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Summary

In the instant proceeding, the Commission seeks comments on several proposals relating to broadcast licensee/community communication and the broadcast of locally-oriented programming. The Notice includes proposals to (1) require licensees to convene, maintain, and consult with community advisory boards; (2) re-establish license renewal programming processing “guidelines”; (3) revise the unattended operation rule to require stations to be staffed during all hours of operation; (4) require stations to maintain their main studios in their communities of license; and (5) require stations to report to the Commission on the airplay of local artists and local performances. NCAB opposes the adoption of the proposed new regulations.

In the 1980s, the Commission abandoned the requirement that stations engage in mechanistic formal ascertainment in order to determine the programming needs and interests of their local communities. The justifications for rescinding that requirement still hold true today. Requiring stations to convene community advisory boards would be a return to formal ascertainment, which is not justified based on the record in this proceeding.

Likewise, the Commission rescinded its programming guidelines in the 1980s. The rationale for removing those guidelines still holds true today, and any return to intrusive regulatory oversight would be unjustified. Broadcasters already devote significant air time to community-responsive programming, making a return to programming guidelines unnecessary. Moreover, establishing workable, objective guidelines concerning “local programming” poses significant administrative and operational problems.

Similarly, the Commission has, over the past 20 years, developed a regulatory regime allowing station flexibility in the area of remote station operations. Amendments to the remote station operation rules would not substantially further the goal of localism. Stations have technical and operational procedures in place to respond to emergencies without intrusive regulation in this area. In fact, the Commission's proposal, if adopted, would likely result in less, not more local programming.

The Commission's existing framework for regulating main studio location also permits flexibility by allowing stations to take advantage of economies of scale through co-location of stations with other operations outside the community of license. The Commission's proposal would eviscerate those economies of scale and would not further the goals of localism in any meaningful way. In fact, the proposal would cause significant harm to stations through financial expenditures and to communities through potential loss of local programming.

Finally, requiring stations to maintain records regarding local artist airplay so that the Commission may consider those efforts at license renewal time is unnecessary and unworkable. Stations do air local artists, both in their regular formats and during special, locally-oriented programs. Additionally, there are definitional and operational difficulties with determining which artists are "local." Any potential benefits of the Commission's proposal are far outweighed by the administrative burden of maintaining records of local artist airplay. There is no factual predicate established that would support the proposed regulation.

In sum, the facts demonstrate that the Commission's localism proposals are unnecessary and unwarranted. As such, NCAB respectfully requests that the Commission decline to adopt the proposals discussed herein.

* * *

station/community communication, the reintroduction of specific license renewal programming processing “guidelines,” rescission of the remote operation rule, modification of the main studio rule, and the use of “local” artist airplay as a consideration during license renewal evaluations.

At the outset, NCAB wishes to underscore the abiding commitment of North Carolina broadcasters over the years to provide quality programming that is responsive to the local needs and interests of each station’s service community. In preparation for these comments, NCAB sent to its membership a survey requesting comment on the issues raised by the *Notice*. Results from the survey are cited throughout the comments. The survey confirms that North Carolina broadcasters—in practice, not simply in terms of promise—place a high value on localism, are in continuing communication with their communities, and devote considerable time, effort, and resources to serve their local communities. The survey demonstrates that continued regulatory flexibility is essential for stations to continue airing locally oriented programming at or above current levels. As discussed below, some of the proposals in the *Notice* would consume significant financial and human resources, diverting those resources from the production of programming. Thus, the practical, though unintended consequence of the proposals, if adopted, would be to undermine the very laudatory public interest goals the Commission seeks to achieve.

II. Comments on Commission Proposals

The *Notice* offers some proposals that are ghosts of proceedings past. As discussed more fully below, the proposals to establish community advisory boards, to re-establish highly intrusive and specific license renewal programming processing “guidelines,” to revise the unattended operation rule, to require a station’s main studio to be located in its community of license, and to require stations to report their local artist airplay are all too familiar to North Carolina broadcasters. Many regulations related to these matters were thoroughly evaluated,

modified, and largely eliminated by the Commission in earlier proceedings. The Commission found that the competitive programming marketplace provides a better incentive for stations to program in the public interest than “one-size-fits-all” government-mandated regulation. The *Notice*, with little factual analysis, however, proposes to turn the clock back and re-impose many of the very requirements eliminated by the Commission over twenty years ago.

That a tension has long existed between the Commission’s oversight of program content and the First Amendment is self-evident. North Carolina broadcasters acknowledge that the Commission’s regulatory responsibility plainly extends beyond the mere policing of technical interference between broadcast stations.³ The Commission’s obligation to oversee the public interest includes a reasonable measure of oversight of the overall public interest contribution by broadcast licensees. However, intrusive regulatory oversight of specific program content triggers fundamental First Amendment concerns, a fact the Commission, itself, has long recognized. When the Commission “deregulated” certain aspects of radio and television operation in the 1980s, it acknowledged the First Amendment implications of an excessively intrusive regulatory scheme.⁴ NCAB is concerned that the degree of intrusion into the day-to-day operations and decisions of broadcast stations implicated by the regulatory scheme proposed

³ See *National Broadcasting Co. v. United States*, 319 U.S. 190, 215-16 (1943) (“[W]e are asked to regard the Commission as a kind of traffic officer, policing the wave lengths to prevent stations from interfering with each other. But the Act does not restrict the Commission merely to supervision of traffic. It puts upon the Commission the burden of determining the composition of that traffic.”).

⁴ *Deregulation of Radio*, Report & Order, 84 FCC 2d 968 (1981) (“*Radio Deregulation Order*”), ¶ 106; *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report & Order, 98 FCC 2d 1076 (1984) (“*Television Deregulation Order*”), ¶¶ 27-28. See also *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 590 (1981) (affirming the Commission’s decision not to regulate radio station formats and observing that “the Commission concluded that ‘the market is the allocation mechanism of preference for entertainment formats, and . . . Commission supervision in this area will not be conducive either to producing program diversity [or] satisfied radio listeners.’”).

in the *Notice* would tilt the tenuous balance between the First Amendment on the one hand and a measured Commission oversight of broadcast programming on the other.

A. Communication Between Licensees and Their Communities—Community Advisory Boards

The *Notice* notes that the establishment of community advisory boards is “needed to ensure that licensees regularly gather information from community representatives to help inform the stations’ programming decisions.”⁵ The Commission has proposed to require licensees to establish and meet quarterly with permanent “community advisory boards” comprised of local officials and leaders from the station’s service area.⁶ NCAB opposes this proposal and respectfully urges the Commission to re-evaluate the factual evidence of record in this proceeding. The evidence unequivocally demonstrates that regular, consistent, on-going communication does exist between stations and leaders and members of their communities.

1. When Formal Ascertainment Was Eliminated in the 1980s, the Commission Correctly Ceased Intrusive Oversight of Station/Community Communication Methods

As the *Notice* acknowledges,⁷ the Commission rescinded formal ascertainment requirements more than twenty years ago. In 1981, in the case of radio,⁸ and 1984, in the case of television,⁹ the Commission rescinded the requirement that stations engage in formal ascertainment, which obligated stations to follow painstakingly mechanistic procedures to

⁵ *Notice*, ¶ 25.

⁶ *See Notice*, ¶ 26.

⁷ *See Notice*, ¶¶ 11, 16, & n.38.

⁸ *Radio Deregulation Order*, ¶¶ 55-72.

⁹ *Television Deregulation Order*, ¶¶ 45-54.

determine the needs and interests of their local communities.¹⁰ Recognizing that the public interest did not require, and indeed was not served by, the formal ascertainment requirement, the Commission stated:

Ascertainment procedures were never intended to be an end in and of themselves. Rather, these procedures were intended as a means of ensuring that licensees actively discovered the problems, needs and issues facing their communities, thereby positively influencing the programming performance of stations by affecting the process of program decision-making. Yet, we have no evidence that these procedures have had such an effect. Indeed, under existing requirements there is no guarantee that once a concern is ascertained by formal or informal means, programming responsive to that concern will be presented. Moreover, we believe that licensees become and remain aware of the important issues and interests in their communities for reasons wholly independent of ascertainment requirements, and that our existing procedures are, therefore, neither necessary nor, in view of their significant costs, appropriate.¹¹

The Commission determined in the 1980s that the costs of the formal ascertainment process—a prescribed form of station/community communication—were significant and ultimately outweighed any potential benefits.¹² The *Television Deregulation Order* estimated that some 66,956 industry work hours and 761.5 agency work hours would be saved each year by eliminating the formal ascertainment requirement.¹³ The costs per licensee as estimated by the National Association of Broadcasters using 1983 data ranged from \$2,425 to \$8,986.¹⁴ Additionally, the Commission determined that the cost of “litigation over trivia”—not just in terms of dollars but also in terms of human resources and delay in service to the public—was no

¹⁰ See *Television Deregulation Order*, ¶ 45.

¹¹ See *Television Deregulation Order*, ¶ 48.

¹² See *Television Deregulation Order*, ¶ 54.

¹³ See *Television Deregulation Order*, ¶ 51.

¹⁴ See *Television Deregulation Order*, ¶ 51 & n.84. Obviously, these numbers would be significantly higher today when adjusted for inflation.

longer acceptable.¹⁵ The Commission could no longer countenance the amount of station resources diverted from broadcast programming to fulfill its detailed communication prescription: “The resources which the licensee is forced to expend to satisfy procedural requirements are lost from other potentially beneficial activities, such as program production in response to determined needs.”¹⁶

The Commission’s rationale for rescinding the formal ascertainment requirements continues today. Departure from the *Radio Deregulation Order* and *Television Deregulation Order* and the reinstatement of highly intrusive, mechanistic methods of station/community communication are unwarranted. When an agency makes substantial changes in its regulations, it must set forth a “reasoned analysis” explaining the reasons and basis for its actions.¹⁷ “An agency which chooses to reverse a previously held position must . . . supply a ‘reasoned analysis’ of its decision. Such an analysis should include an explanation for the reversal which is supported by the record and a discussion of what alternatives were considered and why they were rejected.”¹⁸ This, the Commission has failed to do—and we respectfully submit that the factual record of evidence suggests it cannot be done.

The *Notice* characterizes the record on the issue of broadcaster communication with the public as “decidedly mixed.” While broadcasters “strive to actively ascertain the needs and interests of the communities they serve and air programming that reflects those needs and

¹⁵ See *Television Deregulation Order*, ¶ 52.

¹⁶ See *Television Deregulation Order*, ¶ 53.

¹⁷ *Greater Boston Tel. Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970); see also *Williams Gas Processing-Gulf Coast Co. v. FERC*, 475 F.3d 319, 328-29 (D.C. Cir. 2006); *ANR Pipeline Co. v. FERC*, 205 F.3d 403, 407 (D.C. Cir. 2000).

¹⁸ *Center for Sci. in the Pub. Interest v. Dep’t of Treasury*, 797 F.2d 995, 999 (D.C. Cir. 1986) (citations omitted).

interests,” the *Notice*, with virtually no factual support, asserts that “there is some question as to whether these practices have been widespread.”¹⁹ Indeed, to support the Commission’s communication-related proposals, the *Notice* cites as evidence only the isolated, anecdotal comments and suggestions of a few individuals and organizations²⁰ and an individual representing an advocacy group who suggested the creation of community advisory boards.²¹ Given the myriad efforts of stations to actively communicate with their audiences, as described in these comments and in the *Notice*,²² the factual evidence is insufficient to support a departure from the *Radio Deregulation Order* and *Television Deregulation Order*.

Broadcast licensees plainly have an obligation to serve their local communities with issue-responsive programming, and existing Commission processes serve to ensure that this obligation is met.²³ The “issues,” obviously, cannot be identified in the absence of on-going communication with local listeners and viewers. Adoption of the proposed community advisory board requirement would impose needless, burdensome, and inflexible mandatory issue ascertainment requirements on licensees. Such far-reaching intrusive requirements are

¹⁹ See *Notice*, ¶¶ 13, 15.

²⁰ See *Notice*, ¶ 14 & n.33-37.

²¹ See *Notice*, ¶ 14 & n. 34.

²² See *Notice*, ¶ 13.

²³ See, e.g., 47 C.F.R. § 73.3526(e)(11)(i) (requiring Issues/Programs Lists to be compiled and maintained in each station’s public inspection file); *Application of Capstar TX Limited Partnership, For Renewal of License for Station WSNE-FM, Taunton, Massachusetts*, Memorandum Opinion & Order & Notice of Apparent Liability for Forfeiture, DA 07-2789 (June 25, 2007) (imposing \$4,000 forfeiture for failure to retain in public file all issues/programs lists during license term); *Application of Clear Channel Broadcasting, Inc., for Renewal of License for Station KBAC(FM), Las Vegas, New Mexico*, Memorandum Opinion & Order & Notice of Apparent Liability for Forfeiture, DA 07-2790 (June 25, 2007) (same).

inappropriate where individual station programming deficiencies may easily be addressed through other, existing means.

2. A Compulsory Requirement to Establish Community Advisory Boards Would Be Overly Burdensome, Unworkable, and Unnecessary

All of the reasons earlier cited by the Commission in rescinding its micromanagement approach to station/community communication continues today. Although the *Notice* describes the proposed community advisory board requirement as less detailed and less burdensome than the former formal ascertainment requirement,²⁴ it is the same activity in another guise and would be as costly to implement and unworkable today as it was twenty-five years ago.

The proposal would require stations to identify local leaders in their communities and require the community advisory board to convene regularly (perhaps quarterly).²⁵ The *Notice* seeks comment on a number of details, including how stations should select community leaders and which segments of the community stations should target to find likely board members.²⁶ The problems with assembling a workable community advisory board that might satisfy the Commission, the station, and various segments of the station's local community are endless. There simply is no line that can be drawn that would realistically ensure that *every* segment of *every* community could be represented on the board. As the collective experience of NCAB members with formal ascertainment has shown, despite best intentions, community programming by majority vote on any given day does not work. As evidenced by the response of one small radio operator to the proposed requirement, the financial burden of establishing, maintaining, and

²⁴ See *Notice*, ¶ 25.

²⁵ See *Notice*, ¶¶ 25-26.

²⁶ See *Notice*, ¶ 26.

consulting with community advisory boards on small broadcast stations would be particularly exacting:

If placed into operation this would be more burdensome on small station operators like myself who are trying to follow the rules. . . . I would have to take time away from our customers and potential customers of the station to meet with this board we would have to put together. I believe it would cause confusion and more problems than it would help. This would be redundant for us. This extra work and time could cost WJCV radio heavily financially and put us in a financial crisis. Some small stations like ours, the owners like myself or managers do approximately 80% to 95% of the sales in the station. We may not have excessive money to fund this extra work. We are already doing what this localism plan is to do.

In the end, whether it takes the form of formal ascertainment or a community advisory board, the end result of any regulation that dictates in detail the appropriate methods of station/community communication is a waste of significant resources with no demonstrable results.²⁷

Moreover, stations accomplish the *Notice's* stated goals—to communicate with and serve local communities with locally oriented, diverse programming—using their own methods, which are chosen through their own good judgment as a result of station experience and which are compelled by the necessity of competing in an ever more competitive market. For example, the advent of HD radio with multiple radio channels and digital television with multiple video channels will only bring more choice and more diversity of programming to local communities throughout the nation. The variety of programming formats now available as a result of new technologies, regulatory flexibility, and competition, is evident at www.HDRadio.com, which includes a list of radio stations and formats in more than 100 communities.²⁸ The existence of

²⁷ See *Television Deregulation Order*, ¶ 48.

²⁸ See <http://www.hdradio.com/#stationGuideWidgetry> (last visited Apr. 24, 2008). Click on “Find a Station,” select a city, and a list of stations and formats displays. For example, Charlotte, North Carolina, has a list of more than 30 stations and nearly as many formats,

more and more locally oriented and differentiated programming undermines the Commission's conclusion that new, intrusive regulation is needed to ensure that station/community communication results in community-responsive programming. Indeed, stations continue to communicate with members of their service communities to determine local interests. Those interests and the programming broadcast in response are now reflected in each station's quarterly Issues/Programs List.

North Carolina broadcasters routinely engage with residents of their local communities to determine their programming interests and needs. For example, station personnel at WWWC(AM), Wilkesboro, go out into their local communities and review message boards and meeting agendas for local organizations; WITN-TV, Washington, WDCC(FM), Sanford, WPYB(AM), Benson, WCCG(FM), Hope Mills, and WJCV(AM), Jacksonville, talk directly and in the normal course of business to community leaders in government, business, education, and non-profit organizations; WITN-TV sends community issues questionnaires to members of the community; and WIOZ(AM)/-FM, Pinehurst/Southern Pines, and WPTL(AM), Canton, both point out that station managers and other personnel are members of their local communities—they belong to local business and civic organizations, and they speak with their peers constantly and directly.²⁹ In the words of small market station WWCU(FM), Cullowhee, “We are in a remote area and we are Local, Local, Local! We are involved in our community and get constant feedback.” It goes without saying—though it has been said and repeated numerous times by

ranging from Sports-Talk to Urban, Christian, Classical, Country, Jazz, and more.

²⁹ WKML(FM), Lumberton, WFLB(FM), Laurinburg, WZFX(FM), Whiteville, WUKS(FM), St. Pauls, WAZZ(AM), Fayetteville, and WTEL(AM), Red Springs, all report that station personnel are members of local business and civic organizations. WECT(TV), Wilmington, describes its communication with viewers as “constant.”

numerous broadcasters in this proceeding—that North Carolina broadcasters listen to and value the input provided by their viewers and listeners.

Not only are station personnel involved in the life of their communities, they also invite members of the community into the station in a variety of ways. Of the stations who responded to NCAB's survey, nearly every station that operates a website promotes on its website an e-mail address or telephone number by which the station may be contacted to discuss programming, technical, and other matters. Through the Internet and on the air, NCAB members ask for e-mails, letters, faxes, and telephone calls from viewers and listeners about their programming needs.³⁰ North Carolina broadcasters want to know—and ask—what their audiences think about their programming to enable them to provide appropriate local listener/viewer-responsive programming.

Moreover, stations receive communication from their audience on an ongoing and consistent basis. Letters and e-mails from the public influence station programming decisions, and the voluminous content of each station's public file reflects that community members are not reluctant to express their views to stations. Non-commercial broadcasters engage directly with their communities through pledge drives and related fundraising events; for example, WCPE(FM), Raleigh, estimates that the station receives an incredible 2,500 letters a year from listeners, clearly demonstrating that community members know how to and do, in fact, communicate with the station. WITN-TV, Washington, estimates that it receives between 350 and 500 e-mails from viewers each calendar quarter. As noted by another station owner:

³⁰ Respondents from WKXB(FM), Burgaw, WFSM(FM), Oak Island, WILT(FM), Wilmington, WAZO(FM), Southport, WLGD(FM), Jacksonville, WMFD(AM), Wilmington, WKRR(FM), Asheboro, WKZL(FM), Winston-Salem, WDCC(FM), Sanford, WYCV(AM), Granite Falls, WJCV(AM), Jacksonville, WRAZ(TV), Raleigh, WCPE(FM), Raleigh, and WUNC-TV all report efforts of this kind.

Years ago this [community advisory board proposal] would have been an idea worth exploring, but with today's technology the public can and does voice concerns on a very frequent basis. We operate a large news talk operation; rarely do we ever get a comment about coverage of a public issue. We believe this is because we are constantly searching for local issues for our seven hours of daily local interactive talk show programs. It is good programming to have discussion of the biggest local issues. More coverage results in more listeners. Today our e-mails are vital and helpful to understanding the public's concern. Bottom Line, Our listeners are not shy, they give us advice now.

In short, broadcasters currently communicate with their communities in myriad ways and respond by programming their stations appropriately to address the interests and needs of their communities. Accordingly, intrusive regulation such as adoption of the community advisory board proposal is completely unnecessary.

Finally, securing what various members of each community might consider to be the composition of a truly "representative" board reflective of *all* segments of a community would be impossible to achieve. The composition of the board—unless dictated by the Commission—would become the subject of endless debate and, ultimately, litigation. The Commission could head that off, of course, by specifying what specific segments of the community are to be represented—but that would discount the great ethnic, social, civic, political, geographic, religious, and educational diversity of each community. It would be presumptuous in the extreme for the Commission to attempt to second-guess those factions.

Thus, the specific means of community ascertainment should be left where it is now—within the good judgment and discretion of each licensee.

B. License Renewal Programming Processing Guidelines

The *Notice* asks for comment on its tentative conclusion that renewal application processing guidelines should be reintroduced "to ensure that all broadcasters, not just the ones

we heard from in this proceeding, provide some locally-oriented programming.”³¹ NCAB is opposed to the adoption of processing guidelines that would require stations to air a certain amount of programming for specific government selected categories (*i.e.*, news, public affairs, etc.).

Nowhere is the stewardship of the public’s airwaves more evident than in the performance of North Carolina broadcasters in times of local disaster. During hurricanes that have struck North Carolina in the last 15 years, the commitment to the public of North Carolina broadcasters has been nothing short of extraordinary. Station owners and staff have repeatedly and selflessly put their own lives on the line to be in harm’s way, in front of microphones and cameras to bring critical emergency information to the public, while their own homes and families may have been at peril. These efforts spring from a deep and abiding commitment to public service in a tradition that has been the hallmark of broadcast professionals in the State of North Carolina for decades. These life-saving actions were not (and never have been) taken in response to a government regulatory mandate or “guideline”—North Carolina broadcasters take such action and provide such community-responsive programming out of a profound and tireless professional commitment to their local communities.

1. Programming Guidelines Are a Relic of Regulation Abandoned in the 1980s And Should Not Be Revived

The guidelines proposal represents a reversion to a long-abandoned, intrusive regulatory programming regime. As with the formal ascertainment requirement, the Commission rescinded its programming guidelines during the 1980s. Before 1981 (for radio) and 1984 (for television) renewal applications reflecting less than certain threshold percentages of programming categories required Commission action and disposition rather than routine processing at the

³¹ See Notice, ¶ 40.

bureau level.³² In eliminating the former programming guidelines for radio, the Commission concluded:

We believe the public interest warrants the elimination of our current non-entertainment programming guidelines for commercial broadcast radio. We are convinced that absent these guidelines significant amounts of non-entertainment programming of a variety of types will continue on radio. However, because of the growth of radio and other informational and entertainment services available to the public, we do not believe that it is necessary for the government to continue to assume, albeit indirectly, that every radio station broadcast a wide variety of different types of programming. Our review convinces us that the history of governmental involvement in non-entertainment programming has been driven by one overriding concern—the concern that the citizens of the United States be well informed on issues affecting themselves and their communities. It is with such information that the citizenry can make the intelligent, informed, decisions essential for the proper functioning of a democracy. Accordingly, we believe the only non-statutory programming obligation of a radio broadcaster should be to discuss issues of concern to its community of license. This obligation can be fulfilled without resort to a guideline of limited effect and, we believe, of no substantial utility.³³

Likewise, in the context of television, the Commission found:

Our decision to eliminate the processing guidelines is based on two fundamental considerations. First, our review of the record and study of station performance persuades us that licensees will continue to supply informational, local and non-entertainment programming in response to existing as well as future marketplace incentives, thus obviating the need for the existing guidelines. Second, our re-examination of the current regulatory scheme reveals inherent disadvantages, including: potential conflicts with Congressional policies expressed in the Regulatory Flexibility Act and the Paperwork Reduction Act, imposition of burdensome compliance costs, possibly unnecessary infringement on the editorial discretion of broadcasters, and distortion of the Commission's traditional policy goals in promulgating and monitoring programming responsibilities.³⁴

³² See *Radio Deregulation Order*, ¶ 20 (requiring at least 8 percent of non-entertainment (*i.e.*, news, public affairs, and all other non-entertainment programming) for AM stations and at least 6 percent for FM stations); *Television Deregulation Order*, ¶ 5 (requiring at least 5 percent local programming, 5 percent information programming (news and public affairs), or 10 percent total non-entertainment programming).

³³ See *Radio Deregulation Order*, ¶ 24.

³⁴ *Television Deregulation Order*, ¶ 8 (citations omitted).

The Commission’s rationale for abandoning programming guidelines in the 1980s is as valid today—indeed more so—as it was when guidelines were rescinded in the 1980s. The Commission rightly determined more than two decades ago that stations would “continue to supply information, local and non-entertainment programming” in the absence of programming guidelines.³⁵ The audio and video market is infinitely more diverse and the program choices more abundant today than in 1981. Given the realities of today’s competitive, diverse programming market, the Commission has failed to supply any “reasoned analysis” for reviving the notion of specific programming guidelines, which, as noted earlier, is a legal impediment to the adoption of the guidelines.

With regard to future marketplace incentives referenced in the *Television Deregulation Order*, the passage of 20-years’ time has proven the Commission right: the media content marketplace “has exploded into exponentially more diverse and interesting programming that is now available through a dizzying array of platforms.”³⁶ As a result, the justification for further, intrusive regulatory oversight is even less than it was in 1984, when the Commission determined that market incentives provided sufficient motivation to ensure that stations air community-responsive programming.

2. Renewal Processing Guidelines Are Not Necessary to Encourage Community-Responsive Programming

North Carolina broadcasters already devote significant air time to community-responsive programming. For example, the following programs, which are merely representative and by no

³⁵ *Television Deregulation Order*, ¶ 8.

³⁶ Keynote Address of FCC Commissioner Robert M. McDowell, 2008 Quello Communications Law and Policy Symposium (Apr. 23, 2008), *available at* http://www.fcc.gov/edocs_public/attachmatch/DOC-281772A1.pdf.

means exhaustive, demonstrate the diverse issue-oriented programming North Carolina broadcasters air:

- WNCN(TV), Goldsboro, airs “At Issue” each week. The program is locally produced and features station news anchors and guests discussing political and news topics of interest to the Raleigh-Durham-Chapel Hill area.
- WRAZ(TV), Raleigh, airs several public interest programs: “Tarheel Talk,” a half-hour locally produced, weekly program that addresses topics of interest to North Carolinians; “NC Spin,” a half-hour locally produced, weekly program during which panelists have roundtable discussions on political issues; and “NC Wanted,” a half-hour locally produced program that airs twice each week and focuses on local crimes under investigation by area law enforcement.
- WTVD(TV), Durham, airs “Heart of Carolina Perspectives” each week, which provides a look at local newsmakers, community leaders, and local artists.
- UNC-TV, which operates 11 public television stations around the state, airs a number of public affairs programs each week, including: “North Carolina Now,” a public affairs news magazine series with features, interviews, local stock reports, weather reports, and candidate interviews during election seasons (each week night with nightly repeats); “North Carolina People,” a half-hour interview program featuring conversations with key North Carolinians whose lives have impacted the state and its citizens (each week with one repeat); “Black Issues Forum,” a half-hour interview program featuring one or more guests who discuss a single topic, such as black economic impact or models of power (weekly); “Legislative Week in Review,” (weekly with one repeat), an hour-long program featuring issues and bills before the North Carolina General Assembly, news about what happened in the legislature during the week, and interviews with legislators (weekly with one repeat when the legislature is in session); “Carolina Business Review,” a half-hour program providing updates on business news in the Carolinas (weekly); and election coverage, debates, and forums aired at various times during election seasons, get-out-the-vote specials, and other issue-oriented election specials.
- Non-commercial radio station WVCU(FM), Cullowhee, airs “Western Carolina Roundtable” twice weekly and “Cherokee One Feather News” once each week.
- WIOZ(AM), Pinehurst, and WIOZ-FM, Southern Pines, conduct daily interviews regarding public affairs issues and also air local news and community announcements hourly.
- WJCV(AM), Jacksonville, a religious broadcaster, airs weekly and periodic programming related to social services, political news, and community ministries

and recently helped one organization raise \$30,000.00 to maintain its level of charitable services to the public.

- WPTL(AM), Canton, a primarily country format station, airs a weekly report on the county school system, a report each weekday on health matters, and, as available, airs half-hour interviews with members of the community.
- WCCG-FM, Hope Mills, a primarily urban format station, airs an hour-long public affairs program each week and includes listener participation and question-and-answer opportunities with guests.
- WYCV(AM), Granite Falls, airs a church community calendar twice daily and includes public interest matters in its local news segment aired twice daily.
- WKIX(FM), Walnut Creek, WGBR(AM), Goldsboro, and WFMC(AM), Goldsboro, air public affairs programming in (1) weekly programs, (2) within newscasts, with spotlights on causes and issues to build awareness, (3) through public service announcements, and (4) special promotions that deal with specific needs within the community.
- Stations WKML(FM), Lumberton, WFLB(FM), Laurinburg, WZFX(FM), Whiteville, WUKS(FM), St. Pauls, WAZZ(AM), Fayetteville, and WTEL(AM), Red Springs, each air a minimum of one hour of public affairs programming each week and run public service announcements daily.
- WJZY(TV), Belmont, airs “Charlotte Now,” a weekly, half-hour locally produced public affairs studio show; “Community Calendar” segments at various times each day, live political debates as available during election seasons; and “Candidates and Issues” segments at various times of day during election seasons.
- WKRR(FM), Asheboro, and WKZL(FM), Winston-Salem, air a half-hour program each week that, in the month of March 2008 alone, dealt with issues covering elections, education, pop culture, urban matters, minority and immigrant matters, recreation, child and family matters, mental health, elder care, employment, and technology.
- WITN-TV, Washington, airs a half-hour local public affairs program, “NC Spin,” each week. It airs an average of 55 hours of news, informational, and public affairs programming weekly, which represents 33 percent of its weekly schedule.
- WKRK(AM), Murphy, airs locally produced public service announcements promoting the good causes of the local community and airs twice weekly a half-hour public affairs show with local guests. It also airs a local call-in show for 3 hours each day during which free classifieds and local events are promoted.

- WKNC-FM, Raleigh, airs 90-second newscasts three times a day during weekdays and an hour-long economic-focused local public affairs program, “Failure to Refrain,” once each week.
- WWWC(AM), Wilkesboro, a primarily gospel format station, airs local news 7 times each day, local sportscasts (when relevant), a 25-minute weekly interview show, and election coverage during election season.

As this sample of actual programming further demonstrates, North Carolina broadcasters continue to provide *local* news, *local* public affairs, and *local* informational programming. Renewal processing guidelines are unnecessary to encourage broadcasters to produce and air locally-oriented programming. At the Commission’s October 22, 2003, Charlotte, North Carolina, localism hearing, North Carolina broadcasters submitted voluminous information concerning the level of public interest programming broadcast by North Carolina stations. Numerous members of the public appeared and testified at that hearing in support of the truly extensive public interest stewardship of North Carolina broadcast stations. NCAB incorporates that supportive testimony in and makes it a part of these Comments. In short, the processing guidelines proposal is a solution in search of a problem.

Moreover, the Commission has failed to adequately justify a return to the renewal processing guidelines that were abandoned a quarter-century ago. Local programming is the lifeblood of any broadcaster. Ears and eyes and, consequently, advertising dollars gravitate to stations who establish their “local” identity and service. WIOZ(AM), Pinehurst, and WIOZ-FM, Southern Pines, put it best: “Radio and TV stations have natural motivation to serve the local news and information needs of [their] communit[ies]. There is a symbiotic relationship between a local broadcaster and its community. . . .” Even if broadcasters did not want to provide locally-oriented programming (to the contrary, they do), they would continue to do so because success in the market *requires* programming targeted to the particular interests of each station’s viewing or

listening audience. The Commission recognized this marketplace principle when it eliminated programming processing guidelines a quarter-century ago.³⁷

We recognize that there may be individual stations that fail to provide adequate community-responsive programming. However, there is no need to impose wide-ranging regulations applicable to *all* stations when existing mechanisms are already in place to address individual stations that may not be sufficiently fulfilling their obligations. Concerned citizens and advocacy groups may file complaints, petitions to deny, and informal objections against stations and license renewal applications. Regulatory remedies exist that allow local citizens and groups, as well as the Commission, to specifically address any station that fails to adequately discharge its public interest responsibilities.

3. The Commission Cannot Establish Workable, Objective Guidelines Concerning “Local Programming”

The *Notice* seeks comment on, among other things, whether the processing guidelines should cover particular types of programming or merely reflect locally-oriented programming.³⁸ It also asks what the categories and percentages should be and how “local programming” should be defined, including whether it must be produced locally in order to be considered “local.”³⁹ These questions expose the administrative and operational problems with any “guidelines” requirement.

³⁷ See, e.g., *Television Deregulation Order*, ¶ 8 (“[O]ur review of the record and study of station performance persuades us that licensees will continue to supply informational, local and non-entertainment programming in response to existing as well as future marketplace incentives, thus obviating the need for the existing guidelines.”).

³⁸ See *Notice*, ¶ 124.

³⁹ See *Notice*, ¶ 124.

Significantly, not all community-responsive programming would fit neatly into a “guidelines” classification system.⁴⁰ North Carolina’s public, non-commercial television network, UNC-TV, produces several programs that are of broad appeal and potential interest to North Carolinians in every community. For example, the program “Our State,” which UNC-TV produces locally and airs on North Carolina’s statewide public television network from its centralized studio and operations hub in Research Triangle Park, frequently profiles specific communities and events around the state. An episode on the historic community of New Bern in the eastern part of the state may or may not be considered “local,” under a “guidelines” regimen, to Asheville viewers in the western part of the state. Yet, New Bern was the colonial capital and the first capital of the state and is of interest to North Carolinians throughout the state. Likewise, UNC-TV’s program “Exploring North Carolina” focuses on the state’s natural resources (*i.e.*, the Neuse River and the Long Leaf Pine) but is not specifically targeted to a particular community’s issues. The same can be said of UNC-TV’s “Carolina Outdoor Journal,” which focuses on outdoor sports but also addresses issues of importance like the environment. It is far from clear that such programming, despite its obvious responsiveness to the needs and interests of various communities throughout the state, would satisfy a cramped and unnecessarily narrow category of locally-oriented programming.

More generally, on-air radio discussions between live, local program hosts and listeners often address issues of interest and importance to the community but do not fit neatly into any conceivable programming category because of the informal manner in which these programs may be presented. Indeed, it would be extremely burdensome for program hosts and on-air talent to track all of the issues and community concerns addressed by such informal discussions,

⁴⁰ By the same token, not all community-responsive programming fits neatly into the categories of programming established on the new Form 355.

though in the aggregate they account for a significant amount of community-responsive programming.

For example, during the 2007 drought that affected much of North Carolina, the morning show hosts on WBBB(FM), Raleigh, regularly discussed the City of Raleigh's implementation of water use restrictions but did so in such an informal manner that it often defied a simplistic categorization of the segments as "public affairs," "news," or any other guidelines label. Nonetheless, those discussions treated an issue of considerable importance to the local community, despite their inability to be "shoehorned" into a definable programming "guideline" category. It is apparent that the adoption of guidelines categories would unnecessarily interfere with a licensee's presentation of program material that addresses the interests and needs of its local community.

The proposal to re-institute processing guidelines calls to mind the D.C. Circuit's admonition that a "goal of making a single station all things to all people makes no sense. It clashes with the reality of the radio market, where each station targets a particular segment: one pop, one country, one news radio, and so on."⁴¹ Yet, that is precisely what programming guidelines would effectively do: cause each station to respond to its local community by providing prescribed kinds and amounts of certain categories of programming—a classic example of trying to make each station all things to all people.

In short, a guidelines approach would completely ignore the myriad ways in which stations can and do effectively serve their communities with locally-oriented programming even while choosing not to air some "categories" of programming. Accordingly, NCAB opposes the Commission's proposal to adopt programming "guidelines."

⁴¹ *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 355-56 (D.C. Cir. 1998).

C. Remote Station Operation

The *Notice* seeks comment on whether to require television stations to have personnel on site at the main studio during all hours of operation.⁴² In the *Notice*, the Commission noted that, in another proceeding, it is considering whether the remote station operation rules should be amended so that radio stations must be attended by station personnel during all hours of operation. NCAB filed joint comments in that proceeding requesting that the Commission refrain from amending the unattended operation rules.⁴³ In the instant proceeding, NCAB again urges the Commission not to amend the remote operation rules because doing so would not further the goals of localism in any substantial way. The history of flexibility in this area began more than 20 years ago with elimination of the rule that broadcasters originate a majority of non-network programming from the main studio.⁴⁴ Then, in 1995, the Commission found that technological advances obviated the need for attended operation and granted broadcasters additional flexibility to allow unattended operation, which caused an increase in nighttime broadcast service and has served the public interest well for over a decade.⁴⁵

⁴² See *Notice*, ¶ 29.

⁴³ See *Joint Comments of the North Carolina, Ohio, and Virginia Associations of Broadcasters*, FCC Docket No. 99-325 (filed Oct. 15, 2007), p.9.

⁴⁴ See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio & Program Origination Rules for Radio & Television Broadcast Stations*, Report & Order, 2 FCC Rcd 3215 (1987) (“*Main Studio Order*”); see also *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 & Order, 10 FCC Rcd 11479 (1995) (“*Unattended Operation Order*”).

⁴⁵ *Unattended Operation Order*, ¶ 3.

1. Stations Employing Remote Techniques Are Able to Respond to Emergencies

The Commission seeks to justify its proposal that stations be staffed during all hours of operation in part on the basis that unattended stations may not be able to disseminate emergency information to the public during hours of remote operation.⁴⁶ The facts, however, demonstrate that stations have systems in place to deal with emergency situations:

- WIOZ(AM), Pinehurst, and WIOZ-FM, Southern Pines, use pre-recorded emergency announcements that can be activated remotely.
- WKRK(AM), Murphy, WCCG(FM), Hope Mills, and WPYB(AM), Benson, report that personnel get telephone calls from local emergency officials when local emergencies occur—they speak with the officials directly.
- WKRK(AM) is able to go on-air instantly through remote techniques (regardless of the individual’s physical location) involving VoIP or landline telephones. WKRK(AM) also points out that some weather subscription services allow station personnel to call an “emergency interrupt” programming line (irrespective of the personnel’s physical location) in order to break in to regular programming when severe weather hits.
- WKYK(AM), Burnsville, and WTOE(AM), Spruce Pine, observe: “With today’s technology and the station’s EAS system, we are able to put emergency announcements on the air immediately even without a person in the building at night. We have been able to do this in the past including during a local flood.”
- UNC-TV, operator of the North Carolina statewide public television network, operates all of its transmitters by remote control from a central location which is monitored 24 hours a day, 7 days a week. It inserts local emergency information at each transmitter site in compliance with the EAS rules and the North Carolina State EAS Plan.⁴⁷
- The emergency protocol followed by personnel at WKRR(FM), Asheboro, and WKZL(FM), Winston-Salem, is as follows:

We have the capability to control programming remotely. We also have remote control of our transmitters. Currently the following weather emergencies are automatically broadcast as they are issued by the EAS: Tornado Watch, Tornado Warning, Thunderstorm Warning and Flood Warning. The EAS will override current programming when the alerts are

⁴⁶ Notice, ¶ 29.

⁴⁷ The North Carolina State EAS Plan contemplates automatic activation of the EAS, which allows stations to deliver EAS messages remotely.

issued during both attended and unattended operation. As to natural disasters, we are an active participant with the Media Security and Reliability Council and have worked closely with the Guilford County Emergency Management Service, North Carolina EMS officials, area law enforcement, Bell South, Duke Power, Time Warner Cable and area broadcasters (both radio and television) to develop a plan in the event of a catastrophic emergency. This plan will help insure a flow of information from the various state and local emergency management agencies to the area broadcasters, in addition, it will allow broadcasters to pool resources in the event of an emergency (i.e. diesel fuel, transmitter issues, studio space, etc.). Information from each member station such as phone, cell, pager, fax and e-mail has been collected as is available to EMS and other stations. Regarding Toxic spills and derailments and emergency protocol to return personnel to station; upon learning of the event, management and/or program directors will first call the station to establish if anyone is in the building, if so, that employee may broadcast emergency information, if not, the manager or program director will either go to the station or immediately assign another to broadcast the emergency information until such time the emergency is over. Many employees can be at the station in 20 minutes or less.

Additionally, NCAB members have systems in place to return personnel to the station in the event of an emergency. As mentioned above, station personnel are often listed on local emergency responders' list of individuals to be called in the event of an emergency. In cases of emergency where it is desirable to have personnel at the station, stations such as WNCN(TV), Goldsboro; WRAZ(TV), Raleigh; WTVD(TV), Durham; and WKIX(FM), Walnut Creek, WGBR(AM), Goldsboro, and WFMC(AM), Goldsboro, get the word out to staff through phone trees. Stations have rotating personnel on-call to respond to emergency situations (WWCU(FM), Cullowhee) or assign the task to specific individuals, along with back-up personnel (WJZY(TV), Belmont). Some stations, such as WPTL(AM), Canton, have a policy that, in the event of a community emergency, staff is authorized—or in the cases of WKXB(FM), Burgaw, WSFM(FM), Oak Island, WILT(FM), Wilmington, WAZO(FM), Southport, WLGD(FM), Jacksonville, WMFD(AM), Wilmington required—to get to the station and activate live coverage, as needed. WPYB(AM), Benson, WCCG(FM), Hope Mills, WIOZ(AM),

Pinehurst/WIOZ-FM, Southern Pines, WKRR(FM), Asheboro/WKZL(FM), Winston-Salem, all report that they have critical staff within a short walking or driving distance from the station and can be there to provide emergency information and announcements within a matter of minutes.

As the above examples illustrate, many stations have the technical capability to activate EAS and weather-related emergency crawls remotely, through automated means. Station personnel are in contact with law enforcement and emergency management personnel, irrespective of the station's on-site staffing situation. Stations also have procedures established to call staff back to the station during emergencies. These techniques and procedures adequately address any concern the Commission has about stations' abilities to broadcast emergency information to the community during periods of unattended operation.

2. The Proposed Rule Would Result In A Loss, Not A Gain, In Service To The Public

Significantly, permitting stations to operate remotely allows them to remain on the air 24 hours a day, rather than signing off in the overnight. One NCAB member and station owner stated it plainly: "Smaller market stations are marginal investments as it is. . . . Midnight to 5 AM operation is a contribution to the community as it is. To [b]urden these station by having fully attended operations will merely result in most of these stations going off the air during this period of time." Of course, any resources required to be invested in having personnel operate the station on-site during all hours of operation would naturally be diverted from other station endeavors, including the production of community-responsive programming. Moreover, many small stations are able to operate during overnight hours because existing regulations permit them to be unattended during those hours. Should the Commission require stations to be attended during all hours of operation, it is probable that many stations, particularly in small markets, would not be able to do so—resulting in a *loss*, not a gain, of local programming in the

community. In the words of the respondent for WKRK(AM), Murphy, “small market radio stations like [mine] . . . are already stretched very thin.” A rule that has the potential to result in a decrease in public service is, plainly, not in the public interest.

D. Main Studio Rule

The *Notice* seeks comment on whether the main studio rule should revert to the former requirement that a station’s main studio be located in the station’s community of license.⁴⁸ NCAB opposes this proposal.

In 1987,⁴⁹ the Commission abandoned the requirement that a station’s main studio be located in the community of license, and the Commission relaxed it further in 1998.⁵⁰ Recognizing that economic efficiencies could be achieved by permitting stations to have their main studios co-located with other operations outside the community of license but within their primary service areas, the Commission found that revision of the rule “should allow many more multistation licensees to combine the resources of their jointly-owned stations, which can allow them to better serve the public.”⁵¹ The Commission acknowledged then that the changes would reduce the burden of the old rule and would “generate savings that can be put to more productive

⁴⁸ See *Notice*, ¶ 41.

⁴⁹ See *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report & Order, 2 FCC Rcd 3215 (1987).

⁵⁰ See *Review of the Commission’s Rules Regarding the Main Studio & Local Public Inspection Files of Broadcast Television & Radio Stations*, Report & Order, 13 FCC Rcd 15691 (1998).

⁵¹ *Id.*, ¶ 7.

use for the benefit of the community served by the station.”⁵² The changes to the rule have had the desired effects, and turning back the clock now would be contrary to the public interest.

1. The Existing Rule Allows for Much Needed Economic Efficiencies and Repeal of the Rule Would Harm Local Communities

In reliance on the relaxation of the main studio rule, station owners have invested in buildings, infrastructure, and operations that they would not have done otherwise. In fact, stations have been able to remain on air or increase their service as a result of the flexibility afforded by the existing main studio rule. Some owners would not have been able to acquire stations or keep them on the air without the ability to co-locate them with other operations outside the community of license.

The main studio rule allows stations to co-locate beyond the borders of a community of license to take advantage of economies of scale—this would be completely undone by a requirement that each station maintain its main studio in its community of license. For example, one licensee reports that when two Raleigh market stations licensed to smaller communities on the fringe of the Raleigh metro area were acquired, they were unattended until midnight and off the air the remainder of the overnight period. These stations are still not profitable; they are very small stations in a large market; but by combining them with commonly-owned larger stations, they are better programmed, on the air 24 hours a day, and attended 24 hours a day, 7 days a week. Without the ability to co-locate, these critical economies of scale would be lost, and those stations would likely have to decrease their service to the public in order to survive. Co-location of a station outside of its community of license provides opportunities for greater service to the public—a benefit that would be lost if the main studio rule proposal is adopted.

⁵² *Id.*, ¶ 9.

2. The Existing Main Studio Rule Benefits Local Communities and the Proposed Change Would Not Further Localism Goals

The public benefits flowing to the local community from the existing main studio rule are significant. As the licensee of WKRR(FM), Asheboro, and WKZL(FM), Winston-Salem, states:

[C]o-locating the two stations in the largest city within the metro [Greensboro] has given us better and faster access to news and event coverage. It has also afforded us the opportunity to be more accessible to the public being close to major interstate system and in the population center of the metro, we're located near congressional and law enforcement offices and we were the anchor of the gentrification of a once decaying neighborhood. Furthermore, locating in the larger city has allowed our employees more opportunity for volunteer work.

Television stations WNCN(TV), Goldsboro, and WRAZ(TV), Raleigh, report that, as a result of the current main studio rule, they are able to produce more, better, and more relevant local news and informational programming. UNC-TV states that the efficiencies afforded by the main studio rule have allowed it to produce more than 400 hours of local programming for and about North Carolina in the past year.⁵³ The licensee of WKIX(FM), Walnut Creek, WGBR(AM), Goldsboro, and WFMC(AM), Goldsboro, states: "Higher quality resources like news, promotions, and public involvement/assistance can be produced by better people from a single location." For co-located WKYK(AM), Burnsville, and WTOE(AM), Spruce Pine, the flexibility afforded by the current main studio rule means that WTOE(AM) remains on the air serving Mitchell County with local news, weather, sports, and community programming—WTOE(AM) nearly went silent under different ownership in 1991, but it was "saved" under new ownership by the flexibility of the current main studio rule, which allows it to co-locate its main

⁵³ UNC-TV's flagship station is licensed to Chapel Hill and maintains its main studio in Research Triangle Park. Pursuant to main studio waivers, UNC-TV's other television stations (which together comprise the statewide public television network) also operate from the main studio in Research Triangle Park. NCAB is concerned that the *Notice*, in soliciting comments on the proposed revision to the main studio rule, fails altogether to discuss the continued validity of main studio waivers or any other "grandfathering" mechanism for stations whose studios are already located outside of their community of license.

studio with WKYK(AM) outside the community of license. On a different note, WCCG(FM), Hope Mills, notes that it provides excellent coverage of the community from its current location in Fayetteville and a 7-mile move to its community of license would have *no* effect—none—on its service to its community. This point is significant, as the Commission’s proposed change to the main studio rule is premised on the factually-unsupported theory that the change would substantially further the goals of localism.

This point is further underscored by changes in the way people now communicate and interact with each other: the Internet has led to a new era of communication between stations and local residents. Stations routinely receive email correspondence from local residents and input about news and programming via website “feedback” forms. There is no lack of public accessibility to station program decision-making executives, and the *Notice*’s presumption to the contrary is not factually supported. The *Notice* cites nothing to contradict the Commission’s conclusion in 1987—and the factual record on which the conclusion was based—that there is “uncertainty” as to whether location of the main studio in the community of license increases licensee/community interaction.⁵⁴ Given the ease in today’s world of electronic communication and the concomitant local access to stations and station programming executives, it is difficult to imagine how the location of the brick and mortar studio in the community of license would make so big a difference as to outweigh all of the costs and burdens that such a requirement would impose.

⁵⁴ 1987 *Main Studio Order*, ¶ 12.

3. The Proposed Changes to the Main Studio Rule Would Impose Significant Financial Burdens and Harm Local Communities

For stations not located in the community of license, and even for those stations that do not co-locate, the proposed change to the main studio rule would require a significant and, in many cases, prohibitive capital investment. For example, UNC-TV, which believes that reversion to the old rule “would be catastrophic” to its operations, provided the following estimate of its one-time and recurring annual costs:

The cost to fulfill this requirement could run into tens of millions of dollars. To assign a budgetary dollar figure is nearly impossible without knowing the exact requirements for each location. The cost to build a studio in each of 12 cities will depend on the city. Below is an attempt to make an educated guess at the capital cost and the recurring expense of a minimal studio facility.

Capital Cost:

SD Studio Facility	\$500,000
Video Edit Facility	\$225,000
Encoding System	\$13,500
Multiplexer License	\$4,500
Microwave System	\$100,000
Space Refit	\$50,000
Subtotal Per Station	\$893,000
System Cost -12 stations	\$10,716,000

The proposed facility [above] is a minimal standard-definition studio with two cameras, a switcher, studio set with lighting, minimal record capability and editing. The microwave system assumes availability of a frequency, the ability to rooftop-mount a dish on an existing building with minimal load framework. Additional construction, such as for a microwave antenna installation, could dramatically increase project cost. Other unknown factors like local PSIP generation can also substantially increase project costs.

Recurring Annual Expense:

Building Rent	\$21,600
Utilities	\$5,000
Staffing	\$100,000
Subtotal Per Station	\$126,000
System Cost - 12 Stations	\$1,512,000

The facility [above] is based on renting 1200 sq. ft. at a cost of \$18 /sq. ft. Staffing is based on one additional full-time employee and two part-time employees (not including benefits). Not included is on-camera talent.

Other NCAB members report varying costs ranging from more than \$100,000.00 in the first year—potentially “prohibitively expensive” (WIOZ(AM), Pinehurst, and WIOZ-FM, Southern Pines); several hundred thousand to millions (WKRR(FM), Asheboro, and WKZL(FM), Winston-Salem); more than \$2.5 million to buy or construct buildings and build studios, plus personnel costs (WKML(FM), Lumberton, WFLB(FM), Laurinburg, WZFX(FM), Whiteville, WUKS(FM), St. Pauls, WAZZ(AM), Fayetteville, WTEL(AM), Red Springs); \$2 million (WJZY(TV), Belmont); more than \$400,000.00 (WCCG(FM), Hope Mills); \$3 million, which is half the station’s annual broadcast budget—“economically impossible” (WCPE(FM), Raleigh); \$23 to \$25 million (WNCN(TV) Goldsboro); \$900,000.00 (WRAZ(TV), Raleigh); \$60 million (WITN-TV, Washington⁵⁵).

With respect to the costs associated with a change to the main studio rule, one North Carolina station owner observed that access to capital for minorities remains a “major problem,” and he reported that the cost to relocate to the station’s community of license would be “astronomical.” Small market stations WKYK(AM), Burnsville, and WTOE(AM), Spruce Pine, offer similar evidence:

The cost of relocating WTOE Spruce Pine would be totally prohibitive. The result would be the loss of the only radio station in Mitchell County where 15,000 people depend on the station for vital weather, news and emergency information. Our biggest complaint now is not enough power at nighttime to fulfill these needs. In our case if we had to relocate WTOE’s main studio in the city of license ten miles away, we could not possibly have the economics of scale and efficiencies that we now provide with the co-location of the two stations. Our profits are slim

⁵⁵ In reliance on the existing main studio rule, WITN-TV, Washington, has recently been reviewing plans to build its main studio in Greenville, North Carolina, 22 miles from Washington, North Carolina, its community of license. The licensee has already acquired land and obtained necessary zoning modifications to allow for construction. To change the rule now would result in considerable waste of resources.

now and to relocate the facilities would not be in the public interest. WTOE could not survive as a totally separate operation.

This informal sample of costs demonstrates that the financial burden of the proposed changes to the main studio rule would be financially devastating for many stations—and, ultimately, result in a loss of service for their communities.

E. Local Artist Airplay

The *Notice* seeks comment on whether broadcasters should be required to provide information to the Commission relating to the airing of music and other performances of local artists and how stations compile their playlists.⁵⁶ The Commission does not propose to require stations to play records by “local” artists, but the *Notice* indicated that such information would be used to evaluate a station’s overall performance at license renewal time.⁵⁷ NCAB opposes this reporting proposal.

First, the *Notice* assumes that radio stations do not play music by “local” artists—an assumption not supported by the facts. Stations *do* air local artists when appropriate. Following are representative samples of the kinds of efforts NCAB member stations are taking in the area of local artist airplay:

- Non-commercial classical station WCPE(FM), Raleigh, broadcasts performances by local classical artists, including the North Carolina Symphony, the Raleigh Symphony, Raleigh Ringers, Durham Ringers, and performances by and for Duke University.
- WWCU(FM), Cullowhee, airs the program “For Locals Only” each week, which features local bands and talent.
- For two hours each Sunday, WJCV(AM), Jacksonville, airs performances by local artists.

⁵⁶ See *Notice*, ¶ 112.

⁵⁷ See *Notice*, ¶ 112.

- WCCG(FM), Hope Mills, airs a two hour program called “Shockwave” each Friday featuring music by local musicians and one or more artist interviews.
- WYCV(AM), Granite Falls, and WWWC(AM), Wilkesboro, both air one hour of programming each week that features only local artists, and WYCV also includes local artists during regular programming.
- The licensee of WKIX(FM), Walnut Creek, WGBR(AM), Goldsboro, and WFMC(AM), Goldsboro, reports that the group has had local artists on all of its stations, and one of its three stations has conducted a local singing contest.
- WKRK(AM), Murphy, regularly features local artists during a request show and airs and promotes concerts where local artists appear.
- WKNC-FM, Raleigh, estimates that about 20 percent of its programming is devoted to performances by local artists.
- WTVD(TV), Durham, WITN-TV, Washington, and UNC-TV stations all air performances by local artists, including music, dance, theatrical, and other performances. WECT(TV), Wilmington, occasionally features local artists in news programming.
- WTOE(AM), Spruce Pine, has invested thousands of dollars of time playing local artists as part of its regular programming and promoting local artists through groups like Carolina Barn Dance and the Toe River Arts Council.
- WKYK(AM), Burnsville, co-sponsors a local talent contest and provides local religious groups with daily and weekend programming opportunities. The station routinely plays music by local artists.
- WQDR(FM), Raleigh, plays bluegrass and country music by local artists.

As these examples illustrate, stations already air material by local artists when appropriate. And, with all the other outlets available to local artists to promote their music (MySpace, iTunes, and similar online publishing resources), requiring stations to report information on local artist airplay so that it can be used at license renewal time is unwarranted. The reporting proposal and use of the information at license renewal time threatens to upset the delicate balance between the Commission’s oversight of locally-oriented programming and the First Amendment.⁵⁸

⁵⁸ See *Lutheran Church-Missouri Synod*, 141 F.3d at 353 (“It cannot seriously be argued

Second, an artist's "local" residency does not entitle the artist to airplay on every local station. It should be beyond debate that a local artist's performance must fit within the format of the station in order for the performance to be of interest to the station's audience. An urban format station should not have its localism performance evaluated on the basis that it does not air performances by a local acoustic/folk band. The local listeners of an adult contemporary station would not have their interests served by the station's airplay of the music of a local indie-rock band; ironically, though, that airplay, because of its ostensibly local character, would be viewed favorably by the Commission at license renewal time. In other words, an artist's "local" residency does not mean that the audience of any particular station is interested in music from that artist—if stations are forced to play it, listeners will complain or (more likely) move the dial.

One station owner puts it this way:

Is this [proposal] serving the listeners or just a handful of artists? Radio Stations get a bad rap for simply following the wishes of its listeners. Metro Market stations spend thousands of dollars on research to determine what songs and artists our listeners want to hear. We [know] for a fact, proven time and time again, that playing the "wrong songs" causes tune out. How does tune-out benefit anyone.

North Carolina has even more proof. The Radio Station in Selma, North Carolina was purchased by an individual who had this theory of playing *only* local artists. He invested heavily in a power increase, and state of the art equipment. It was a disaster. No ratings. No Revenue. There was no ground swell, no big demand. The station never achieved enough ratings to even appear in the Arbitron Survey despite being in the Raleigh-Durham Market with a 10,000 Watt Signal.

There could be nothing more desired than to have a local artist have a hit, but despite every experiment we have attempted, it just doesn't work out. The public just doesn't fall in love with a song just because it is exposed.

Moreover, the proposal is fundamentally flawed because of serious definitional and operational difficulties. For example, WKNC-FM, Raleigh, for a time played an indie-pop song

that [a] screening device does not create a strong incentive to meet the numerical goals.”).

written by a singer-songwriter of Canadian origin about North Carolina's Commissioner of Labor, whose picture appears in every elevator in the state.⁵⁹ The song was a local hit in Raleigh, where the artist lived at the time. However, according to Wikipedia, "[f]or a time, [the artist] avoided being associated with the song, and only admitted to recording it when his anonymous emails about the song were found to originate from his home computer."⁶⁰ In that case, a station aired a song written by a Canadian citizen about a state political official whose office was located in the station's community of license, and the Canadian citizen, who resided in the community of license, made deliberate efforts to avoid being identified. Assuming WKNC-FM would have been able to identify the artist in a timely fashion to report to the Commission, would the station have gotten "credit" for airing this song? Can the Commission reasonably expect stations (in that case a public, non-commercial station) to track down artists who wish to remain anonymous? The application of the Commission's proposal as a reasonable regulation to that set of facts boggles the mind.

Other definitional issues are readily apparent: Can a foreign citizen be a local artist? What if the foreign citizen is in the United States unlawfully? Is a local artist limited to someone who resides in the community of license? If so, the chances that *every* community will have a local artist, period, let alone one who fits the station's format are slim. Or is a local artist someone who lives in the relevant Arbitron market? If so, what happens if that artist who once lived in the market moves to another market in the state, or, more likely, to another state

⁵⁹ See Ryan Teague Beckwith, *Ode to Cherie Berry Redefines Elevator Music*, (Raleigh) News & Observer, July 7, 2007, available at <http://www.newsobserver.com/114/story/629647.html> (last visited Apr. 22, 2008). The article characterized the song this way: "At three minutes and three seconds, 'Cherry Berry' is a piece of bubblegum pop reminiscent of The Archies and other '60s groups crossed with the ironic sensibilities of The Talking Heads."

⁶⁰ See http://en.wikipedia.org/wiki/Dan_Bryk (last visited Apr. 28, 2008).

entirely? The likely career trajectory for any successful local group involves a move to New York, Los Angeles, Nashville, or elsewhere. Is Jacksonville native (Greenville-New Bern-Jacksonville market) and former Raleigh resident (Raleigh-Durham market) Ryan Adams a “local artist” now that he lives in New York (New York market)? What about Ben Folds, who was born in Winston-Salem (Greensboro-Winston-Salem-High Point market), attended college in Chapel Hill (Raleigh-Durham market), but lives in Nashville, Tennessee (Nashville market)? The list for North Carolina goes on and on: James Taylor, Fred Durst, Tori Amos, Jermaine Dupri, Tift Merritt, and more. Determinations about who qualifies as a “local artist” would be hard enough for the Commission to establish and at least as hard for station personnel to track and report. The thought station personnel would be able to—let alone required to—keep track of the comings and goings of thousands of performance artists in an effort to program the station and report on such programming simply defies understanding. Including local artists in programming is better left to voluntary efforts, not confusing and vague regulation.

Furthermore, the administrative burden of this kind of record keeping task far outweighs any potential benefit. More record keeping means more resources diverted away from producing local news, informational, and public affairs programming that truly would serve the public interest.

Finally, and significantly, the Commission has been down this road before and has concluded that the public interest is better served by the audio and video programming marketplace. *See FCC v. WNCN Listeners Guild*, 450 U.S. 582, 590 (1981) (affirming the Commission’s decision not to regulate radio station formats and observing that “the Commission concluded that ‘the market is the allocation mechanism of preference for entertainment formats, and . . . Commission supervision in this area will not be conducive either to producing program

diversity [or] satisfied radio listeners.’’). There has been no factual predicate established that would support government dictation of what music or talk should be broadcast on the radio or what news or entertainment programming ought to be broadcast on television.

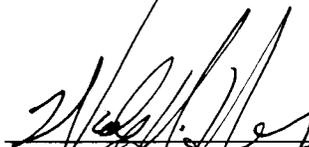
III.

Conclusion

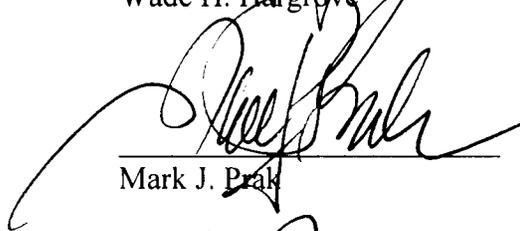
For the reasons stated above, the North Carolina Association of Broadcasters respectfully requests that the Commission consider these comments and refrain from imposing rules that would result in unnecessary or burdensome regulation.

Respectfully submitted,

**NORTH CAROLINA ASSOCIATION
OF BROADCASTERS**



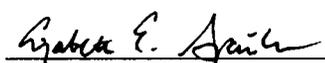
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Its Attorneys

April 28, 2008

Declaration of Elizabeth E. Spainhour

I, Elizabeth E. Spainhour, hereby declare, under penalty of perjury, as follows:

1. I am greater than eighteen years of age and am competent to make this Declaration.

2. I am an attorney at Brooks, Pierce, McLendon, Humphrey, & Leonard, LLP, and I am the principal drafter of the comments filed by the North Carolina Association of Broadcasters ("NCAB") in the Broadcast Localism proceeding, MB Docket 04-233.

3. The quotations and summaries from NCAB members referenced throughout NCAB's comments are drawn directly from surveys completed by NCAB members, which I reviewed. Those quotations and summaries are true and accurate accounts of the survey responses. All copies of surveys used in preparing these comments are on file with NCAB.

4. In some instances, I spoke directly with survey respondents via telephone to obtain further clarification of their survey responses. Notes from those conversations are also on file with NCAB.

I declare, under penalty of perjury, that the foregoing Declaration is true and accurate to the best of my knowledge, information, and belief.

4/28/08
Date

Elizabeth E. Spainhour
Elizabeth E. Spainhour