Id.* at 3216.

³⁷ *Id.* at 3218.

³⁸ Broadcast Licensees are aware of no study by the FCC of the number of times members of the public actually consult local public inspection files, much less a systematic comparison of the “benefits” of such visits with the substantial “costs” incurred by a licensee in compiling, updating, and maintaining such a file.

so that a hypothetical visitor will be assured of locating a studio within the “political boundaries”³⁹ of a certain community, strays far from the Commission’s previously stated goal to “strike an appropriate balance between ensuring that the public has reasonable access to each station’s main studio . . . and minimizing burdens on licensees.”⁴⁰ It would also, as shown below, inevitably lead to an overall and, in most cases, substantial decrease in resources available for the production of issue-responsive programming and community service activities. Such a regression would be particularly damaging in the marketplace as it exists in 2008, where broadcasters are struggling to compete with entities, like Internet and satellite companies, which have no roots in local communities, no public service responsibilities, and no attendant “local” costs. There simply is no concrete evidence on the record of any additional benefit to the community from the proposed main studio rule reversion.

B. Reimposition of the 1986 Main Studio Rule Would Impose Severe Costs on Broadcast Stations Without Measurable Countervailing Benefits.

For more than two decades, broadcasters have developed business structures and physical plants in reasonable reliance on the main studio policies implemented by the Commission. Especially following adoption of the current main studio rule in 1998, which the Commission recognized was “particularly warranted in light of the [Telecommunications Act of 1996],”⁴¹ many broadcasters, responding to marketplace efficiencies of scale envisioned by the 1996 Act, consolidated operations of their radio and television stations into centralized, fully equipped facilities. This facilitated the development of opportunities for efficiencies in sales, management, programming, and public service. Whether operating “clusters” or stand-alone

³⁹ *1987 Order* at 3218.

⁴⁰ *1999 Order* at 11113.

⁴¹ *1998 Order* at 15695.

stations, broadcasters often chose to position main studios in locations that, due to market forces, were more visible, more cost efficient, or simply more easily accessible. Some broadcasters relocated to be nearer to transmission facilities, so as to lessen costs associated with studio-to-transmitter linking. In sum, broadcasters constructed business and physical structures in conformity with, and encouraged by, Commission rules.

Unraveling these efficiencies, now ingrained in the broadcasting industry, would be deeply disruptive and costly, both in individual cases and in the aggregate. In some instances, the additional costs would limit, or even completely curtail station operations; in all cases, the additional costs would be unjustifiable. The very existence of financially marginal stations and stations in smaller markets with limited revenues stands to be particularly threatened. To assess the impact of a reversion to the main studio rule as it existed in 1986, Broadcast Licensees have estimated the compliance costs. The following case studies are exemplary of the tremendous toll, in both human and financial capital, that would attend reinstatement of the rule.⁴²

- Americom Las Vegas Limited Partnership (and affiliates) (“Americom”) operates six radio stations in the Reno, Nevada Arbitron market, five of which have main studios located outside the political boundaries of their communities of license. The six stations share staff and a central computer system. Americom is in the first year of a long-term lease for its centralized main studio that carries a hefty \$25,000 monthly rental. Americom spent nearly half a million dollars to move into the new studio space. Americom estimates the cost to separate the main studios and move to separate locations at \$50,000 to \$200,000 per station, or \$250,000 to \$1,000,000 total, over and above the rent for which it is already obligated. Due to the mountainous terrain of the area, locating line-of-site STL capabilities will range from difficult to impossible, likely necessitating the need for multiple microwave “hops.” There is no alternative delivery system available to the tower locations. Locating open STL frequencies would be a challenge, due to congestion in the band. Americom would need to hire at least four additional full-time staff members to operate the six separate studios. The strain of operating six studios for six stations, along with substantial new additional staff

⁴² Attachment B hereto contains additional examples of the real-world impact FCC adoption of the main studio, attended operation, and community advisory board proposals would have on Broadcast Licensees.

would almost certainly put Americom in a situation of economic loss in this market. Due to the financial burden of complying with the new rule, Americom would strongly consider signing off its Reno-area stations at midnight and returning to the air at 5:00 or 6:00 a.m.

- Beasley Broadcast Group, Inc. (“Beasley”), through its subsidiaries, operates nine grandfathered radio stations in the Augusta, Georgia market from a common main studio facility located in Augusta. Six of the stations are licensed to communities other than Augusta. Beasley estimates the cost of opening six new studios to comply with the proposed rule at \$200,000 each, or \$1,200,000 total for the market. In addition to costs associated with leasing or buying and constructing these multiple new studios, Beasley anticipates problems locating adequate STL frequencies. ISDN phone lines used in lieu of microwave links would cost up to \$2,000 per month for the market. Similarly, Beasley operates five stations in the Fort Myers, Florida market from a main studio facility in Estero, Florida. Each of the stations is licensed to a different community, none of which is Estero. Beasley would have to construct a totally new studio for each station at an aggregate cost estimated to exceed \$500,000.
- Citadel Broadcasting Company, the licensee of 227 radio stations nationwide, calculates that it would have to open a total of 120 new main studios, at a cost running into the multiple millions of dollars.
- Davis Television Wausau, LLC (“Davis”) operates WFXS-TV, Wittenberg, Wisconsin, from a studio 30 miles away in Wausau, Wisconsin. WFXS-TV’s current lease is for a five-year term. Were WFXS-TV required to move its main studio to Wittenberg, Davis estimates incurring a total cost of over \$3,000,000.
- Entercom Wilkes-Barre-Scranton License, LLC operates a total of nine stations in the Wilkes-Barre-Scranton, Pennsylvania Metro from a common studio facility in Pittston, Pennsylvania, the community of license of one of the stations. Were each station required to operate from a main studio within its designated community of license, a total of seven new studios would have to be established at a total cost of approximately \$1,780,000, not including annual additional costs of operation in the order of \$640,000.
- Entercom Kansas City License, LLC operates nine stations in the Kansas City Metro from a combined facility in Mission, Kansas, which is outside of the communities of license of all of the stations. Were each station required to operate from a main studio in its designated community of license, at least four new studio facilities would be required to be established, at a total cost well in excess of \$1,000,000, not including annual increased staffing and operational costs.
- Entercom New Orleans License, LLC operates WWL-FM, Kenner, Louisiana, from a combined main studio facility located in New Orleans, approximately 10.5 miles from the nearest political boundary to Kenner. It estimates it would cost

\$300,000 to move WWL-FM to a facility in Kenner, including new equipment to provide an alternative STL connection, but not including additional rent and long-term staffing costs.

- Nationwide, Entercom operates 112 stations in 23 markets, and would be required to construct a total of at least 49 separate new studio facilities in order to comply with the proposed main studio rule.
- Galaxy Communications, L.P. (“Galaxy”) owns seven stations that serve the Syracuse, New York market, and six stations that serve the Utica, New York market. The seven Syracuse stations have two main studios, one in Syracuse and one in Pulaski, but none of its stations is licensed to these communities. Its six Utica stations operate from a studio located in New Hartford, New York, a suburb located approximately one mile from Utica proper. None of the Utica stations is licensed to New Hartford. If the rule proposed by the Commission were adopted, Galaxy would have to construct thirteen new main studios – one for each station it owns. It is difficult to estimate the cost of such an endeavor without knowing exactly what additional equipment would be needed, and the availability and cost of STLs and T1 lines, but Galaxy estimates that it would cost approximately \$200,000 per studio, or \$2,600,000 total, an amount that could be debilitating for a small, privately owned broadcaster such as Galaxy.
- Great Scott Broadcasting (“Great Scott”) operates ten grandfathered radio stations in the Salisbury-Ocean City, Maryland Arbitron designated market area. Seven of these have main studios located outside their communities of license. Only two of those seven stations share the same community of license. Great Scott would have to absorb exorbitant, crippling costs to open six new studios to comply with the rule as proposed.
- Greater Media, Inc. (“Greater Media”), through its subsidiaries, operates five radio stations in the Philadelphia, Pennsylvania market. Four of the stations are licensed to Philadelphia, and one is licensed to Burlington, New Jersey; all five presently operate from main studios located outside the political boundaries of their communities of license. Due to the high cost of real estate in the area, existing lease commitments, and the likely unavailability of STL frequencies, Greater Media estimates a cost of \$15-20 million to comply with the proposed rule.
- Journal Broadcast Corporation (“Journal”) is the licensee of more than 40 television and radio stations in 13 markets. If required to locate a main studio in each community of license in which it has a station, Journal would need to establish 14 new main studios and relocate an existing studio at substantial cost to the company. Journal operates a television station licensed to Palm Springs, California, from a main studio in Palm Desert, California. The station has estimated that the cost of moving the main studio to Palm Springs would be as high as \$15,000,000. The station owns the property that currently houses the main studio and would be forced to sell that property in a depressed market and

take accelerated depreciation. It would need to purchase new property, build a new facility, and relocate its technical equipment, support staff, and satellite dishes. The move would result in the station's news operations being located farther from a majority of the news events the station covers, resulting in additional fuel costs and diminished response time to meet the public's needs.

- Kirkman Broadcasting, Inc. ("Kirkman") operates four stations serving the Charleston, South Carolina market from a common facility in Charleston. Kirkman would have to build two new main studios, at an estimated total cost of \$275,000, and additional employment expenses would run at least \$160,000 annually. The microwave spectrum is reported to be "flooded" in its area, which would likely lead to problems in locating additional or modified STL frequencies.
- M. Belmont VerStandig, Inc. and HJV Limited Partnership ("VerStandig") together operate five radio stations in the Shenandoah Valley area of Virginia, from a central main studio facility in Harrisonburg. Two of the stations are licensed to two different communities outside Harrisonburg. VerStandig estimates the cost of construction of two new studios would be approximately \$600,000, and additional annual expenses for utilities, personnel and other operating costs of approximately \$200,000. In the Hagerstown-Chambersburg-Waynesboro Metro in southern Pennsylvania, VerStandig operates four stations from a common facility located outside of any of the stations' communities of license. Three new facilities would be required, at a relocation cost estimated to total approximately \$900,000. Annual expenses for new personnel, utilities and other operating expenses would exceed \$300,000.
- The proposed requirements would severely impact noncommercial station networks, which operate, under well-established Commission policies, with waivers of the main studio rule specifically granted to conserve limited resources for the purposes of furthering the educational noncommercial mission of the licensees. Western Kentucky University operates three noncommercial stations located between 65 and 85 miles from the network's main studio in Bowling Green, Kentucky. If required to establish three new main studios, the University would be faced with one time construction expenses of approximately \$315,000, and would incur additional annual operating expenditures for staff, rent, utilities, and similar expenses in the approximate amount of \$350,000.

* * *

Seldom do the scales of a cost/benefit analysis swing so heavily against a proposal as in the case of the proposed reversion to the 1986 Rule. The occasional, sporadic, essentially illusory benefits promised by the mushrooming of multiple main studio "bricks and mortar buildings" within a single radio market must be weighed against the potentially crippling costs

that would attend the dismantling of the broadcast industry's reasonably efficient business models, lawfully built in response to government rules long ago adopted for amply supported, compelling reasons. The harms would be massive and unjustifiable. The contemplated return to the main studio rule of yesteryear should be summarily rejected.

III. ADOPTION OF THE PROPOSED “ROUND-THE-CLOCK” ATTENDED OPERATION RULE, AND THE INSTITUTION OF VOICE TRACKING REGULATION, WOULD REINTRODUCE COSTLY INEFFICIENCIES INTO THE BROADCAST INDUSTRY, WITH NEGLIGIBLE IMPROVEMENT IN THE PROVISION OF SERVICE TO THE PUBLIC.⁴³

A. Unattended Operation.

The Commission proposes to reinstate the rule that each station operate only when an attending licensed employee is present, a requirement discarded in 1995 “for reasons of efficiency.”⁴⁴ In that 1995 proceeding, the Commission concluded, after careful deliberation and thorough analysis, that changes in broadcasting technology permitted it “to eliminate the requirement that a broadcast station must have a licensed radio operator on duty in charge of the transmitter during all periods of broadcast operation.”⁴⁵ Now, 13 years later, with no indication that the technology that made such close oversight unnecessary a decade ago is failing in any manner, the Commission inquires “whether we should require a physical presence at a

⁴³ Broadcast Licensees provide comment herein regarding the potential impact on radio station operations of reimposition of the rule of constant “attended operation.” Because the *NPRM* expresses generalized “concern about the prevalence of automated broadcast operations,” comments regarding the potential effect of the rule on radio licensees are germane to this proceeding. See note 6, *supra*.

⁴⁴ *1995 Order* at 11480.

⁴⁵ *Id.* at 11479.

broadcasting facility during all hours of operation,”⁴⁶ asserting that this “can only increase the ability of [a] station to provide information of a local nature to the community of license.”⁴⁷

The 1995 proceeding focused on improvements in transmitters and transmitter monitoring technology. Initially, the Commission had been concerned that an unattended facility could malfunction and cause interference to other stations, and for many years was extremely conservative in its willingness to “trust” automatic monitoring services. By 1995, however, given the state of solid-state transmitters and accurate remote monitoring equipment, there simply were “no technical obstacles to the automation of any type of broadcast station.”⁴⁸ Consequently, the Commission authorized the automation of stations and resulting unattended operation.

Although the core considerations in 1995 were engineering issues, how unattended operation might affect “licensees’ ability to serve local needs”⁴⁹ was addressed in the 1995 Order. The Commission noted that unattended operation of stations under the old Emergency Broadcast System (“EBS”) might be problematic, since EBS “was designed for human intervention.”⁵⁰ But the Emergency Alert System, “on the other hand, *is specifically designed for unattended operation.*”⁵¹ One of the cornerstones of EAS was a requirement that “encoders and decoders provide both *automatic* and manual operation [that] will permit each EAS participant to

⁴⁶ *NPRM* at ¶ 87.

⁴⁷ *NPRM* at ¶ 29.

⁴⁸ *1995 Order* at 11481.

⁴⁹ *NPRM* at ¶ 28.

⁵⁰ *1995 Order* at 11481.

⁵¹ *Id.* (*emphasis added*).

determine whether to use *automatic* or manual operation to send or receive EAS alerts.”⁵² The Commission has established a comprehensive system designed to deliver emergency information almost instantaneously and automatically, in conjunction with unattended broadcast station operation.

Enhancements to EAS are ongoing. Just this past year, the Commission began requiring EAS participants to receive alerts activated by state governors or their designees, and to deliver emergency alerts to areas smaller than a state.⁵³ The Commission’s concern about the supposed inability of an unattended station to provide information regarding “severe weather or a local emergency”⁵⁴ is misplaced, especially in light of the constant improvement of EAS, and the Commission’s promise “to address the issues in the currently outstanding EAS Further Notice of Proposed Rulemaking.”⁵⁵ The Commission improperly conflates the continuing propriety of the unattended operation rule with broadcasters’ ability to provide emergency information. The EAS was specifically designed for, and adequately addresses, the nation’s emergency

⁵² In the Matter of Amendment of Part 73, Subpart G, of the Commission’s Rules Regarding the Emergency Broadcast System, *Report and Order and Further Notice of Proposed Rulemaking*, 10 FCC Rcd. 1786, 1822 (1994) (*emphasis added*).

⁵³ In the Matters of Review of the Emergency Alert System; Independent Spanish Broadcasters Association, the Office of Communication of the United Church of Christ, Inc., and the Minority Media and Telecommunications Council, *Petition for Immediate Relief, Second Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 13275, 13303 (2007). (“2007 Further NPRM”).

⁵⁴ *NPRM* at ¶ 29.

⁵⁵ *NPRM* at ¶ 86. One proposal addresses “geo-targeting” of EAS alerts, so as to allow EAS to function on an even more localized level. *2007 Further NPRM* at 13307. Another is to ensure that EAS operates in emergencies as designed. *Id.* at 13308. Both of these, if acted upon, should further alleviate the Commission’s concern about provision of emergency information to citizens.

information requirements. If there are deficiencies in the EAS operations, the Commission has the power to correct them without affecting the unattended operation rule.

As with the main studio rule, broadcasters have relied on the unattended operation rule to develop their business and physical plants. They have invested extensively in monitoring and automation equipment which has resulted in the establishment of 24-hour service in markets that, prior to the provision of this flexibility, had no around-the-clock media outlets. They have, as required, upgraded their emergency monitoring equipment in compliance with EAS directives, and ensured that this equipment functions seamlessly in coordination with automated broadcast operations. For some communities, emergency information is available *only* because of station investments in combined automation and EAS equipment; prior to adoption of the rule allowing unattended operations, some stations signed off to the extent permitted by their licenses, especially during overnight periods, which left listeners and viewers with reduced or no access to emergency alerts. To revert now to the archaic rule of constant monitoring, rooted in an era of transmitters and antennae that required frequent, manual tuning, is unnecessary and counterproductive.

Several Broadcast Licensees surveyed their current operations and attempted to estimate the costs to comply with the proposed constant attended operation rule. The economic implications of requiring a licensed operator on staff at all times would result in some broadcasters ceasing service at certain hours of the day, resulting in less broadcasting and EAS service than is currently the case. For some broadcasters, it could spell the end of operations.

Compiling reliable estimates of the costs associated with compliance is difficult, given the as-yet imprecise nature of the Commission's proposal. Nowhere in the *NPRM* for example, is "physical presence" defined. Broadcast Licensees assume that, as the *NPRM* implies, a mere

“warm body” at a station would not suffice. After all, requiring fully attended operation of stations, according to the *NPRM*, “may increase the likelihood that each broadcaster will be capable of relaying critical life-saving information to the public,”⁵⁶ and “increase the ability of the station to provide information of a local nature to the community of license.”⁵⁷ Implicit in these assumptions is that the employee tasked with “attending” a station must be capable of “relaying” information – that is, of physically assuming control of the main studio, going on the air, and broadcasting. Not only does this concept require that information regarding some local event be provided to a station, but that the person manning the station be sufficiently competent to receive reports of emergencies, analyze them, sift through potentially erroneous and irrelevant information, confer with authorities, consult with listeners or viewers, and then “relay[] critical life-saving information”⁵⁸ in an accurate manner without creating undue panic or confusion. Providing for an employee with this level of ability has vastly different financial and operational implications than simply maintaining an employee on duty who is capable of reading dials on meters.

The *NPRM* suggests that the Commission is considering a rule that calls for a “physical presence” at “each radio broadcasting *facility*,”⁵⁹ or, perhaps “that all radio *stations* be attended.”⁶⁰ It is difficult to know if the Commission is proposing that each individual radio

⁵⁶ *NPRM* at ¶ 29.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.* (*emphasis added*).

⁶⁰ *Id.* (*emphasis added*).

station (and television station, should the requirement extend to television)⁶¹ have, at all times of operation, staff dedicated *solely* to that station. Even if, assuming *arguendo*, the Commission reintroduced the requirements of the 1986 Rule, co-owned stations sharing a community of license could presumably still operate from the same “facility.” It is unclear from the proposal, however, if sharing staff among co-located studios in a common “facility” would meet the requirement of attended operation for *each* station.

The following case studies demonstrate the significant costs that would be associated with compliance with the proposed rule.

- Beacon Broadcasting, LLC (“Beacon”) operates KWAY-FM, Lamar, Colorado, with unattended operation approximately 100 hours per week. In order to comply with the proposed rule, Beacon would need to hire at least three additional full-time staff, at a minimum of \$6,000 per month. These additional staffing costs would be so prohibitive that Beacon would have to consider curtailing full-time operation, especially during overnight periods.
- Beasley estimates that to comply with the proposed rule in its Augusta, Georgia cluster, it would need to hire 19 new employees. Most of its Augusta stations presently operate unattended for at least 84 hours per week, although Beasley notes that county EMS directors have direct access at all times to station program and news directors. Beasley would likely opt to sign off some stations during certain dayparts.
- Davis operates WFXS-TV in unattended mode for 28 hours per week. Davis estimates annual compliance costs for the proposed rule at \$100,000, but says it would likely sign-off WFXS-TV during overnight hours to avoid financial strain.
- Each of the four stations licensed to East Tennessee Radio Group L.P. (“East Tennessee”) is staffed for 12 hours a day. East Tennessee estimates that it would cost approximately \$315,000 annually to hire the necessary personnel for fully attended operation. Because of the magnitude of this expense, which will not produce any additional revenue, East Tennessee expects a radical curtailment of

⁶¹ On this point, the terms “station” and “facility” are used seemingly interchangeably. “[W]e seek comment here on whether we should extend this requirement to television *stations*, as well as radio *facilities*.” *Id.* (*emphasis added*). This confusion is further compounded by reference to the fact that “many stations now operate for extended periods without station personnel present at or near *transmission facilities*.” *Id.* at ¶ 28 (*emphasis added*).

hours of operation if the new rule were imposed. North Georgia Radio Group, L.P., under common ownership with East Tennessee, would also anticipate a significant cutback in its operations in the face of approximately \$260,000 annually in additional personnel costs at its four stations if unattended operation were no longer permitted.

- Evangel Ministries, Inc. (“Evangel”) estimates the cost of compliance with the proposed rule for its three Wisconsin stations, each of which presently operates 88 hours per week unattended, at \$300,000 annually. From Evangel’s perspective, signing off during certain dayparts would be undesirable, but it might be forced to do so.
- Golden Isles Broadcasting, LLC (“Golden Isles”) estimates the annual cost of compliance with the new rule at a minimum of \$36,000 each for the two stations that it owns, as well as stations licensed to a commonly-owned entity – WXMK(FM), Dock Junction, Georgia; WRJY(FM), Brunswick, Georgia; KSAM-FM, Huntsville, Texas; KHVL(FM), Huntsville, Texas. The stations presently are unattended for approximately 100 hours per week, though station personnel can respond to emergency situations within minutes. Golden Isles would likely be forced to sign off each of its stations during the overnight hours in order to comply with the new rule.
- Irie Radio, Inc. (“Irie”), operator of stand alone WOCM-FM, Selbyville, Delaware, presently operates the station unattended 40 hours per week. It estimates the cost of compliance with the proposed rule at \$21,000 per year. If the rule were to take effect, signing off during unprofitable dayparts would most likely be the station’s only option.
- Jubilation Ministries, Inc. presently operates WSTM-FM, Kiel, Wisconsin, unattended for 108 hours per week. It estimates the annual cost of compliance with the proposed rule at \$120,000, and states that it would be forced to sign off from midnight to 5:00 a.m., because it could not afford to remain on the air 24-hours a day under the rule.
- Port St. Lucie Broadcasters, Inc. and its sister company, Treasure Coast Broadcasters, Inc. (“Port St. Lucie”) operate three AM stations in Florida. Each of the stations operates unattended for between 49 hours and 77 hours per week. Port St. Lucie states that, to comply with the proposed rule, it would need to hire six additional staff for its three stations. The cost for this additional staffing requirement would be so great that Port St. Lucie likely would have to consider not operating during evening and/or overnight hours in order to comply with the proposed requirement. The loss of evening service on WJNX(AM), Ft. Pierce, Florida, would result in the loss of the only evening Spanish language programming in the market.

- San Luis Obispo Broadcasting, Inc. operates KKJL(AM), San Luis Obispo, California. The station broadcasts on an unattended basis for 128 hours per week. KKJL(AM) operates on a “shoestring budget” now, and could not afford to hire the additional staff that would be required by the new rule. It would be forced to consider signing off during certain dayparts when it now operates in an unattended mode.

Broadcast Licensees note that the implicit assumption made by the Commission that *each* radio station must have a *dedicated* employee on duty at all hours of operation as a means of “increas[ing] the ability of a station to provide information . . . to the community,”⁶² is simply inaccurate. A station operating at certain times using computerized automation equipment is able to respond to emergencies and provide prompt information to its communities. Broadcasters typically have policies and mechanisms to ensure that local public safety and emergency services officials can contact one or more responsible employees who can quickly get a message on the air, even when a station is operating unattended.

For example, Wolfhouse Radio Group, Inc. (“Wolfhouse”), which operates four stations from a combined main studio in Salinas, California, has adopted procedures for local police and other agencies to reach its stations, even when they are operated on an unattended basis. Wolfhouse can originate the broadcast of a message of an emergency nature on the air in less than ten minutes. Sarkes Tarzian, Inc., which always has at least one employee on duty for both its radio stations in Bloomington, Indiana, purchased at its expense special equipment that establishes a direct link from Bloomington Central Dispatch to WTTS(FM) in case of emergencies, saving critical minutes in getting information on the air. Likewise, Entercom Denver License, LLC has established procedures at its Denver cluster under which the program director or another qualified staff member will be at the stations’ studio within ten minutes of notification by local public safety authorities of an emergency situation; it has also established an

⁶² *NPRM* at ¶ 29.

agreement with a Denver television station which allows the radio stations to simulcast the audio of the television station in the event of a major local emergency, as was done in Washington, DC in the immediate aftermath of the September 11 attacks. These arrangements are not typically visible to the public, and individuals who have criticized the performance of the industry in this context may have unreasonable expectations in this regard. In most instances, the ability to get an announcement on the air within 10-15 minutes is reasonable during a time when the broadcast of incomplete or erroneous information would make an emergency situation worse. In those instances where an instantaneous response might be desired, EAS is generally a much more effective and reliable technique for warning the public.

B. Voice Tracking.

The Commission questions whether it should regulate voice tracking, which it defines as “a practice by which stations import popular out-of-town personalities from bigger markets to smaller ones, customizing their programming to make it appear as if the personalities are actually local residents.”⁶³ Voice tracking, contrary to the Commission’s definition, does not typically involve the “importation” of “personalities from bigger markets.” It is, in fact, most often employed by stations to enable local talent to record programming for broadcast at a later time; an employee can finish his or her air shift and move to a production studio down the hall to record the non-music components of an overnight or weekend daypart through a computerized system that automatically inserts music, advertisements, public service announcements and other

⁶³ *NPRM* at ¶ 101. There is an intimation in the *NPRM* that requiring a physical presence at radio broadcasting facilities during all hours of operation will reduce the use of voice tracking. *See id.* at ¶ 111. Unless the Commission is prepared to require that the person “attending” a station also actively, and constantly, originate programming, it is unlikely that requiring attended operation will have this effect. It will simply result in stations signing-off during times they presently use voice tracking, or importing other cost-efficient (but less “local”) programming, such as syndicated shows distributed via satellite.

programming when aired. Because the non-music components can be recorded separately from the other programming, a single employee can fill the equivalent of several “shifts” in the course of a day, or put the time saved by the use of voice tracking to productive, alternative use within the station. No Broadcast Licensee that uses voice tracking reports receiving any complaints concerning this programming.

There is utterly no evidence in the record that this use of “time shifting” technology to present programming somehow “diminish[es] the presence of licensees in their communities and thus hinder[s] their ability to assess the needs and interests of their local communities.”⁶⁴ Rather, this approach utilizes a valuable and efficient tool of technology, employed in many markets daily on a *local* level. Were these stations precluded from maximizing their local talent in this manner, they would face additional programming costs in terms of new employees or rights fees for network or syndicated programming that would likely result in reductions in the resources available to serve their communities through public services and charitable initiatives. Furthermore, any proposal that would incorporate steps to limit voice tracking – i.e., dictating or monitoring the methods by which broadcasters may, or may not speak – would raise obvious, substantial constitutional concerns.⁶⁵

IV. MANDATED QUARTERLY MEETINGS WITH “COMMUNITY ADVISORY BOARDS” SHOULD BE REJECTED, AS THEY WILL IMPOSE SIGNIFICANT COMPLIANCE COSTS AND BURDENS, WHILE PROMISING ONLY BENEFITS THAT ARE ELUSIVE AT BEST.

The Commission tentatively concludes that each licensee should be required to establish a permanent advisory board consisting of officials and local leaders representing “all segments”

⁶⁴ *Id.*

⁶⁵ Another potential regulation alluded to in the *NPRM*, that of “requir[ing] licensees to provide . . . data regarding their airing of the music and other performances of local artists,” (*NPRM* at ¶ 112), raises similar free speech concerns and should also be rejected.

of the population within a station's service area.⁶⁶ It proposes that the licensee be required to conduct regular, quarterly meetings with these advisory boards.⁶⁷ These requirements will entail many of the same costs and burdens of the formal ascertainment rules that were eliminated by the Commission in the 1980s. As explained below, the Commission correctly concluded then that a "one-size-fits-all" system of ascertainment was certainly not the only – and was far from the most effective – way for licensees to remain knowledgeable about local needs and interests, and focused far too much on "process" than on the programming that was presented.

In 1981, the Commission discarded its formal ascertainment requirements for radio stations which, in part, had required stations to conduct interviews with leaders of 20 enumerated community elements in order to identify issues of importance to those constituencies.⁶⁸ The Commission acted three years later to eliminate these requirements for television stations.⁶⁹ In deregulating this area, it recognized that "what is important is that licensees use their good faith discretion in determining the type of programming that they will offer and the issues to which they will be responsive."⁷⁰ Broadcasters, the Commission observed, should remain in contact with their local communities, but it was no longer necessary that "each licensee follow the same requirements dictating how to do so."⁷¹ The Commission now proposes to adopt an ascertainment requirement under which broadcasters must select local residents to serve on

⁶⁶ *NPRM* at ¶ 26.

⁶⁷ *Id.* at ¶ 25.

⁶⁸ *1981 Deregulation Order* at 993.

⁶⁹ *1984 Deregulation Order* at 1098.

⁷⁰ *1981 Deregulation Order* at 998.

⁷¹ *Id.*

community advisory boards. The FCC would also mandate how often the boards must meet.⁷² The testimonial and anecdotal support proffered by the Commission for this drastic re-regulatory proposal,⁷³ falls well short of the reasoned analysis required of an expert agency seeking to change its regulatory course. In the absence of evidence of industry failure, the Commission should not require *any* particular form of ascertainment practices.

One significant factor that led to the elimination of the former ascertainment requirements was the Commission's recognition that, while the formal procedures required were intended to expose licensees to the issues that those interviewed thought were facing their communities, there was no evidence that the ascertainment procedures actually identified local community issues.⁷⁴ The Commission came to realize that following a "ritual" of ascertainment in no way guaranteed that programming responsive to community concerns would be broadcast.⁷⁵ This led to the conclusion that it should be "of no concern to the Commission how [a broadcaster] became aware of issues facing his community;" rather, the Commission would focus on the issue-responsive programming that is broadcast, not the process a station used to identify community issues.⁷⁶ Broadcast Licensees, many of whose owners and managers have been working in the broadcast industry for decades, believe strongly, on the basis of that experience, both that ascertainment methodology should remain within the discretion of

⁷² *NPRM* at ¶ 25.

⁷³ *NPRM* at ¶¶ 34-39.

⁷⁴ *1984 Deregulation Order* at 1098.

⁷⁵ *Id.*

⁷⁶ *1981 Deregulation Order* at 999.

licensees and that new detailed formalized procedures would not be any more effective today than those that were deemed ineffective more than two decades ago.

The creation of formal advisory boards will impose significant costs on broadcasters. Elimination of the previous formal ascertainment requirements saved, according to the Commission, 66,956 aggregate work hours for broadcasters per year and 761.5 work hours for the FCC per year. The annual mean cost of the ascertainment requirements for licensees was \$6,574 per year, in 1979.⁷⁷ It is unclear how the creation of broadly representative community boards, required to meet on not less than a quarterly schedule, would not entail similar costs. Licensees will still be required to spend considerable amounts of time and money contacting and soliciting local community “leaders” sufficient to ensure that “all segments of the community, including minority or underserved members” are represented; persuading them to join and stay on the permanent advisory boards; and conducting the required quarterly meetings.⁷⁸ Journal Broadcast Group, for example, estimates that scheduling, planning, and preparing for each meeting would require at least ten hours of time, and an additional four to five employees would spend an additional one to two hours participating in each meeting. For all licensees, the results of those meetings would need to be tabulated, distributed and, ultimately, subjected to review by the Commission, just as in the past.⁷⁹

⁷⁷ *1984 Deregulation Order*, at 1099.

⁷⁸ *NPRM* at ¶ 26.

⁷⁹ Greater Media estimates that the effort needed to recruit and maintain such advisory boards, to supervise the holding of four annual meetings, and to collate findings and determine responses, would require the hiring of a full-time position in its Philadelphia market; such an employee’s salary in Philadelphia would command approximately \$50,000. Evangel and Jubilation Ministries are concerned about the Commission’s charge that the proposed boards consist of representatives of “all segments” of the community, given that their charters are guided by adherences to certain religious principles.

The mandate that all segments of a community be represented on *every* permanent advisory board ignores the Commission's previous acknowledgement that stations need not attempt to serve the entire general public.⁸⁰ Most radio stations, for example, employ specific formats which attract differing audiences, with varying interests. The Commission understands this, having previously agreed that a radio broadcaster may consider the format of its station and the composition of its audience in determining which community problems should be addressed by the station.⁸¹ To require now that every station attempt to divine the important issues faced by *all* groups in its geographic area, including those of population segments who do not watch or listen to its particular broadcasts, will tax the finite resources available to each station and will impose time demands on local community leaders many of whom are already overworked and heavily committed.

Substantial issues of interpretation will attend any further FCC pursuit of this ill-conceived idea. The task of identifying "all segments" of a population in a given market, particularly a thriving modern metropolis, is particularly problematic, given the many ways to divide a modern population into "segments." The seeds of confusion on this issue are sown in the *NPRM* itself. For example, in the discussion of the "underserved" population segments, the *NPRM* variously mentions farmers, Catholics, children, low-income individuals, the blind, and people of color as examples of underserved audiences.⁸² If "segments" of just this one population category ("underserved") are so varied as to include people categorized by occupation, religion, age, income level, disability, and race or ethnicity, a broadcaster will be

⁸⁰ *1981 Deregulation Order*, at 995.

⁸¹ *Id.* at 996.

⁸² *NPRM* at ¶ 70.

hard pressed to conclude with any confidence that its Community Advisory Board, whatever its membership, actually contains “all segments” of the community in question.⁸³

Broadcast Licensees currently employ a variety of methods to ensure their programming addresses significant community issues, including website audience surveys, involvement with community groups, and regular contact with community leaders, among others. In addition, station employees can gather knowledge of their communities through everyday interactions with the local residents and leaders who communicate by phone and e-mail with their local broadcasters and through such activities as serving on the boards of local community organizations and being active in school, religious and other community activities. The Commission should not adopt standardized ascertainment requirements that fail to take into account significant differences in station audiences and communities. It should, instead, continue to follow its longstanding policy of deferring to each station’s good faith determination of the issues faced by its community, and development of programming that best addresses those needs.

V. THE COMMISSION’S CONTEMPLATED RETURN TO QUANTITATIVE RENEWAL PROCESSING GUIDELINES FINDS NO SUPPORT IN FACT OR LAW, AND SHOULD BE JETTISONED.

In the *NPRM*, the Commission tentatively concludes that it should reintroduce specific quantitative programming guidelines for the processing of renewal applications for stations, based in particular on amounts of local programming broadcast.⁸⁴ Until the deregulation of radio and television in the 1980s, the Commission authorized its staff to act by delegated authority on renewal applications for stations that had aired at least minimum amounts of specified

⁸³ The *NPRM* is also unclear as to the ramifications (*e.g.*, for license renewal) of any alleged broadcaster failures to follow the “advice” of a Community Advisory Board.

⁸⁴ *NPRM* at ¶ 124.

programming, expressed as percentages of their overall programming. Applications for stations that failed to meet the specified thresholds were referred for consideration, on a less streamlined basis, by the full Commission. Those prior guidelines were: eight percent (8%) non-entertainment programming (including news, public affairs, and other non-entertainment programming) for AM stations, six percent (6%) non-entertainment programming for FM stations, and ten percent (10%) non-entertainment programming, five percent (5%) local programming and five percent (5%) informational (news plus public affairs) programming for TV stations.

In 1981, the Commission thoroughly analyzed the issue of the then-existing non-entertainment programming guidelines for radio, and after careful deliberation, decided to eliminate the guidelines, retaining only a generalized obligation that commercial radio stations offer programming responsive to public issues. The Commission explained that “[u]nder certain circumstances, the issues may focus upon those of concern to the station’s listenership as opposed to the community as a whole.”⁸⁵ It further articulated its expectation “that service in the public interest [would] continue without unnecessarily burdensome regulations of uniform applicability that fail[ed] to take into account local conditions, tastes, or desires.”⁸⁶ The Commission concluded that because of the growth of radio and other informational services available to the public, it was no longer necessary “for the government to continue to assume, albeit indirectly, that every radio station broadcast a wide variety of different types of programming.”⁸⁷ The newly-adopted standard was that a radio broadcaster should “discuss

⁸⁵ *1981 Deregulation Order* at 971.

⁸⁶ *1981 Deregulation Order* at 968-69.

⁸⁷ *Id.* at 977.

issues of concern to its community of license,” an obligation which “can be fulfilled without resort to a guideline of limited effect and, we believe, of *no substantial utility*.”⁸⁸ The Commission desired to provide broadcasters with the greatest flexibility to be responsive to issues important to their listeners, with minimal government interference.⁸⁹ The Commission expressly noted that it did not expect broadcasters to attempt to be responsive to each group in their community, but trusted marketplace forces to assure the overall provision of news programs in the amounts to be determined by the licensee and guided by the tastes, needs, and interests of its listeners.⁹⁰

Similarly, with respect to television, in 1984 the Commission concluded a lengthy examination of its rules regarding programming, ascertainment, and program log requirements for commercial television stations.⁹¹ At the conclusion of this review, the Commission again eliminated a number of “unnecessary and often burdensome regulations,” including rules establishing program minimums for specific types of non-entertainment and local programming that had been considered as part of the license renewal process.⁹² The Commission stressed the “importance and viability of market incentives” as a means of achieving its goals, and the benefits of “provid[ing] television broadcasters with increased freedom and flexibility in meeting the continuously changing needs of their communities.”⁹³

⁸⁸ *Id.* (emphasis added).

⁸⁹ *Id.* at 978.

⁹⁰ *Id.* at 978-79.

⁹¹ *See 1984 Deregulation Order.*

⁹² *1984 Deregulation Order* at 1077.

⁹³ *Id.*

In discarding the former use of program guidelines, the Commission explained that, to the extent programming levels exceeded regulatory standards, the guidelines were not necessary and the regulations implementing them could be considered capricious.⁹⁴ In particular, the Commission cited to “convincing evidence” that “existing marketplace forces, not our guidelines, are the primary determinants of the levels of informational, local and overall non-entertainment programming provided on commercial television” and that these existing and future incentives would continue to elicit levels of such programming well above the FCC’s arbitrarily set processing guidelines.⁹⁵ The Commission also concluded that the guidelines imposed burdensome compliance issues in potential conflict with the Regulatory Flexibility Act and the Paperwork Reduction Act, and with the First Amendment.⁹⁶

In eliminating the renewal processing guidelines, the Commission relied on three separate studies with respect to the programming performance of commercial television stations. The studies concluded that there was little correlation between the existing processing standards and the amount of informational, local and non-entertainment programs broadcast. One study demonstrated that UHF stations that were exempt from the processing guidelines still provided informational and overall non-entertainment programming at levels far exceeding the processing guidelines.⁹⁷ Based on these studies, the FCC concluded that existing marketplace forces, not government guidelines, are the primary determinants of the levels of informational, local and

⁹⁴ *Id.* at 1088.

⁹⁵ *Id.* at 1085.

⁹⁶ *Id.* at 1080 and 1089.

⁹⁷ *Id.* at 1083.

overall non-entertainment programming provided on commercial television.⁹⁸ There is no evidence cited by the Commission in the *NPRM* that disputes these conclusions.

Moreover, the Commission expressed its confidence that the market demand for informational, local and non-entertainment programming would continue to be met as the video marketplace evolves. In 1984, the Commission mentioned a number of “new” technologies that were beginning to assert themselves in the marketplace (subscription television, multipoint distribution service, satellite master antenna television, low power television, direct broadcast satellite, multi-channel MDS and instructional television fixed service), and stated that “cable television service already reaches some 29.9 million subscribers.”⁹⁹ According to the National Cable & Telecommunications Association, that number has increased dramatically in the intervening years – 64.8 million households subscribed to basic cable in 2007.¹⁰⁰ The marketplace today provides far more choices and options than could have been reasonably imagined in 1984, and countless new audio and video delivery methods not even considered then. Far from being proven wrong, the Commission’s rationale that marketplace forces are the primary determinants of levels of informational, local and overall non-entertainment programming applies with even more force today than in 1984.

The Commission also recognized in the *1984 Deregulation Order* a number of disadvantages posed by the programming guidelines. First, it noted that the United States Court of Appeals for the District of Columbia Circuit has held that regulations, originally adopted to

⁹⁸ *Id.* at 1086.

⁹⁹ *Id.*

¹⁰⁰ See National Cable & Telecom. Ass’n Industry Statistics, <http://www.ncta.com/Statistic/Statistic/Statistics.aspx>

correct a specific problem, may be capricious if the underlying problem no longer exists.¹⁰¹

Second, it acknowledged the significant compliance costs associated with the guidelines, and concluded that, to the extent the rules are not necessary to meet regulatory objectives, the costs incident to compliance and record keeping are inappropriate.¹⁰² Finally, the Commission found that the regulatory scheme raised inherent First Amendment concerns, which “are exacerbated by the lack of a direct nexus between a quantitative approach and licensee performance.”¹⁰³

Approximately 25 years later, the Commission now tentatively concludes that it should reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their local programming performance. But the FCC cannot defend this determination in the face of its own prior conclusions to the contrary. The Commission appears to reach its decision to reimpose burdensome regulations through reliance on the comments of special interest groups and academics in the town hall meeting sessions, at the same time minimizing any significance of the extensive examples of exemplary broadcaster community service which have been submitted in the record of this proceeding.

The *NPRM* also requests comments on a number of quantitative and qualitative factors related to the proposed programming guidelines, such as whether the guidelines should be expressed in hours or percentages, what types of programming should qualify, what programming categories should be adopted, and how locally-produced should be defined. Integral to the concept of processing guidelines is information gathering. Taken together with

¹⁰¹ 1984 *Deregulation Order* at 1088, citing *Home Box Office v. FCC*, 567 F.2d 9, 48 (D.C. Cir. 1977).

¹⁰² *Id.* at 1089.

¹⁰³ *Id.*

the rules adopted by the Commission in its recent *Enhanced Disclosure Order*¹⁰⁴ – from which the present proposals cannot be separated – the Commission seeks nothing less than to reimpose all of the essentials of a regulatory scheme abandoned as unnecessary 25 years ago. Several of the Broadcast Licensees have filed a Petition for Reconsideration in the Commission’s *Enhanced Disclosure Order* proceeding, challenging the adoption of the standardized enhanced disclosure form for television licensees on both administrative and First Amendment grounds. A copy of the Petition for Reconsideration is attached hereto as Attachment C, and the arguments advanced therein are incorporated herein. As described therein, the standardized enhanced disclosure form is but one facet of an effort to impose program content regulation that the Commission cannot readily implement directly, and which is contrary to its previous careful, incremental, and well-supported rulemaking decisions that such efforts are both constitutionally problematic and programmatically unproductive.

The Commission has failed to demonstrate how the tedious, time consuming, and expensive record-keeping required by the standardized form bears the requisite correlation to community awareness of a broadcaster’s localism efforts. Licensees have dutifully prepared quarterly issues programs lists and placed them in their public inspection files for a quarter century, and, at most stations, a request from a member of the public to review a station’s public inspection file is rare, if not non-existent. The public benefit that would derive from the extensive record-keeping and paperwork that the adoption of renewal processing guidelines would once again require of broadcasters is, at best, speculative. There can be no doubt, however, that the costs of compliance, added to those already incurred in connection with

¹⁰⁴ See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Report and Order* (adopted November 27, 2007) (“*Enhanced Disclosure Order*”).

existing regulation, would significantly hamper the efforts of free television and radio broadcasters to remain viable in a media landscape marked by the rapid emergence of new competitors.

* * *

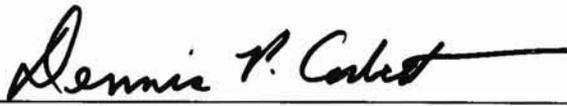
The *NPRM* seeks comment on whether the FCC should reenact a series of regulations long ago discarded by the agency for sound, ample factual and policy reasons. There has been no factual showing of an industry-wide failure sufficient to justify such a financially punishing return to a prior era of “bricks and mortar” main studios in every community of license, constant attended operation at every station, as well as government-mandated ascertainment methodology and content regulation in the guise of programming processing guidelines applied at license renewal time. To the contrary, the breadth and depth of the competitive marketplace pressures to which broadcasters must respond on a daily basis have only intensified in the intervening years, making it more important than ever to preserve, and indeed extend, broadcaster flexibility to respond to the dynamism of the marketplace. The rigidity embodied in the *NPRM*'s proposals addressed herein threatens devastating impact on an industry which strives to, and does, serve the public in so many ways. For all of the reasons explained above, these proposals should be rejected in favor of finding ways to help broadcasters thrive in an increasingly challenging competitive arena.

VI. CONCLUSION.

For all of the reasons set forth above, Broadcast Licensees urge the Commission *not* to adopt the re-regulatory proposals advanced in the *NPRM* and addressed above.

Respectfully submitted,

BROADCAST LICENSEES

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April 28, 2008

Their Attorneys

Broadcast Licensees

Airen Broadcasting Company

KZCC(FM), Trinidad, CA

All Pro Broadcasting, Inc.

KCXX(FM), Lake Arrowhead, CA

KATY-FM, Idyllwild, CA

Americom Las Vegas Limited Partnership

KRNO(FM), Incline Village, NV

KLCA(FM), Tahoe City, CA

KZTQ(FM), Carson City, NV

KJFK(AM), Reno, NV

KBZZ(AM), Sparks, NV

Americom, L.P.

KODS(FM), Carnelian Bay, CA

Beacon Broadcasting LLC

KVAY(FM), Lamar, CO

Beasley Broadcast Group, Inc.

Beasley Broadcast Group, Inc. is the parent of the following licensee subsidiaries:

WAEC License Limited Partnership, licensee of:

WKXC-FM, Aiken, SC

WHHD(FM), Clearwater, SC

WGAC(AM), Augusta, GA

WGUS-FM, New Ellenton, SC

WJBR-FM, Wilmington, DE

WCHZ License, LLC, licensee of:

WCHZ-FM, Harlem, GA

WGAC-FM, Warrenton, GA

WGUS(AM), Augusta, GA

WGOR License, LLC, licensee of:

WDRR(FM), Martinez, GA

WRXK License Limited Partnership, licensee of:

WRXK-FM, Bonita Springs, FL

WXKB License Limited Partnership, licensee of:

WXKB(FM), Cape Coral, FL

WJPT License Limited Partnership, licensee of:

WJPT(FM), Fort Myers, FL
WWCN(AM), North Fort Myers, FL

WJBX License Limited Partnership, licensee of:

WJBX(FM), Fort Myers Beach, FL

WMGV License Limited Partnership, licensee of:

WMGV(FM), Newport, NC

WXNR License Limited Partnership, licensee of:

WXNR(FM), Grifton, NC

WXTU License Limited Partnership, licensee of:

WXTU(FM), Philadelphia, PA

WDAS License Limited Partnership, licensee of:

WRDW-FM, Philadelphia, PA
WZFX(FM), Whiteville, NC
WUKS(FM), St. Pauls, NC

WTMR License Limited Partnership, licensee of:

WTMR(AM), Camden, NJ

WWDB License Limited Partnership, licensee of:

WWDB(AM), Philadelphia, PA

WWNN License Limited Partnership, licensee of:

WWNN(AM), Pompano Beach, FL
WSBR(AM), Boca Raton, FL
WHSR(AM), Pompano Beach, FL

WKML License Limited Partnership, licensee of:

WKML(FM), Lumbarton, NC

WFLB License Limited Partnership, licensee of:

WFLB(FM), Laurinburg, NC

Bravo Mic Communications, LLC

KXPZ(FM), Las Cruces, NM
KVLC(FM), Hatch, NM

Bravo Mic Communications II, LLC

KOBE(AM), Las Cruces, NM
KMVR(FM), Mesilla Park, NM

Chet-5 Broadcasting, L.P.

WDST(FM), Woodstock, NY

Citadel Broadcasting Corporation

Citadel Broadcasting Corporation is the parent of the following licensee subsidiaries:

Citadel Broadcasting Company

WAPI(AM), Birmingham, AL
WSPZ(AM), Birmingham, AL
WUHT(FM), Birmingham, AL
WYSF(FM), Birmingham, AL
WZRR(FM), Birmingham, AL
WFFN(FM), Coaling, AL
WDGM(FM), Greensboro, AL
WJOX(FM), Northport, AL
WBEI(FM), Reform, AL
WTSK(AM), Tuscaloosa, AL
WTUG-FM, Tuscaloosa, AL
KAAY(AM), Little Rock, AR
KARN(AM), Little Rock, AR

KARN-FM, Little Rock, AR
KPZK(AM), Little Rock, AR
KIPR(FM), Pine Bluff, AR
KLAL(FM), Wrightsville, AR
KURB(FM), Little Rock, AR
KSZR(FM), Oro Valley, AZ
KCUB(AM), Tucson, AZ
KHYT(FM), Tucson, AZ
KIIM-FM, Tucson, AZ
KTUC(AM), Tucson, AZ
KWIN(FM), Lodi, CA
KDJK(FM), Mariposa, CA
KATM(FM), Modesto, CA
KESP(AM), Modesto, CA
KHKK(FM), Modesto, CA
KHOP(FM), Oakdale, CA
KWYL(FM), South Lake Tahoe, CA
KJOY(FM), Stockton, CA
KWNN(FM), Turlock, CA
KKFM(FM), Colorado Springs, CO
KKML(AM), Colorado Springs, CO
KKPK(FM), Colorado Springs, CO
KVOR(AM), Colorado Springs, CO
KATC-FM, Colorado Springs, CO
KKMG(FM), Pueblo, CO
WQGN-FM, Groton, CT
WSUB(AM), Groton, CT
WMOS(FM), Stonington, CT
KWQW(FM), Boone, IA
KBGG(AM), Des Moines, IA
KGGO(FM), Des Moines, IA
KHKI(FM), Des Moines, IA
KJJY(FM), West Des Moines, IA
KBOI(AM), Boise, ID
KIZN(FM), Boise, ID
KQFC(FM), Boise, ID
KKGL(FM), Nampa, ID
KTIK(AM), Nampa, ID
KZMG(FM), New Plymouth, ID
WWKI(FM), Kokomo, IN
WMDH(AM), New Castle, IN
WMDH-FM, New Castle, IN
WIBR(AM), Baton Rouge, LA
WXOK(AM), Baton Rouge, LA
KMEZ, Belle Chasse, LA
WCDV(FM), Hammond, LA

WEMX(FM), Kentwood, LA
WDVW(FM), La Place, LA
KRRQ(FM), Lafayette, LA
KSMB(FM), Lafayette, LA
KRDJ(FM), New Iberia, LA
KXKC(FM), New Iberia, LA
KQXL-FM, New Roads, LA
KKND(FM), Port Sulphur, LA
KNEK(AM), Washington, LA
KNEK(FM), Washington, LA
WFHN(FM), Fairhaven, MA
WXLO(FM), Fitchburg, MA
WBSM(AM), New Bedford, MA
WWFX(FM), Southbridge, MA
WMAS(AM), Springfield, MA
WMAS-FM, Springfield, MA
WORC-FM, Webster, MA
WJZN(AM), Augusta, ME
WMME-FM, Augusta, ME
WCYY(FM), Biddeford, ME
WSHK(FM), Kittery, ME
WBLM(FM), Portland, ME
WJBQ(FM), Portland, ME
WBPW(FM), Presque Isle, ME
WOZI(FM), Presque Isle, ME
WQHR(FM), Presque Isle, ME
WEBB(FM), Waterville, ME
WTVL(AM), Waterville, ME
WHNN(FM), Bay City, MI
WIOG(FM), Bay City, MI
WFMK(FM), East Lansing, MI
WMMQ(FM), East Lansing, MI
WFBE(FM), Flint, MI
WTRX(AM), Flint, MI
WBBL(AM), Grand Rapids, MI
WLAV-FM, Grand Rapids, MI
WKLQ(FM), Greenville, MI
WHTS(FM), Coopersville, MI
WTNR(FM), Holland, MI
WVIB(FM), Holton, MI
WITL-FM, Lansing, MI
WJIM(AM), Lansing, MI
WJIM-FM, Lansing, MI
WVFN(AM), Lansing, MI
WKQZ(FM), Midland, MI
WLAW(FM), Newaygo, MI

WLCS(FM), North Muskegon, MI
WILZ(FM), Saginaw, MI
WEFG-FM, Whitehall, MI
WODJ(AM), Whitehall, MI
WRBO(FM), Como, MS
WMTI(FM), Picayune, MS
WOKQ(FM), Hampton, NH
WSAK(FM), Hampton, NH
WHOM(FM), Mt. Washington, NH
WPKQ(FM), North Conway, NH
KDRF(FM), Albuquerque, NM
KKOB(AM), Albuquerque, NM
KKOB-FM, Albuquerque, NM
KMGA(FM), Albuquerque, NM
KNML(AM), Albuquerque, NM
KRST(FM), Albuquerque, NM
KTBL(AM), Los Ranchos, NM
KBUL-FM, Carson City, NV
KKOH(AM), Reno, NV
KNEV(FM), Reno, NV
WAAL(FM), Binghamton, NY
WHWK(FM), Binghamton, NY
WNBF(AM), Binghamton, NY
WYOS(AM), Binghamton, NY
WBBF(AM), Buffalo, NY
WEDG(FM), Buffalo, NY
WGRF(FM), Buffalo, NY
WHTT-FM, Buffalo, NY
WWYL(FM), Chenango Bridge, NY
WAQX-FM, Manlius, NY
WXLM(FM), Montauk, NY
WHLA(AM), Niagara Falls, NY
WLTI(FM), Syracuse, NY
WNSS(AM), Syracuse, NY
WNTQ(FM), Syracuse, NY
WWLS-FM, Edmund, OK
WWLS(AM), Moore, OK
KATT-FM, Oklahoma City, OK
KYIS(FM), Oklahoma, City, OK
WKY(AM), Oklahoma City, OK
WLEV(FM), Allentown, PA
WCAT-FM, Carlisle, PA
WSJR(FM), Dallas, PA
WCTO(FM), Easton, PA
WXTA(FM), Edinboro, PA
WIOV-FM, Ephrata, PA

WQHZ(FM), Erie, PA
WRIE(AM), Erie, PA
WXKC(FM), Erie, PA
WBSX(FM), Hazleton, PA
WMHX(FM), Hershey, PA
WBHT(FM), Mountain Top, PA
WBHD(FM), Olyphant, PA
WIOV(AM), Reading, PA
WARM(AM), Scranton, PA
WMGS(FM), Wilkes-Barre, PA
WQXA-FM, York, PA
WPRO(AM), Providence, RI
WPRO-FM, Providence, RI
WPRV(AM), Providence, RI
WWLI(FM), Providence, RI
WEAN-FM, Wakefield-Peacedale, RI
WWKX(FM), Woonsocket, RI
WSSX-FM, Charleston, SC
WIWF(FM), Charleston, SC
WTMA(AM), Charleston, SC
WISW(AM), Columbia, SC
WLXC(FM), Columbia, SC
WOMG(FM), Lexington, SC
WTCB(FM), Orangeburg, SC
WNKT(FM), Eastover, SC
WWWZ(FM), Summerville, SC
WXSM(AM), Blountville, TN
WGOW(AM), Chattanooga, TN
WSKZ(FM), Chattanooga, TN
WOGT(FM), East Ridge, TN
WGFX(FM), Gallatin, TN
WNRX(FM), Jefferson City, TN
WJCW(AM), Johnson City, TN
WQUT(FM), Johnson City, TN
WGOC(AM), Kingsport, TN
WKOS(FM), Kingsport, TN
WIVK-FM, Knoxville, TN
WNML(AM), Knoxville, TN
WNML-FM, Loudon, TN
WGKX(FM), Memphis, TN
WXXM(FM), Millington, TN
WKIM(FM), Munford, TN
WKDF(FM), Nashville, TN
WOKI-FM, Oliver Springs, TN
WGOW-FM, Soddy-Daisy, TN
KJQS(AM), Murray, UT

KBER(FM), Ogden, UT
KENZ(FM), Ogden, UT
KKAT-FM, Orem, UT
KBEE(FM), Salt Lake City, UT
KFNZ(AM), Salt Lake City, UT
KKAT(AM), Salt Lake City, UT
KUBL-FM, Salt Lake City, UT

Radio License Holding I, LLC

WJR(AM), Detroit, MI
WDVD(FM), Detroit, MI
WDRQ(FM), Detroit, MI

Radio License Holding II, LLC,

WYAY(FM), Gainesville, GA
WKHX-FM, Marietta, GA

Radio License Holding III, LLC,

KQRS-FM, Golden Valley, MN
KXXR(FM), Minneapolis, MN
WGVX(FM), Lakeville, MN
WGVY(FM), Cambridge, MN
WGVZ(FM), Eden Prairie, MN

Radio License Holding IV, LLC

WBAP(AM), Fort Worth, TX
KSCS(FM), Fort Worth, TX
KTYS(FM), Flower Mound, TX

Radio License Holding V, LLC

WZZN(FM), Chicago, IL

Radio License Holding VI, LLC

KABC(AM), Los Angeles, CA

Radio License Holding VII, LLC

WMAL(AM), Washington, DC
WRQX(FM), Washington, DC
WJZW(FM), Woodbridge, VA

Radio License Holding VIII, LLC

KGO(AM), San Francisco, CA
KSFO(AM), San Francisco, CA

Radio License Holding IX, LLC

WPLJ(FM), New York, NY

Radio License Holding X, LLC

WABC(AM), New York, NY

Radio License Holding XI, LLC

WLS(AM), Chicago, IL

Radio License Holding XII, LLC

KLOS(FM), Los Angeles, CA

Clarity Communications, Inc.

WLXO(FM), Stamping Ground, KY

Davis Television Wausau, LLC

WFXS(TV), Wittenberg, WI

Eagle Creek Broadcasting of Laredo, LLC

KVTV(TV), Laredo, TX

Eagle Creek Broadcasting of Corpus Christi, LLC

KZTV(TV), Corpus Christi, TX

East Tennessee Radio Group, L.P.

WMXK(FM), Morristown, TN
WSEV(AM), Sevierville, TN
WSEV-FM, Gatlinburg, TN
WPFT(FM), Pigeon Forge, TN

Entercom Communications Corp.

Entercom Communications Corp. is the parent of the following licensee subsidiaries:

Entercom Austin License, LLC, licensee of:

KKMJ-FM, Austin, TX
KAMX(FM), Luling, TX
KJCE(AM), Rollingwood, TX

Entercom Boston License, LLC, licensee of:

WEEI(AM), Boston, MA
WVEI(AM), Worcester, MA
WRKO(AM), Boston, MA
WAAF(FM), Westborough, MA
WKAF(FM), Brockton, MA
WMKK(FM), Lawrence, MA

Entercom Buffalo License, LLC, licensee of:

WBEN(AM), Buffalo, NY
WWWS(AM), Buffalo, NY
WGR(AM), Buffalo, NY
WWKB(AM), Buffalo, NY
WKSE(FM), Niagara Falls, NY
WTSS(FM), Buffalo, NY
WLKK(FM), Wethersfield Township, NY

Entercom Denver License, LLC, licensee of:

KALC(FM), Denver, CO
KEZW(AM), Aurora, CO
KOSI(FM), Denver, CO
KQMT(FM), Denver, CO

Entercom Gainesville License, LLC, licensee of:

WSKY-FM, Micanopy, FL
WKTK(FM), Crystal River, FL

Entercom Greensboro License, LLC, licensee of:

WEAL(AM), Greensboro, NC
WJMH(FM), Reidville, NC
WPAW(FM), Winston Salem, NC
WPET(AM), Greensboro, NC

WQMG-FM, Greensboro, NC
WSMW(FM), Greensboro, NC

Entercom Greenville License, LLC, licensee of:

WFBC-FM, Greenville, SC
WGVC(FM), Simpsonville, SC
WORD(AM), Spartanburg, SC
WROQ(FM), Anderson, SC
WSPA-FM, Spartanburg, SC
WTPT(FM), Forest City, NC
WYRD(AM), Greenville, SC

Entercom Indianapolis License, LLC, licensee of:

WNTR(FM), Indianapolis, IN
WXNT(AM), Indianapolis, IN
WZPL(AM), Indianapolis, IN

Entercom Kansas City License, LLC, licensee of:

KCSP(AM), Kansas City, MO
KMBZ(AM), Kansas City, MO
KQRC-FM, Leavenworth, KS
KRBZ(FM), Kansas City, MO
KUDL(FM), Kansas City, KS
KXTR(AM), Kansas City, KS
KBLV(FM), Kansas City, MO
WDAF-FM, Liberty, MO
KYYYS(AM), Kansas City, KS

Entercom Madison License, LLC, licensee of:

WCHY(FM), Waunakee, WI
WMMM-FM, Verona, WI
WOLX-FM, Baraboo, WI

Entercom Memphis License, LLC, licensee of:

WSNA(FM), Germantown, TN
WRVR(FM), Memphis, TN
WSMB(AM), Memphis, TN
WMFS(FM), Bartlett, TN
WMC(AM), Memphis, TN
WMC-FM, Memphis, TN

Entercom Milwaukee License, LLC, licensee of:

WMYX-FM, Milwaukee, WI
WSSP(AM), Milwaukee, WI
WXSS(FM), Wauwatosa, WI

Entercom New Orleans License, LLC, licensee of:

WEZB(FM), New Orleans, LA
WKBU(FM), New Orleans, LA
WLMG(FM), New Orleans, LA
WWL-FM, Kenner, LA
WWL(AM), New Orleans, LA
WWWL(AM), New Orleans, LA

Entercom Norfolk License, LLC, licensee of:

WNVZ(FM), Norfolk, VA
WPTE(FM), Virginia Beach, VA
WVKL(FM), Norfolk, VA
WWDE-FM, Hampton, VA

Entercom Portland License, LLC, licensee of:

KGON(FM), Portland, OR
KNRK(FM), Camas, WA
KWJJ-FM, Portland, OR
KFXX(AM), Portland, OR
KKSJ(AM), Salem, OR
KRSK(FM), Molalla, OR
KYCH-FM, Portland, OR
KTRO(AM), Vancouver, WA

Entercom Providence License, LLC, licensee of:

WEEI-FM, Westerly, RI

Entercom Rochester License, LLC, licensee of:

WPXY-FM, Rochester, NY
WRMM-FM, Rochester, NY
WZNE(FM), Brighton, NY
WCMF-FM, Rochester, NY
WROC(AM), Rochester, NY
WBEE-FM, Rochester, NY
WBZA(FM), Rochester, NY
WFKL(FM), Fairport, NY

Entercom Sacramento License, LLC, licensee of:

KDND(FM), Sacramento, CA
KSEG(FM), Sacramento, CA
KRXQ(FM), Sacramento, CA
KCTC(AM), Sacramento, CA
KSSJ(FM), Fair Oaks, CA
KWOD(FM), Sacramento, CA

Entercom San Francisco License, LLC, licensee of:

KDFC-FM, San Francisco, CA
KOIT-FM, San Francisco, CA
KBWF(FM), San Francisco, CA

Entercom Seattle License, LLC, licensee of:

KMTT(FM), Tacoma, WA
KNDD(FM), Seattle, WA
KISW(FM), Seattle, WA
KKWF(FM), Seattle, WA

Entercom Springfield License, LLC, licensee of:

WVEI-FM, Easthampton, MA

Entercom Wichita License, LLC, licensee of:

KEYN-FM, Wichita, KS
KFH(AM), Wichita, KS
KNSS(AM), Wichita, KS
KFBZ(FM), Haysville, KS
KFH-FM, Clearwater, KS
KDGS(FM), Andover, KS

Entercom Wilkes-Barre Scranton, LLC, licensee of:

WBZU(AM), Scranton, PA
WGGI(FM), Benton, PA
WKRZ(FM), Freeland, PA
WILK(FM), Avoca, PA
WKZN(AM), West Hazleton, PA
WDMT(FM), Pittston, PA
WILK(AM), Wilkes-Barre, PA
WGGY(FM), Scranton, PA
WKRF(FM), Tobyhanna, PA

Evangel Ministries, Inc.

WEMI(FM), Appleton, WI
WEMY(FM), Green Bay, WI
WGNV(FM), Milladore, WI

Galaxy Communications, L.P.

Galaxy Communications, LP is the parent of the following licensee subsidiaries:

Galaxy Utica Licensee LLC, licensee of:

WIXT(AM), Little Falls, NY
WKLL(FM), Frankfort, NY
WOUR(FM), Utica, NY
WRNY(AM), Rome, NY
WTLB(AM), Utica, NY
WUMX(FM), Rome, NY

Galaxy Syracuse Licensee LLC, licensee of:

WKRH(FM), Minetto, NY
WKRL-FM, North Syracuse, NY
WSGO(AM), Oswego, NY
WTKV(FM), Oswego, NY
WTKW(FM), Bridgeport, NY
WTLA(AM), North Syracuse, NY
WZUN(FM), Phoenix, NY
WCSP(AM), Sandy Creek-Pulaski, NY

Golden Isles Broadcasting, LLC

WRJY(FM), Brunswick, GA
WXMK(FM), Dock Junction, GA

Great Scott Broadcasting

WKHW(FM), Pocomoke City, MD
WOCQ(FM), Berlin, MD
WKHI(FM), Fruitland, MD
WGBG(FM), Seaford, DE
WJKI(FM), Bethany Beach, DE
WJWK(AM), Seaford, DE
WJWL(AM), Georgetown, DE
WKDB(FM), Laurel, DE
WZBH(FM), Georgetown, DE

WZEB(FM), Ocean View, DE
WPAZ(AM), Pottstown, PA

Greater Media, Inc.

Greater Media, Inc. is the parent of the following licensee subsidiaries:

Charles River Broadcasting Company, licensee of:

WKLB-FM, Waltham, MA

Greater Boston Radio, Inc., licensee of:

WROR-FM, Framingham, MA
WBOS(FM), Brookline, MA
WMJX(FM), Boston, MA
WTKK(FM), Boston, MA
WMMR(FM), Philadelphia, PA
WCSX(FM), Birmingham, MI
WRIF(FM), Detroit, MI
WMGC-FM, Detroit, MI

Greater Philadelphia Radio, Inc., licensee of:

WPEN(AM), Philadelphia, PA
WBEN-FM, Philadelphia, PA
WMGK(FM), Philadelphia, PA
WPEN(AM), Philadelphia, PA
WJJZ(FM), Burlington, NJ

Jersey Shore Broadcasting Corporation, licensee of:

WJRZ(FM), Manahawkin, NJ

The Sentinel Publishing Co., licensee of:

WRAT(FM), Point Pleasant, NJ
WCTC(AM), New Brunswick, NJ
WMGQ(FM), New Brunswick, NJ
WWTR(AM), Bridgewater, NJ
WMTR(AM), Morristown, NJ
WDHA-FM, Dover, NJ

Greater Media of Charlotte Inc., licensee of:

WBT(AM), Charlotte, NC
WLNK(FM), Charlotte, NC
WBT-FM, Chester, SC

HEH Communications, LLC

KHVL(AM), Huntsville, TX
KSAM-FM, Huntsville, TX

HJV Limited Partnership

WCBG(AM), Waynesboro, PA
WFYN(FM), Waynesboro, PA
WAYZ(FM), Hagerstown, MD
WJDV(FM), Broadway, VA

Irie Radio Inc.

WOCM(FM), Selvyville, DE

Journal Broadcast Corporation

KIVI(TV), Nampa, ID
KCID(AM), Caldwell, ID
KGEM(AM), Boise, ID
KJOT(FM), Boise, ID
KQXR(FM), Payette, ID
KRVB(FM), Nampa, ID
KTHI(FM), Caldwell, ID
WFTX(TV), Cape Coral, FL
WGBA(TV), Green Bay, WI
WQBB(AM), Powell, TN
WKHT(FM), Knoxville, TN
WMYU(FM), Karns, TN
WWST(FM), Sevierville, TN
WSYM-TV, Lansing, MI
KTNV(TV), Las Vegas, NV
WTMJ-TV, Milwaukee, WI
WTMJ(AM), Milwaukee, WI
WKTI-FM, Milwaukee, WI
KMTV(TV), Omaha, NE
KXSP(AM), Omaha, NE
KEZO-FM, Omaha, NE
KKCD(FM), Omaha, NE
KQCH(FM), Omaha, NE

KSRZ(FM), Omaha, NE
KMIR-TV, Palm Springs, CA
KSGF(AM), Springfield, MO
KSGF-FM, Ash Grove, MO
KSPW(FM), Sparta, MO
KTTS-FM, Springfield, MO
KZRQ-FM, Mount Vernon, MO
KGUN(TV), Tucson, AZ
KFFN(AM), Tucson, AZ
KGMG(FM), Oracle, AZ
KMXZ-FM, Tucson, AZ
KQTH(FM), Tucson, AZ
KFAQ(AM), Tulsa, OK
KXBL(FM), Henryetta, OK
KVOO-FM, Tulsa, OK
KFTI(AM), Wichita, KS
KFDI-FM, Wichita, KS
KFTI-FM, Newton, KS
KFXJ(FM), Augusta, KS
KICT-FM, Wichita, KS
KYQQ(FM), Arkansas City, KS

Jubilation Ministries, Inc.

WJUB(AM), Plymouth, WI
WSTM(FM), Kiel, WI

Kirkman Broadcasting, Inc.

WJKB(AM), Moncks Corner, SC
WQNT(AM), Charleston, SC
WQSC(AM), Charleston, SC
WTMZ(AM), Dorchester-Terr.-Bre, SC

M. Belmont VerStandig, Inc.

WPPT(FM), Mercersburg, PA
WBHB-FM, Bridgewater, VA
WQPO(FM), Harrisonburg, VA
WSVA(FM), Harrisonburg, VA
WHBG(FM), Harrisonburg, VA

Milwaukee Radio Alliance, LLC

WLDB(FM), Milwaukee, WI
WLUM-FM, Milwaukee, WI
WMCS(AM), Greenfield, WI

Multicultural Radio Broadcasting, Inc.

Multicultural Radio Broadcasting, Inc. is the parent of the following licensee subsidiary:

Multicultural Radio Broadcasting Licensee, LLC

KAHZ(AM), Pomona, CA
KAZN(AM), Pasadena, CA
KBLA(AM), Santa Monica, CA
KCHN(AM), Brookshire, TX
KEST(AM), San Francisco, CA
KIDR(FM), Phoenix, AZ
KIQI(AM), San Francisco, CA
KMNY(AM), Hurst, TX
KMRB(AM), San Gabriel, CA
KSJX(AM), San Jose, CA
KWRU(AM), Fresno, CA
KXPA(AM), Bellevue, WA
KXYZ(AM), Houston, TX
KYP A(AM), Los Angeles, CA
WAZN(AM), Watertown, MA
WEXY(AM), Wilton Manors, FL
WGFS(AM), Covington, GA
WHWH(AM), Princeton, NJ
WJDM(AM), Elizabeth, NJ
WKDM(AM), New York, NY
WLXE(AM), Rockville, MD
WLYN(AM), Lynn, MA
WNMA(AM), Miami Springs, FL
WNSW(AM), Newark, NJ
WNYG(AM), Babylon, NY
WPAT(AM), Paterson, NJ
WTTM(AM), Lindenwold, NJ
WWRU(AM), Jersey City, NJ
WZRC(AM), New York, NY

Multicultural Television Broadcasting, LLC

Multicultural Television Broadcasting, LLC is the parent of the following licensee subsidiaries:

MTB Boston Licensee LLC

WMFP(TV), Lawrence, MA

MTB Cleveland Licensee LLC

WOAC(TV), Canton, OH

MTB Bridgeport-NY Licensee LLC

WSAH(TV), Bridgeport, CT

MTB Raleigh Licensee LLC

WRAY-TV, Wilson, NC

MTB San Francisco Licensee LLC

KCNS(TV), San Francisco, CA

Noalmark Broadcasting Corporation

KAGL(FM), El Dorado, AR
KELD(AM), El Dorado, AR
KELD-FM, Hampton, AR
KIXB(FM), El Dorado, AR
KMLK(FM), El Dorado, AR
KMRX(FM), El Dorado, AR
KBHS(AM), Hot Springs, AR
KLAZ(FM), Hot Springs, AR
KPZA(AM), Hot Springs, AR
KLEZ(FM), Malvern, AR
KBOK(AM), Malvern, AR
KVRC(AM), Arkadelphia, AR
KDEL-FM, Arkadelphia, AR
KVMA(AM), Magnolia, AR
KVMZ(FM), Waldo, AR
KYXK(AM), Gurdon, AR
KBIM(AM), Roswell, NM
KBIM-FM, Roswell, NM
KIXN(FM), Hobbs, NM
KPER(FM), Hobbs, NM
KZOR(FM), Hobbs, NM
KPZA-FM, Jal, NM
KYKK(AM), Humble City, NM

North Georgia Radio Group, L.P.

WBLJ(AM), Dalton, GA
WDAL(AM), Dalton, GA
WYYU(FM), Dalton, GA
WOCE(FM), Ringgold, GA

Northwest Broadcasting, Inc.

Northwest Broadcasting, Inc. controls the following licensees:

Broadcasting Licenses, L.P., licensee of:

KMVU(TV), Medford, OR

Mountain Licenses, L.P., licensee of:

KAYU-TV, Spokane, WA

KFFX-TV, Pendleton, OR

Stainless Broadcasting, L.P., licensee of:

WICZ-TV, Binghamton, NY

Port St. Lucie Broadcasters, Inc.

WPSL(AM), Port St. Lucie, FL

WJNX(AM), Fort Pierce, FL

Ramar Communications II, Ltd.

KTLL-TV, Durango, CO

KTEL-TV, Carlsbad, NM

KUPT(TV), Hobbs, NM

KJTV(AM), Lubbock, TX

KLZK(FM), New Deal, TX

KSTQ-FM, Brownfield, TX

KXTQ-FM, Lubbock, TX

KJTV-TV, Lubbock, TX

Rocky Mountain Broadcasting Company

KMTF(TV), Helena, Montana

San Luis Obispo Broadcasting, Inc.

KKJL(AM), San Luis Obispo, CA

Sarkes Tarzian, Inc.

KTVN(TV), Reno, NV
WRCB-TV, Chattanooga, TN
WLDE(FM), Fort Wayne, IN
WAJI(FM), Fort Wayne, IN
WTTS(FM), Bloomington, IN
WGCL(AM), Bloomington, IN

Shooting Star Broadcasting of New England, LLC

WZMY-TV, Derry, NH

Sky Television, L.L.C.

WSKY-TV, Manteo, NC

Treasure Coast Broadcasters, Inc.

WSTU(AM), Stuart, FL

Western Kentucky University

WDCL-FM, Somerset, KY
WKPB(FM), Henderson, KY
WKUE(FM), Elizabethtown, KY
WKYU-FM, Bowling Green, KY
WKYU-TV, Bowling Green, KY
WWHR(FM), Bowling Green, KY

Wolfhouse Radio Group, Inc.

KEXA(FM), King City, CA
KMJV(FM), Soledad, CA
KRAY-FM, Salinas, CA
KTGE(FM), Salinas, CA

Broadcast Licensees Localism Comments – Additional Examples

Main Studio

- Beasley Broadcast Group, Inc. (“Beasley”) operates six radio stations in the Fayetteville, North Carolina market. Five of these stations have main studios located outside their communities of license. Beasley estimates the average cost of moving each studio to comply with the proposed rule at \$634,000 each, or \$3,170,000 total for the market. There are no frequencies available in the market to set up new STLs.
- Clarity Communications, Inc. (“Clarity”) operates WLXO(FM), Stamping Ground, KY, from a studio in Lexington, KY. Moving the station’s studio would be a substantial expense for Clarity.
- Greater Media, Inc. (“Greater Media”) operates five radio stations in the Boston, Massachusetts market. Three of those stations are outside their communities of license. Greater Media estimates the cost of moving the three stations’ studios to be \$5 million. Greater Media believes it likely that frequencies to establish an STL path for each new studio would be unavailable.
- Greater Media also operates three stations that serve the Detroit market, from a common main studio located in Detroit. One of these stations is WCSX(FM), licensed to Birmingham, Michigan, which is approximately 5 miles from the main studio location. Greater Media estimates the costs associated with moving this studio to be approximately \$5 million.
- Irie Radio (“Irie”) operates WOCM-FM in Selbyville, DE. Irie estimates the technical costs associated with moving the main studio to be \$25,000, plus additional costs for a new building and staffing. Irie currently shares accounting, human resources, payroll, reception, secretarial, and IT departments with another entity at its current location. Irie cannot afford to move and supply all of these services on its own.
- Journal Broadcast Corporation (“Journal”) operates five radio stations in the Springfield, Missouri market. Three of those stations would be required to establish new main studios in their communities of license under the proposed rule. Journal estimates that this would cost approximately \$500,000 for new equipment, buildings and personnel, exclusive of expenses associated with dismantling equipment currently associated with those stations, and moving it to the new main studios.

- Journal operates six radio stations in the Boise, Idaho Metro, four of which would need to move to new main studios under the proposed rule. Journal has estimated that the cost to unbundle these stations would be \$1,260,000, with an additional annual cost of \$78,000 for data connectivity and studio transmitter links. These estimates do not include any rent or mortgage payments for the new facilities.
- Journal operates four radio stations in the Knoxville, Tennessee market. Journal would be required to establish new studios for three of those stations. It is estimated that each of these facilities would cost between \$750,000 and \$850,000, not including additional staffing expenses and the cost of dividing the technical services used by the programming, engineering and administrative staff.

Unattended Operations

- Galaxy Communications, LP (“Galaxy”) operates thirteen radio stations in the Syracuse and Utica-Rome, New York markets. The stations are managed from two centralized studios outside the borders of their communities of license. Several of Galaxy’s stations are Class A facilities located in communities on the outskirts of its markets. In order to serve adequately all parts of the markets Galaxy simulcasts programming on certain of its stations. These simulcast stations are unattended for a substantial amount of time. Galaxy’s other stations are unattended for 85 to 90 hours per week. Galaxy estimates that the cost to staff each station as required by the proposed rule would range from \$140,000 per year to more than \$215,000 per year for the stations that simulcast programming originated by another Galaxy station.
- M. Belmont VerStandig, Inc. and HJV Limited Partnership (“VerStandig”) operate four radio stations in Hagerstown-Chambersburg-Waynesboro, MD-PA Arbitron designated market area. Currently, none of the stations operates unattended. Under the proposed rule, VerStandig estimates that it would need to hire eleven additional full-time staff members and twelve part-time staff members at a cost of \$354,000 per year for all four stations combined.

Community Advisory Boards

- Evangel Ministries, Inc. is a religious broadcaster operating three Wisconsin radio stations, the staff of which meets monthly with area pastors to receive input about the stations’ programming. The stations are religious in nature and operate on a statement of faith. As a result, it would be of great concern to the stations’ religious purpose if they had to have a permanent advisory board comprising “all segments” of their communities, including persons who do not adhere to the same religious principles.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast Licensee)	
Public Interest Obligations)	
)	
Extension of the Filing Requirements)	
For Children’s Television Programming)	MM Docket No. 00-44
Report (FCC Form 398))	

To: The Commission

PETITION FOR RECONSIDERATION

**Broadcasting Licenses Limited Partnership
Davis Television Clarksburg, LLC
Davis Television Wausau, LLC
Eagle Creek Broadcasting of Corpus Christi, LLC
Eagle Creek Broadcasting of Laredo, LLC
Educational Broadcasting Corporation
Journal Broadcast Corporation
Multicultural Television Broadcasting LLC
Mountain Licenses, L.P.
Ramar Communications Ltd., II
Sarkes Tarzian, Inc.
Shooting Star Broadcasting Inc.
Stainless Broadcasting, L.P.
Telecentro of Puerto Rico, LLC
Western Kentucky University
WQED Multimedia**

April 14, 2008

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SUMMARY

In 1984, the Commission concluded a careful and thorough review of many of its rules relating to programming, ascertainment methodology, and program logging requirements for broadcast television stations. At the end of this review, the Commission eliminated a number of “unnecessary and often burdensome regulations,” including minimum requirements for non-entertainment and local programming in the license renewal context, formal ascertainment procedures, and the requirement to maintain program logs. The Commission has now taken action that turns back the clock and reinstates many of these long-abandoned, tremendously burdensome requirements, which will impose significant costs on television broadcasters.

The Commission justified its new requirements as a means of improving the ability of the public to participate in the broadcast license renewal process, and of bringing conformity to the issue-responsive programming reporting requirements with which television stations have long had to comply. The newly adopted standardized disclosure form, however, requires reporting that goes well beyond what is necessary to assist the public in participating in the license renewal process. Moreover, adoption of the new form as a device to increase the public’s participation in the license renewal process completely ignores the fact that cross-station programming comparisons are neither permitted nor relevant under the statutory license renewal standard.

The Commission also ignored the significant impact the reporting requirements will have on the First Amendment rights of broadcasters. By identifying fixed categories of programming that every station must report, and indicating that the resulting information will be used in the license renewal context, the Commission implicitly but unmistakably indicated a preference for those types of programming. While the Commission may contend that it has not adopted explicit programming quotas, it cannot ignore that its action creates pressure on broadcasters that will

inevitably alter or restrict their editorial judgment. The greatly expanded reporting requirements, which, by their nature, are a type of content-based regulation, are not narrowly tailored to achieve a substantial governmental interest -- indeed, they have not been shown to serve any meaningful government interest.

The new regulations also require television broadcasters to post significant portions of their public inspection files on-line. In adopting this requirement, the Commission failed properly to consider its previously stated objective of striking a balance between ensuring reasonable access to public files and minimizing regulatory burdens on broadcasters.

BEFORE THE
Federal Communications Commission
WASHINGTON, DC

In the Matter of)	
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Standardized and Enhanced Disclosure)	MM Docket No. 00-168
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To: The Commission

PETITION FOR RECONSIDERATION

Broadcasting Licenses Limited Partnership; Davis Television Clarksburg, LLC; Davis Television Wausau, LLC; Eagle Creek Broadcasting of Corpus Christi, LLC; Eagle Creek Broadcasting of Laredo, LLC; Educational Broadcasting Corporation; Journal Broadcast Corporation; Multicultural Television Broadcasting LLC; Mountain Licenses, L.P.; Ramar Communications Ltd., II; Sarkes Tarzian, Inc.; Shooting Star Broadcasting Inc.; Stainless Broadcasting, L.P.; Televiscentro of Puerto Rico, LLC; Western Kentucky University; and WQED Multimedia (together, the “Joint Parties”),¹ by their attorneys and pursuant to Section 1.429 of the Commission’s Rules,² hereby submit this Petition for Reconsideration and respectfully request that the Commission reconsider the recently adopted standardized and

¹ The Joint Parties are the licensees of the 39 television stations listed on Attachment 1 hereto.

² Consideration of the facts presented herein is required by the public interest. 47 C.F.R. § 1.429(b)(3).

enhanced disclosure obligations for broadcast television licensees.³ The newly adopted rules will improperly restrict the Joint Parties' First Amendment rights and negatively affect their ability to provide quality responsive programming to their communities. The Commission has adopted these highly burdensome and vague obligations without adducing sufficient or convincing evidence that they are necessary or will serve the public interest. The regulations should be abandoned.

I. The Standardized Television Disclosure Form Is Vague, Highly Burdensome, and Fails to Adhere to the Principles of the Statutory Renewal Standard.

The Commission's newly adopted Standardized Television Disclosure Form – Form 355 (the “*Standardized Form*”) – has been required in place of the quarterly issues/programs list that television stations currently compile and place in their public inspection files. Unlike the issues/programs lists, in which stations describe briefly the community issues they addressed in a particular calendar quarter and provide information about representative programs that covered those issues, the Standardized Form requires stations to classify and report vast amounts of programming and programming segments in discrete, frequently overlapping, and often vague categories. Every program broadcast in the delineated categories must be included in the report each calendar quarter. The form also requires licensees to provide information regarding a station's issues ascertainment methodology, closed captioning and video description services, and emergency information activities.

Although the Commission indicated in 2000 that it intended to adopt a standardized format for issue-responsive program disclosure, it was not until 2004 that a sample form was

³ See Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations, *Report and Order*, FCC 07-205 (rel. Jan. 24, 2008) (“*Report and Order*”).

introduced through an *ex parte* notice filed by the Public Interest, Public Airwaves coalition. The coalition's proposal, submitted long after the close of the reply comment period in this proceeding, was virtually identical to the form adopted by the Commission. The Commission gave no further notice of the proposed form, and made no independent proposal of any form for public comment, until the Standardized Form was adopted in the *Report and Order*. Because of these circumstances, the substantial burdens posed by the Standardized Form have not been properly considered and analyzed.

Moreover, in adopting the Standardized Form, the Commission failed to justify the abrupt reinstatement of requirements that it previously eliminated after a careful, incremental, and well-supported rulemaking process. The Standardized Form seems primarily designed to bring about program content regulation that the Commission could not implement directly.

In 1984, the Commission concluded a lengthy examination of its rules regarding programming, ascertainment, and program log requirements for commercial television stations.⁴ At the conclusion of this review, the Commission eliminated a number of "unnecessary and often burdensome regulations," including rules establishing program minimums for specific types of non-entertainment and local programming that were considered as part of the license renewal process, formal ascertainment requirements, and the requirement to maintain program logs.⁵ In eliminating these requirements, the Commission stressed the "importance and viability of market incentives" as a means of achieving its goals, and the benefits of "provid[ing] television

⁴ See *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations, Report and Order*, 98 FCC 2d 1076 (1984) (the "*Deregulation Report and Order*").

⁵ *Deregulation Report and Order* at 1077.

broadcasters with increased freedom and flexibility in meeting the continuously changing needs of their communities.”⁶

The programming guidelines then abandoned had required full Commission review of any license renewal application reporting less than 5% local programming, 5% informational programming, or 10% total non-entertainment programming. In discarding these renewal processing guidelines, the Commission noted that, to the extent programming levels exceeded regulatory standards, the guidelines were not necessary and the regulations implementing them could be considered capricious.⁷ In particular, the Commission cited to “convincing evidence” that “existing marketplace forces, not our guidelines, are the primary determinants of the levels of informational, local and overall non-entertainment programming provided on commercial television” and that these existing and future incentives would continue to elicit levels of such programming well above the FCC’s arbitrarily set processing guidelines.⁸ The Commission also concluded that the guidelines imposed burdensome compliance issues in potential conflict with the Regulatory Flexibility Act and the Paperwork Reduction Act, and with the First Amendment.⁹

In 1984, the Commission simultaneously did away with the requirement that television broadcasters compile and keep detailed programming logs. In light of the elimination of the programming guidelines, the FCC reasonably determined that the intensive logging obligation served no regulatory purpose.¹⁰ As the *Deregulation Report and Order* noted, elimination of the logging requirements terminated a requirement that the Government Accountability Office had

⁶ *Id.*

⁷ *Deregulation Report and Order* at 1088.

⁸ *Id.* at 1085.

⁹ *Id.* at 1080 and 1089.

¹⁰ *Id.* at 1109.

found “constituted the largest government burden on business in terms of total burden hours,” costing licensees more than 2,468,000 hours per year.¹¹

Finally, in 1984, the FCC also eliminated formal ascertainment procedures, which had required that licensees interview members of the local community representing specific segments of a “typical” community, to determine the most significant issues faced within the community. The Commission found that there was no evidence that the ascertainment procedures were effective in assisting stations in identifying these issues. The FCC instead allowed stations to determine the community issues deserving coverage by whatever methods stations deemed appropriate.¹² The Commission noted that the costs of its ascertainment procedures had been considerable, requiring the dedication of 66,956 work hours per year, and calculated that elimination of the requirement would result in a savings of up to \$8,986 per broadcaster per year.¹³ The Commission expressly stated that it should not be reviewing the methods by which stations made these determinations, but rather, should focus on the responsiveness of programming itself.¹⁴

Now, more than two decades later, the *Report and Order* has effectively, and arbitrarily, reinstated massive, unduly burdensome recordkeeping and reporting obligations -- albeit under a slightly different guise -- without a legally sufficient explanation as to why the solid evidence amassed earlier that compelled the elimination of such requirements is now suddenly suspect or invalid.

¹¹ *Id.* at 1106 (citing GAO, *Federal Paperwork: Its Impact on American Business*, pp. 43-44 (1978)).

¹² *Id.* at 1098.

¹³ *Id.* at 1099.

¹⁴ *Id.* at 1101.

A. The Standardized and Expanded Disclosure Requirements Were Adopted Without An Adequate Factual Foundation.

In taking regulatory action, an agency must examine relevant data and satisfactorily explain its decision with a “rational connection between the facts found and the choice made.”¹⁵ An agency’s action is unjustified if its explanation “runs counter to the evidence before” it.¹⁶ Adoption of the Standardized Form is a clear example of agency action that runs counter to the evidence.

The Commission justified the Standardized Form not to cure “rule violations by licensees or the failings of a particular station or even the television industry generally,” but instead, as a means of addressing the perceived lack of accessibility and uniformity in the issues/programs lists currently prepared by television stations.¹⁷ In particular, the FCC found that a lack of uniformity makes it difficult to aggregate information such that a “comparison between broadcasters is virtually impossible.”¹⁸ The greatly expanded disclosure requirements were also presented as enhancing the ability of the public to “more effectively” participate in license renewal proceedings.¹⁹ Yet the Commission failed to discuss how this claimed justification could be reconciled with its past reliance on marketplace incentives to produce adequate quantities of non-entertainment programming. The Commission offered no evidence -- let alone compelling evidence -- of the “significant market failure” that it previously indicated would be necessary for reinstatement of those logging requirements.²⁰

¹⁵ *Motor Vehicle Mfrs. Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

¹⁶ *Id.*

¹⁷ *Report and Order* at ¶ 37.

¹⁸ *Id.* at ¶ 35.

¹⁹ *Id.* at ¶ 44.

²⁰ *Deregulation Report and Order* at 1109.

The Commission has not explained how the expanded scope of information to be reported in the Standardized Form is an efficient way to remedy the perceived lack of uniformity that it concluded exists among the issues/programs lists now prepared. Many of the program categories in the Standardized Form are only vaguely differentiated one from another -- for example, "local news" versus "local civic affairs programming" versus "local electoral affairs programming" versus "local programming." It is inevitable that the hair splitting use of so many confusingly similar categories will result in a lack of uniformity in the reporting of programming -- the very problem (with respect to the current issues/programs lists) the FCC was ostensibly trying to cure.

Rather than addressing this perceived problem by simply standardizing the manner in which current issues/programs reports are prepared, the Commission arbitrarily turned an asserted need for uniformity into a dragnet search for every program segment broadcast by a station which the licensee might ever want to claim to be creditworthy in the face of a renewal challenge. Without solid evidence of industry failure, a mere desire for more information than the Commission has previously determined necessary for licensing purposes does not serve as an adequate basis for the imposition of detailed, comprehensive and highly burdensome recordkeeping and reporting requirements.

Nor does justification of the adoption of the Standardized Form as necessary to assist members of the public wishing to participate in license renewal proceedings satisfy the Commission's obligations in this regard. This rationale ignores the fact that comparative renewal proceedings have been eliminated and that license renewal applications are reviewed under station specific statutory renewal standards which do not involve cross-station

comparisons.²¹ Since a comparison of one station's issue-responsive programming to that of another station is not permitted or relevant under the statutory standard, any claimed "benefit" from the standardization of information for the purpose of such a comparison does not justify the imposition of these burdensome new requirements.

The unconditioned grant of thousands of television license renewal applications under the existing statutory standard provides strong evidence that stations are satisfying their public interest obligations. The new standardized disclosure obligations are, in other words, a solution in search of a problem. The *Report and Order* failed to offer any support that the expanded disclosure requirements are relevant to the Commission's license renewal process, or that they will increase the "effectiveness" of public participation in license renewal proceedings -- the stated justifications for the new disclosure requirements. As a result, adoption of the new requirements was unjustified.

B. The Commission Ignored Serious First Amendment Concerns Raised In This Proceeding When Adopting the Expanded Disclosure Requirements.

Because the newly adopted regulations will act to chill the editorial judgment of broadcasters, they are content-based restrictions that may be upheld only if they are narrowly tailored to achieve a substantial government interest.²² Indeed, in interpreting the Communications Act of 1934, as amended, the Supreme Court has held that Congress intended

²¹ Pub. L. No. 104-104, 110 Stat. 56 (1996). *See also* 47 U.S.C. § 309(k)(1), 47 C.F.R. § 73.3591(d) (2007) (providing that a license renewal application is to be granted if, during the preceding license term: (i) the station has served the public interest, convenience, and necessity; (ii) the licensee has committed no serious violations of the FCC's rules or regulations; and (iii) the licensee has not committed any other violations of the FCC's rules or regulations which, taken together, constitute a pattern of abuse).

²² *FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984).

to permit private broadcasting to develop with the widest journalistic freedom consistent with its public obligations.”²³

In the *Deregulation Report and Order*, the Commission specifically warned that broad program reporting requirements, such as those embedded in the Standardized Form, naturally heighten First Amendment concerns due to the “lack of a direct nexus between a quantitative approach and licensee performance.”²⁴ Yet, with little or no explanation for its divergence from past decisions, the Commission ignored these concerns in the *Report and Order*.

The Commission also denied that the enumeration of detailed program categories, in a form which requires that every program or program segment be listed, will serve to establish quantitative programming requirements or quotas. Common sense suggests otherwise, especially given the encouragement the Commission offers to third parties anxious to turn the renewal process into a comparative proceeding.

As several parties commented, courts have long disfavored regulations mandating the types of programs that broadcasters must provide. The record in this proceeding noted that, in the context of exempting certain categories of television programming from prime time access rules, courts have warned that “mandatory programming by the Commission *even in categories* [might] raise serious First Amendment questions.”²⁵ The Named State Broadcasters Associations noted that the Commission’s refusal to adopt quantitative standards in the context of comparative renewal proceedings survived judicial review, and resulted in a determination

²³ *Nat’l Black Media Coal. v. FCC*, 589 F.2d 578, 581 (D.C. Cir. 1978) (citing *CBS v. DNC*, 412 U.S. 94, 110 (1973)).

²⁴ *Deregulation Report and Order* at 1089.

²⁵ Comments of Viacom Inc., MM Docket No. 00-168, at 14 (emphasis added) (citing *Nat’l. Assoc. of Indp’t. TV Producers and Distributors v. FCC*, 516 F.2d 526 (2d Cir. 1975)).

that quantitative standards can limit broadcasters' editorial discretion without providing any assurance of improved service.²⁶

Even though these judicial admonitions are directly applicable to the adoption of the enhanced disclosure requirements, the majority of the Commission summarily brushed aside these First Amendment concerns, claiming that the *Report and Order* neither adopts quantitative standards nor requires broadcasters to air specific categories of programming.²⁷ Yet conclusory statements cannot substitute for considered analysis, especially in the context of new government regulations which affect broadcasters' First Amendment rights. The Commission admits that the requirement that a station list every program it deems relevant on the new disclosure form is a new obligation,²⁸ but seems all too willing to dismiss out of hand the inherent, impermissible chilling effect that its "raised eyebrow" approach to regulation will have. Alone among the Commissioners, in his partial dissent Commissioner McDowell called the Standardized Form the FCC's "not-so-subtle attempt to exert pressure to air certain types of content."²⁹

The pressure that will alter or restrict a broadcaster's editorial judgment through this "raised eyebrow" form of regulation cannot be ignored. By requiring licensees to provide detailed information about, and list the quantities of, specific categories of programming aired each quarter, the FCC is implicitly stamping a more favored status on those types of programming. Requiring broadcasters to report the amount of programming aired in each of the specified categories will no doubt incentivize stations to ensure carriage of some amount of programming in every one of those categories, and create a disincentive to broadcast other types

²⁶ Joint Comments of Named State Broadcasters Associations, MM Docket No. 00-168, at 12 (citing *Nat'l Black Media Coalition*, 589 F.2d 578, 580 (D.C. Cir. 1978).

²⁷ *Report and Order* at ¶ 36.

²⁸ *Id.* at ¶ 44.

²⁹ *Statement of Commissioner Robert M. McDowell, Report and Order* at 48.

of programming. This will occur without regard for whether a licensee believes that those other types of programming would be more beneficial to its community, and despite the Commission's well-established reliance upon a licensee's good faith exercise of its programming discretion. This phenomenon, and its intrinsic First Amendment implications, was emphasized by several commenters. The Commission failed to address this legitimate and paramount concern.³⁰

Courts have expressed serious concerns when agencies attempt to engage in "raised eyebrow" regulation in the First Amendment context. For example, in evaluating First Amendment concerns raised in response to a requirement that certain noncommercial broadcast stations retain audio tapes of programs discussing issues of public importance, the United States Court of Appeals for the D.C. Circuit noted that broadcasters can be subject to a "variety of *sub silentio* pressures and 'raised eyebrow' regulation of program content," and that such "subtle forms of pressure are well known."³¹ The Court found that the tape retention rule could inhibit a station's programming discretion, and thus would be "effecting a new and significant diminution in the broadcasters' First Amendment freedoms."³²

The Commission itself has similarly concluded, and previously cautioned, that the application of standards for specific types of programming could have a chilling effect and might "artificially increase the time most television stations devote to local, news and public affairs programming," resulting in a "restriction on licensees' programming discretion, in the context of

³⁰ Comments of The Walt Disney Company, MM Docket 00-168, at 10; Comments of the Named State Broadcasters Associations, MM Docket 00-168, at 13; Joint Comments of Benedek Broadcasting Corporation, LIN Television Corporation, Post-Newsweek Stations, Inc. and Raycom Media, Inc., MM Docket 00-168, at 7.

³¹ *Cnty.-Serv. Broad. Of Mid-America, Inc. v. FCC*, 593 F.2d 1102, 1116 (D.C. Cir. 1978) ("*Community-Service Broadcasting*") (cited in Comments of Viacom Inc., MM Docket No. 00-168, at 11, and in Comments of Named State Broadcasters Associations, MM Docket No. 00-168, at 10).

³² *Id.*

determining what constituted ‘substantial service’ for comparative license renewals.”³³ That the Commission does not literally impose specific quantitative requirements on licensees at this time does not eliminate or excuse the interference with licensees’ proper exercise of their editorial discretion that will result from the obligation to report the amount of programming broadcast in each of the designated categories. The First Amendment does not allow “even minimal burdens on protected rights where no legitimate interest is truly being served.”³⁴ Characterizing the comprehensive report as “replacing” the issues/programs lists now required is insufficient to satisfy the Commission’s burden in this sensitive area.³⁵

The application of “raised eyebrow” regulation to accomplish indirectly what cannot be justified directly is most clearly illustrated by the new requirement to report any “video description services” provided by each station. This disclosure obligation has been imposed despite the fact that the Commission’s prior attempt to require television broadcasters to provide these services was struck down by the courts.³⁶ Whatever distinction the Commission attempts to draw between noting that video description services are not required, but must be reported if voluntarily provided, is without a difference in this context. Stations will inevitably feel pressured to provide video description services, because their only alternative is to report on the Standardized Form that they provided no such services - - yet the only acknowledgement that there is *no requirement* to provide such services is found solely in the instructions, not in the part of the form that will be publicly viewed.

³³ See Comments of Viacom, Inc., MM Docket No. 00-168, at 13 (citing *Formulation of Policies Relating to the Broadcast Renewal Applicant, Stemming from the Comparative Hearing Process*, 66 FCC 2d 419, 428-29 (1977)).

³⁴ *Community-Service Broadcasting* at 1122.

³⁵ *Report and Order* at 22. See also *Statement of Commissioner Jonathan S. Adelstein, Report and Order* at 45.

³⁶ *MPAA v. FCC*, 309 F.3d 796 (D.C. Cir. 2003).

Because the new rules will inevitably restrict broadcasters' editorial discretion while significantly expanding the amount of information that broadcasters will be required to review, compile and report, the new requirements cannot reasonably be found to be narrowly tailored so as to satisfy the Commission's obligations under the First Amendment.

C. The Commission Failed to Weigh the Immense Costs That Stations Will Incur In Complying With the Expanded Disclosure Requirements.

The Commission appears to have ignored the extensive costs that stations will incur to track, compile, and complete the Standardized Form. Indeed, the Commission downplays these costs by saying that the economic impact of the new form will be diminished because "much of the information required" for the new form is already required to prepare the issues/programs list the form replaces.³⁷ This statement is simply not accurate.

The Standardized Form requires television stations to track and report all responsive programs and program segments and categorize programs in ten separate but often overlapping classifications.³⁸ For each program or program segment, a station is required to record title, length, the dates and times aired, and respond to five questions with regard to the broadcast carried on the main and each multicast program stream. Due to the level of detail and recordkeeping required, the amount of time and the cost entailed to complete the Standardized Form will vastly exceed the time and finances consumed in the preparation of the issues/programs list. Indeed, the costs to complete the Standardized Form may well far exceed the costs incurred in complying with the former program logging and monitoring requirements,

³⁷ *Report and Order* at 22.

³⁸ The categories are: National News; Local News; Local Civic Affairs Programming; Local Electoral Affairs Programming; Independently Produced Programming; Local Programming; Public Service Announcements; Paid Public Service Announcements; Programming for Underserved Communities; and Religious Programming.

which were discarded on the conclusion that the resources necessary were not justifiable under the public interest standard. When those logging requirements were eliminated in 1984, each station had one program stream for which to track and report; today, each station must analyze and report programming for numerous multicast program streams, multiplying compliance costs exponentially.

The Commission's estimate of the time and effort needed to complete the Standardized Form -- between 2.5 and 52 hours per response³⁹ -- is so imprecise that it calls into question whether the FCC truly understands the burden it is imposing on stations. This estimate is also significantly lower than broadcasters have estimated. WQED Multimedia undertook to complete the Standardized Form with respect to a 24-hour period of WQED(TV)'s programming.⁴⁰ The categorization and reporting of programming for this single day took 3.75 hours. Extrapolating this information, the reporting requirements would consume 29.5 workdays each calendar quarter. Journal Broadcast Group, which operates eleven commercial television stations, estimates that the monitoring, record-keeping and reporting of all non-entertainment programming, including each local newscast, needed to complete the form will require 1 to 1.5 persons working full time on this task at each station. Complying with other aspects of the new requirements, including the establishment and implementation of ascertainment procedures and compilation of information regarding a station's closed-captioning and video description services, will require many additional hours each week.

³⁹ 73 Fed. Reg. 13542. When the *Report and Order* was initially released, the Commission was able to insert only a blank into its estimation of the number of hours necessary to comply with the new requirements. *Report and Order* at 30. To date, the Commission has not explained how it determined the wide differential in its estimates of the time necessary to complete the Standardized Form.

⁴⁰ WQED(TV) operates an analog channel, a full-time digital channel and a secondary digital channel that broadcasts archived locally produced programming for 7 hours per month.

The Commission calculates that the total annual burden on television licensees to complete the new form will be 2,072,814 hours,⁴¹ with an annual cost of \$11,600,000.⁴² Even if these estimates are accurate, however, they are too high a cost if the purpose of the Standardized Form was merely to create a more uniform information base regarding television programming. Broadcasters already facing tight budgets will be required to divert scarce resources from the production of quality issue-responsive and other programming in order to track and compile vast amounts of information for the Standardized Form. These burdens will fall disproportionately onto smaller broadcasters, many of whom are already struggling to provide issue-responsive programming, or to stay on the air at all. The massive costs and burdens imposed cannot be justified by the record in this proceeding.

II. Requiring Internet Posting of Public Files Fails to Strike the Appropriate Balance Between Reasonable Access and Regulatory Burdens.

The *Report and Order* also required that each television station post much of its public inspection file on line.⁴³ In imposing this obligation, the Commission stated it is “merely making material more accessible to the public.”⁴⁴ In so doing, however, the Commission has completely reversed its previously stated objective “to strike an *appropriate balance* between ensuring that the public has *reasonable access* to each station’s . . . public file while *minimizing regulatory burdens* on licensees.”⁴⁵ In the *Report and Order*, the Commission failed even to mention, let

⁴¹ 73 Fed. Reg. 13542.

⁴² *Id.*

⁴³ *Report and Order* at ¶ 17 (stations must post letters and comments from the public received via email, but are not required to post the contents of their political files or other documents for which direct electronic links can be posted).

⁴⁴ *Report and Order* at ¶ 12.

⁴⁵ Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, *Memorandum Opinion and Order*, 14 FCC Rcd 11113, 11113 (1999) (emphasis added) (“1999 Order”).

alone justify, how mandatory Internet posting of millions of collective pages of administrative documentation strikes an “appropriate balance.” In dismissing public file conversion costs that it admits “may be appreciable,”⁴⁶ the Commission not only failed to minimize regulatory burdens - it has greatly magnified them.

After conceding the “appreciable” expenditures associated with the new rule, the Commission concluded, with no meaningful discussion of any alternatives or of the hardships such expenses might impose, that *all* costs (whatever they may be) of wholesale scanning, organizing, and online posting of public files must simply be borne by television stations. The purported benefit to be derived from these costs is “for the community to have Internet access to information it may not otherwise be able to obtain.”⁴⁷ Yet, there is no evidence that the community does not presently have access. The *very same* information is available *now* by visiting, or if a station’s main studio is located outside its community of license by simply calling, the station.⁴⁸

Many commenters supplied the Commission with good-faith estimates of the time, and financial outlay, required to digitize the public files of television stations.⁴⁹ Some of these were prepared by experts in computer data management. For example, the Named State Broadcasters Associations provided an estimate of a minimum of 20 minutes per page to post information in a disability-friendly format, as is required, and an estimate of \$65 per hour for professional

⁴⁶ *Report and Order* at ¶ 10.

⁴⁷ *Id.* (emphasis added).

⁴⁸ See 47 C.F.R. § 73.3526(b-c) (2007) (providing that public inspection files are to be maintained at the main studio and available during regular business hours; and that licensees must assist citizens with locating information in file, and provide by mail copies of information upon telephone request).

⁴⁹ It should be noted that many of these estimates were prepared shortly after release of the NPRM in 2000, and as a result are likely outdated and need to be adjusted for inflation and cost increases.

assistance.⁵⁰ The National Association of Broadcasters submitted a detailed report from a consultant, estimating a cost of more than \$125,000 for scanning, converting, and indexing of approximately 14,000 pages of documents. This figure did not take into account maintenance, updating, or storage.

The Commission dismissed these estimates from experts in the field as “grossly inflated,” choosing instead to rely on its “own cost estimates,” which were marked by hazy modifiers and little support.⁵¹ The Commission’s conclusion that the public file website implementation costs “should not be overly burdensome” (though at least in the thousands of dollars) was entirely unsupported by reports or data, but based instead on estimates by “Commission staff.”⁵² Rejecting expert evidence in favor of staff approximations, the Commission has engaged in an arbitrary and incomplete analysis that strays far from the “appropriate balancing” demanded by its own precedent.

In 1998, just two years before the Commission issued its Notice of Proposed Rulemaking in this proceeding, it undertook a detailed analysis of public file accessibility, investigating the appropriate location for public files, and the numerous proposals it termed “accommodations” -- ways broadcast stations could assist members of the public who chose not, or perhaps were unable, to visit the main studio facility housing the public file.⁵³ The balanced findings in the *1998 Order* stand in stark contrast to those of the current *Report and Order*.

⁵⁰ See Joint Comments of the Named State Broadcasters Associations, MM Docket No. 00-168, at 21.

⁵¹ *Report and Order* at 10. According to the Commission, initial conversion costs “*may be* appreciable,” but “in nearly all cases, *should not be* overly burdensome.” Ongoing costs “*should be* relatively modest.” *Id.* (emphasis added).

⁵² *Id.*

⁵³ See In the Matter of Review of the Commission’s Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, *Report and Order*, 13 FCC

In the *1998 Order*, the Commission required that a station's public file be maintained at its main studio, wherever that studio is located. The Commission simultaneously relaxed the main studio rule to allow studios (and thus public files) to be located *twenty-five miles* from the community of license.⁵⁴ At such a distance, the Commission determined, residents of the community of license would still have "reasonable access" to the studio, and thus, the public file.⁵⁵ As long as the file remained "reasonably accessible" to citizens in "*the geographic service area of the station*"⁵⁶ (as opposed to anywhere in the world via the Internet, as the current *Report and Order* mandates), the appropriate balance had been struck.⁵⁷

The *1998 Order*, and the follow-up *1999 Memorandum Opinion and Order*, also considered the burdens that would be lifted from, or not imposed on, licensees. Until 1998, stations with main studios outside of their community of license had to make a copy of the station's public file available at some location inside the community of license. This requirement was eliminated, in part because co-location of the main studio and public file would "*reduce the burdens* on licensees who previously were required to maintain an off-premises public file."⁵⁸ The Commission also considered requiring licensees to respond to public file telephone requests by faxing, e-mailing, or sending by courier requested documents, but these

Rcd 15691 (1998) ("*1998 Order*"), *modified*, Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations, *Memorandum Opinion and Order*, 14 FCC Rcd 11113 (1999).

⁵⁴ *1998 Order* at 15697. Under the 25-mile radius option endorsed by the Commission, "citizens at the opposite end of the community would not be expected to have to travel more than 50 miles to reach the studio, which we believe is a *reasonably accessible distance*." *Id.* (emphasis added).

⁵⁵ *Id.* at 15696.

⁵⁶ *1999 Order* at 11119.

⁵⁷ *Id.* at 11119-11120 ("[W]e believe the accommodation should be tailored to the listeners and viewers *that are served by the station.*") (emphasis added).

⁵⁸ *1998 Order* at 15702.

proposals were deemed not appropriately “balanced.”⁵⁹ The accommodation adopted -- that viewers or listeners could telephone stations and request that copies of public file materials be sent by mail (with the requestor paying photocopying costs) -- “further[ed the] stated goals of balancing public access with regulatory burden.”⁶⁰ Even this modest accommodation applied only to stations with main studios outside their community of license, and the required mailing area was limited to stations’ geographic service areas.⁶¹

A comparison of the *1998/1999 Orders* with the *Report and Order* reveals troubling discrepancies and inconsistencies. Ten years ago, the inconvenience of maintaining a paper copy of a public file in the community of license was considered “too burdensome” for stations with out-of-town studios. Now, the lengthy, costly process of posting the contents of public files on Internet websites, according to the Commission, is not “overly burdensome.”⁶² Until 2008, e-mailing a single document from a public file was considered burdensome. Now, the Commission endorses blanket conversion of stacks of hard-copy documents into electronic data, and the posting and maintenance of them on Internet websites. Until now, citizens paid photocopying requests associated with public file requests, because that struck an appropriate regulatory “balance.” Now, saddling television licensees with Internet conversion costs that “may be appreciable”⁶³ is not “overly burdensome.”⁶⁴ For years, stations were required to provide public file information *only* to “listeners and viewers that are served by the station.”⁶⁵

⁵⁹ *Id.* at 15703.

⁶⁰ *Id.*

⁶¹ *1999 Order* at 11119. Stations that maintained main studios in their communities of license were not required to provide this accommodation. *Id.*

⁶² *Report and Order* at ¶ 10.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *1999 Order* at 11120.

Now, the Commission mandates posting public files on the *World Wide Web* (the name has significance), which, by definition, means any “benefit” of such posting will inure largely to citizens *outside* the station’s geographic service area.⁶⁶ In 1998, the Commission concluded that locating public files at any location in a station’s community of license, *or* within twenty-five miles of that community, *or* in any location within the principal community contour of any broadcast station licensed to that community, ensured “a reasonably accessible location [for] the members of the community.”⁶⁷ In the *Report and Order*, the Commission concludes, without supporting evidence, that “[i]t may well be that the requirement of physically going to the station and viewing the file during normal business hours has discouraged public interest in viewing the public files.”⁶⁸

The Commission is obligated to provide a reasoned analysis for broad departures from prior norms.⁶⁹ In this instance, it has failed to meet this burden, or even to acknowledge that the *Report and Order* repudiates the long-held “reasonable access” standard of public file accessibility. Given the lack of a clear explanation and support in the record for this departure from prior policy, the new rules should be rescinded.

⁶⁶ Compare 1999 Order at 11120 (rejecting as “beyond the scope of this process” the “collateral benefits” of stations mailing the public file information outside their geographic service area, such as “allowing citizens to compare performance of local broadcasters with distant broadcasters, or enabling national organizations and academics to collect information from broadcasters nationwide”), with *Report and Order* at ¶ 51 (mandatory filing of certain public file information will make information “more accessible by public interest groups and academics”).

⁶⁷ 1998 Order at 15696.

⁶⁸ *Report and Order* at ¶ 12 (emphasis added).

⁶⁹ See, e.g., *Atchison, Topeka and Santa Fe R.R. v. Wichita Bd. of Trade*, 412 U.S. 800, 808 (1973) (agency has a duty to explain departures from prior norms); *Shaw’s Supermarkets, Inc. v. NLRB*, 884 F.2d 34, 36 (1st. Cir. 1989) (agencies must follow precedents or explain departures).

A. The Commission Has Not Adequately Considered the Privacy Issues Inherent in Internet Posting of Public Files.

In its *Report and Order*, and despite commenter concerns,⁷⁰ the Commission omitted any discussion of privacy concerns raised by on-line posting of certain public file materials. The Commission must recognize that the requirement to post all electronically received letters from the public raises significant privacy concerns with regard to personally identifiable information contained in these documents. Assuming arguendo that the new on-line posting requirements survive, the need for broadcasters to comply with pertinent privacy regulations must be taken into account.

Complying with these and other applicable privacy regulations will not come without substantial cost. The conclusion that e-mails received from viewers be placed on station websites “because stations will incur no cost other than the cost of electronic storage,”⁷¹ is a remarkable oversimplification. Each e-mail will have to be parsed for sensitive personal information, and many will need to be printed, edited, and re-scanned. Additional issues arise in determining the authenticity of e-mail correspondence, in assuring submitters are of appropriate age, and in stripping e-mails of potentially revealing metadata. Because the Commission failed even to consider the privacy issues and potential liabilities associated with mandatory Internet posting of public file materials, it similarly failed to account for the additional cost implications of station compliance with these necessary privacy policies.

⁷⁰ See, e.g., Comments of the National Association of Broadcasters, MM Docket No. 00-168, at 25-26.

⁷¹ *Report and Order* at ¶ 25.

B. The Commission Did Not Adequately Explain Its Website Accessibility Requirements, and Did Not Consider the Associated Burden of Compliance.

The Commission discussed minimally, yet incorporated firmly, the requirement that public files be posted on-line in a manner that meets “a minimal level of compliance with the most recent W3C/WAI guidelines.”⁷² The Commission left television broadcasters on their own to navigate commands such as “checkpoints [must have] a priority level assigned by the W3C/WAI Working Group based on the checkpoint’s impact on accessibility.”⁷³ By incorporating such highly technical, specialized and vague requirements into its online public file obligations, the Commission assured that television broadcasters will be forced to seek professional computer, website, and data management assistance.

The Commission’s offhand comment that “[m]any . . . stations are already equipped to place material on the Internet”⁷⁴ ignores the fact that these stations may very well be unequipped to comply with “a Priority 1 checkpoint,” or any of the other W3C/WAI technicalities, and may be forced to upgrade their existing computer software, hardware and web hosting arrangements to achieve such compliance at potentially a very considerable expense. While the exact requirements of ensuring that the public file portions of websites are disability friendly are left muddy by the *Report and Order*, what is clear is that meeting these obligations does *not* mean the mere scanning of paper documents and placing them online in a form such as portable document format (PDF).⁷⁵ The Commission gave no estimate of the costs to conform with these standards, or whether its staff’s cost estimates included compliance with them.

⁷² *Report and Order* at ¶ 27.

⁷³ *Id.*

⁷⁴ *Id.* at 10.

⁷⁵ “Many non-W3C formats (e.g., PDF, Shockwave, etc.) . . . cannot be viewed or navigated [and] [a]voiding non-W3C . . . features . . . will tend to make pages more accessible to more

III. Conclusion.

In adopting the new standardized and enhanced disclosure requirements, the Commission has adopted rules that effectively reinstate polices and requirements previously abandoned as onerous and unnecessary. The Commission has also ignored serious First Amendment considerations implicit in the new reporting requirements. The Commission has adopted burdensome requirements that stations must post the contents of their public inspection files on-line. All of these actions have been imposed without sufficient justification or documented support. For these and the other reasons discussed previously, the Joint Parties request that the Commission reconsider and eliminate the new standardized and enhanced disclosure rules for broadcast television stations.

people.” Web Content Accessibility Guidelines 1.0, W3C Recommendation 5-May-1999. “[Yet,] [c]onverting documents (from PDF . . . etc.) to W3C markup languages (HTML, XML) does not always create an accessible document.” *Id.* Whatever a broadcaster is to make of guidelines like this, he or she is almost certain to need costly, professional assistance to decipher and comply with them.

Respectfully submitted,

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Davis Television Clarksburg, LLC
Davis Television Wausau, LLC
Eagle Creek Broadcasting of Corpus Christi, LLC
Eagle Creek Broadcasting of Laredo, LLC
Educational Broadcasting Corporation
Journal Broadcast Corporation
Multicultural Television Broadcasting LLC
Mountain Licenses, L.P.
Ramar Communications Ltd., II
Sarkes Tarzian, Inc.
Shooting Star Broadcasting Inc.
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Station KPSE-LP (Fac. Id No. 51660), Palm Springs, CA

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Station WSYM-TV (Fac. Id No. 74094), Lansing MI

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Station WOAC(TV) (Fac. Id No. 48370), Canton, OH
Station WRAY-TV (Fac. Id No. 10133), Wilson, NC
Station WSAH(TV) (Fac. Id No. 70493), Bridgeport, CT

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Station KAYU-TV (Fac. Id No. 58684), Spokane, WA
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Ramar Communications II, Ltd.

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Station KJTV-TV (Fac. Id No. 55031), Lubbock, TX
Station KTEL-TV (Fac. Id No. 83707), Carlsbad, NM
Station KTLL-TV (Fac. Id No. 82613), Durango, CO
Station KUPT(TV) (Fac. Id No. 27431), Hobbs, NM

Sarkes Tarzian Inc.

Sarkes Tarzian Inc. is the owner of:

Station KTVN(TV) (Fac. Id No. 59139), Reno, NV
Station WRCB-TV (Fac. Id No. 59137), Chattanooga, TN

Shooting Star Broadcasting Inc.

Shooting Star Broadcasting Inc. is the owner of:

Station WZMY-TV (Fac. Id No. 14682), Derry, NH

Stainless Broadcasting, L.P.

Stainless Broadcasting, L.P. is the licensee of:

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