Before the
Federal Communications Commission
Washington, DC 20554

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

Directed To: The Commission

COMMENTS OF JCL LICENSES, LLC

JCL Licenses, LLC ("JCL"), by its attorney, hereby submits Comments in reference to the above-referenced rulemaking proceeding.[1] JCL is licensee of Stations WFLL(AM), Fort Lauderdale, Florida; WRMF(FM), Palm Beach, Florida; WFTL(AM), West Palm Beach, Florida; WLVJ(AM), Boynton Beach, Florida; WMEN(AM), Boca Raton, Florida; KCKN(AM), Roswell, New Mexico; and KNIT(AM), Dallas, Texas. With respect thereto, the following is stated:

Background

As a part of its proposals in this proceeding, the FCC has proposed a far-reaching modification of the way local broadcast stations may conduct its business. Among the more alarming proposals, the FCC has proposed elimination of the ability of stations to operate in an unattended manner at night (thereby again requiring overnight staffing); requiring stations to maintain main studios within stations' communities of license; establishing community advisory boards; and filing lengthy summaries of local issue-related programming presented on their stations.

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[1] *Report on Broadcast Localism and Notice of Proposed Rulemaking and Notice of Proposed Rulemaking*, FCC 07-218 (rel. Jan 24, 2008) (hereinafter "*NPRM*").

These proposals, in their present form, are opposed. While licensees appreciate and respect the FCC concerns in reference to the need for local stations to have the ability to ascertain and be responsive to local issues, needs, and emergencies, these concerns must be tempered with an eye focused on current technologies and current economics. It is respectfully asserted that adoption of the proposals in their present form will result in a net *reduction* of the ability of local stations to serve their public in a responsive, responsible, and economic manner, and for that reason, the proposals should not adopted, or if necessary, should be adopted in a greatly modified manner.

The Commission's Proposals

Ascertainment of Local Needs and Issues

There is no question as to the role required of broadcasters by the FCC. As stated by the FCC recently in its "Report on Broadcast Localism and Notice of Rulemaking" released January 24, 2008, the "Commission has consistently held that, as temporary trustees of the public's airwaves, broadcasters are obligated to operate their stations to serve the public interest – specifically, to air programming responsive to the needs and issues of the people in their communities of license." *NPRM* at ¶ 6. The FCC further noted that the "broadcast regulatory framework is designed to foster a system of local stations that respond to the unique concerns and interests of the audiences within the stations' respective service areas." *Id.*

While the FCC's proposal obviously is made with good intention, the net effect of the FCC's well-intentioned proposals is to place unreasonable, unfair demands upon broadcasters, particularly the small broadcaster. The unintended effect of such re-regulation is to force such broadcasters to pare back or abandon operations altogether. The end result is that the FCC will unwittingly cause a diminishment of service to the very constituencies to which they pledge to

protect and serve. In short, the FCC's proposed localism rules will make it more difficult for radio stations to serve the public interest.

The question as to how broadcasters can sufficiently meet their public trust by airing programming that is responsive to the needs and issues of the people in their communities of license is debated broadly by the Commission. In fact, in its Report, the Commission raises more questions than it provides answers.

What lends itself to question is HOW and through WHAT means a broadcaster fulfills this responsibility to the public they serve. HOW does a station, or the FCC, determine success in meeting the localism requirement? Is it determined on the basis of the number of local constituencies served within a primary market area, as suggested by the FCC's Report? Is it determined by the number of individuals among the public who are aware both of this requirement and of how an individual station fulfills this requirement, again as suggested by the FCC's Report? Is it determined by where a studio is located within the market(s) served and an insistence on 24/7 manned operations? Unfortunately for the future of broadcasting, these all appear to be primary requirements under the FCC's "Report on Broadcast Localism and Notice of Proposed Rulemaking." The rules create more problems than are solved, and in fact, the extent of the problems posed can be broadly debated.

It is a simple fact of life that broadcasters must be allowed to balance economics in considering the best way they can fulfill their basic public interest requirement. In addition, one must consider the current media landscape. Today's media market is significantly more fragmented than ever before. Twenty years ago, media was, by and large, driven by success in the mass market. However, in the past ten years, media has become increasingly diversified. There is a plethora of radio and television stations, including broadcast, cable and satellite.

There is a plethora of print publications, ranging from the major market daily newspaper to free weeklies. There are numerous magazines, ranging from mass market publications (e.g., *Time* and *Newsweek*) to niche publications built around a specific consumer interest (e.g., *American Baby* and *Cat Fancy*). Similarly, radio stations are devoted to a particular content such as talk-radio or classical music or are devoted to a particular theme such as a Spanish-centric focus. Increasingly, it is the niche medium catering to a specific interest that is flourishing. More and more, the mass market media is under attack. This is a natural evolution of market forces. The FCC's proposed requirement to focus on ALL segments of a market's audience can be seen as a demand to move media from a niche focus back to a mass-market focus with a higher cost structure that will prove untenable.

So "how" does a radio station define and determine these segments? Is it on the basis of demographics (*e.g.*, race, age, or gender)? With a focus on physical characteristics, the FCC may in fact be encouraging a subliminal form of racial and/or gender stereotyping. Is it on the basis of psycho-social characteristics (*e.g.*, income level, occupation, etc.)? There are the inherent dangers of profiling to this approach, as well. Is it possible instead that perhaps the broadcast industry (and the populations served by the broadcaster) would be better positioned (and would subject itself to less legal and regulatory risk) if the station focuses instead on the type of music, information or entertainment genre that is offered, regardless of age, race or country of origin, or gender?

The key, fundamental issue of the FCC's proposal is how to define localism in this day and age of multiple media formats, many of which are mobile and cut across traditional structures that previously defined localism (*e.g.*, the boundaries of a local population that were traditionally relatively immobile and homogenous). The FCC's push for content regulation –

which is the essence of the proposed regulations -- creates another hurdle for the broadcaster competing for consumers. The broadcaster is now competing with its traditional rivals as well as with Internet providers (AOL and Comcast, for example, provide “news and entertainment” via their entry portals), cell phone providers and other telecomm sources, in addition to electronic versions of traditional media vehicles.

And then there is the question as to the fundamental fairness of imposing unduly burdensome regulations when other media are not or cannot be held to anything resembling the same standards. If these content providers are not held to the same standard, re-regulation by the FCC of the broadcaster alone will force many out of business altogether. A first step will be to force them to pare back programming or hours of availability, due to the increased costs of operations required by the new proposal with little or no offsetting incremental revenues, to the point where listeners are encouraged to migrate to other sources of information and entertainment. If stations do not choose to immediately shut down, continued erosion over time will force a number of stations out of business. Thus, in its proposed rulemaking, the FCC is creating regulatory hurdles for broadcasters that are fundamentally unfair.

The mechanisms proposed by the FCC, include, but are not limited to, the following:

1) require establishment of Local Advisory Boards to foster communication with local constituents about programming, with the goal of developing coverage that includes traditionally underserved audiences and groups with specialized needs and interests;

2) file enhanced disclosure requirements that mandate the form and frequency of communication of local content and new license renewal requirements that include a shortened license span and heightened FCC scrutiny to ensure that localism objectives are met;

3) establish mandated requirements around local content, including the curtailment of national playlists and use of voice-tracking;

4) require the curtailment of the use of automation and remote operations so as to increase responsiveness during emergencies and to increase community presence within the city of license; and

5) create additional spectrum allocations for low power FM (LPFM) service and other initiatives designed to make it easier for LPFM stations to operate with the stated goal of promoting "increased localism in broadcasting as well as diversity in radio ownership and programming."

It is firmly believed that the net effect of these proposed rules will be not to increase service to the community, as intended, but will instead (i) thrust the broadcaster into roles for which are counterproductive to the proposed localism objectives and to reduce service to the communities, (ii) force broadcasters to pare back or abandon operations altogether due to additional, unreasonable and unnecessary costs, and (iii) with respect to LPFM stations, create a de facto "government subsidy" and thereby create an uneven playing field which will result in another competitive threat to small radio broadcasters that may ultimately force the small broadcaster out of business.

The Proposed Advisory Board

The Advisory Board is envisioned as a mechanism for the broadcaster to increase communication with members of the community and to gather input so that programming may be responsive to the needs of the community. The Advisory Board as envisioned by the Commission may work well in one type of community that is relatively homogenous but may not work well in another more diverse community, such as a city composed of multiple constituencies and ethnicities.

In its Report, the FCC states that a station should serve ALL segments of its audience with a focus on serving "traditionally underserved populations". Defining a "traditionally underserved population" is a challenge, given the heterogeneous nature of most American cities and towns today. The underlying problem with the FCC's proposed regulation is particularly

acute in today's "globalized" United States. In most, if not all, cities and towns in the US today, there are several immigrant populations. The populations can include several nations from the African continent, from Europe, from Asia, or South America. To call all populations from one continent "the same" is erroneous, as the cultural identity of the Somali is quite different from that of the Sudanese; similarly, while an Argentinian and a Brazilian may share a common continent, they do not share a common language. There are perils in defining African Americans as Africans (lest not we forget the Jamaicans and the Haitians, among others). Does the FCC truly expect a small broadcast station, or a large urban station, to serve ALL the multiple ethnic or demographic populations, if multiple ethnic populations are present in a market area?

It is easy to see how an Advisory Board composed of multiple constituencies may never agree on a format or content that meets their individual, competing needs; and it is easy to see how the creation of such a Board could create unreasonable expectations on the part of the special interest groups or constituencies. The broadcaster is thrust into the role of mediator, and it is easy to see how community relations may in fact *suffer from and not improve* from the creation of such a Board. The Commission itself seems to recognize the risks inherent in this suggestion and asks many questions about how such a Board would be composed, structured and governed.

For broadcasters, local content is their "bread and butter." It is what differentiates them from other media. They know the formula works. Imposing requirements upon licensees such as the Advisory Board will cause stations to deflect their time and attention from their current community involvement; they will be forced to spend less time in the community sponsoring events or participating in charitable activities, and they will have to spend more time "in committee" with ill-defined roles and expectations for that committee.

Proposed Filing Requirements

In the attempt to improve communication between licensees and their communities of service, the FCC proposes that stations post on their websites the license requirements and how the public can become involved in the Commission's processes. Additionally, stations would be required to post the Enhanced Disclosure Form on their website; thus the Enhanced Disclosure Form ("EDF") would replace the current issues/programs list. With the EDF, to be filed on a quarterly basis, the type and amount of programming for the past three months would be broken into categories, such as national news; local news produced by the station; local news produced elsewhere, including the producing entity; local civic affairs; local electoral affairs; independently-produced local public service announcements; paid public service announcements directed to underserved communities; religious programming; and close-captioned programming. For each such program, the station must indicate whether it took efforts to determine the programming needs of its community and how it determined the type and amount of programming based on those needs.

Under the "current issues/programs list" requirement, on a quarterly basis licensees provide *illustrative* examples of programming broadcast in response to what they view as important issues affecting their community or broadcast areas. In this manner, licensees demonstrate that they are satisfying, in at least a basic fashion, their responsibilities to their communities. Insofar as the lists are meant to be illustrative only, and insofar as correctly, license renewal processes are not "comparative" processes whereby licensees have to establish "all" issue-responsive programming in an effort to demonstrate that they were the "best" broadcast in a broadcast market, the lists, while helpful to the public, have not been overly burdensome to the broadcast in their preparation.

Under the Commission's proposals, if adopted, this will change. The Commission is proposing to implement the requirements recently adopted for use by digital television stations. *NPRM* at ¶ 42. In relevant part, adoption of requirements similar to those contained in the new FCC Form 355 would require compilation of the following information:

- the average number of weekly programming hours devoted to the following:

    1. National news

    2. Local news produced by the station

    3. Local news produced by some other entity (who must be identified)

    4. Programming devoted to "local civic affairs," defined as programming designed to provide the public with information about local issues, including statements or interviews with local officials, discussions of local issues, and coverage of local legislative meetings. This programming must be subtracted from the "news" programming reported above.

    5. Coverage of local electoral affairs -- basically coverage of local elections -- which must also be subtracted from the news coverage numbers reported above

    6. Independently produced programming, i.e., programming not produced by a company with substantial ownership by a national network (from the definition, each local station will have to determine if a network has as little as a one-third interest in all programming that is being aired)

    7. "Other" local programming -- which is not defined but presumably would include sports, religious, and entertainment programming produced within the station's service area

    8. Public service announcements

    9. Paid public service announcements (a PSA-type announcement for which the station or any group that the station is affiliated with -- presumably including state broadcast associations -- receives something of value)

- A list of each national news story that includes significant treatment of community issues, listing for each such program:

    1. Title, length and date and time of airing

    2. Whether it was locally produced

3. Whether it previously aired on the station or any other station

4. If it was part of a regularly scheduled news program

5. Whether any consideration was received for the broadcast of the segment

- A list of all local news program segments dealing with community issues, providing the same information for each such segment as listed above for national news segments

- A list of all local civic affairs program segments that provides significant treatment of a community issue, with all the same details as listed above for news segments

- A list of all electoral affairs programs that includes significant treatment of community issues, with the same details as provided for news segments

- The title, length and date and time of the airing of all independently produced programming

- A list of all local programming not otherwise listed above, with title, length, and date and time of airing, and whether the station received consideration for airing the program

- For each PSA, the name of the sponsoring organization, the number of times the PSA ran, the length, and the percentage of times that the spot ran during prime time hours

- For each paid PSA, the same information as for unpaid PSAs

- Details of programming directed to "underserved communities," defined as demographic segments of the community to which little or no programming is directed

- Details of religious services or other local religious broadcasts aired at no charge

- A description of how the station determined that its programming met community needs

- Information in reference to broadcasts about community emergencies

- Whether or not more than three hours per day of programming is provided pursuant to an LMA or JSA

Given the litany of information that the proposed FCC Form 355 requires, it is difficult to imagine how small market radio stations would be capable of complying with this requirement. As set out above, the form calls for an inventory of all program segments that deal with issues of

public concern. To fully comply with the rules, it would appear that a station will have to monitor all programming broadcast on the station, including all network and syndicated programming, to determine if the programming contains a significant discussion of important issues of public concern. Then, if any segment of any program does contain such a discussion, the station will have to write up the description of that program for inclusion on the Form 355, providing the: 1) duration, 2) topic, and 3) time of broadcast of each such program. The Form 355 will not be a form that a station can simply fill out in the last few days of the quarter, but instead will require a minute-by-minute review of station operations, and a daily updating of information in order to be ready to upload it on the due date. No "small business" or "small market" exemption to this requirement has been proposed.

It is firmly believed that the burdensome new filing requirements, including the electronic filing to specifically list all programming and the Enhanced Disclosure Form, will require stations to hire additional staff. As many stations now share resources, the enhanced reporting requirements will require updating information for each station, as each station often has different programming, different newscasts, and different Public Service Announcements, among other items. The administrative load will increase significantly and will have little effective payback. It is likely that time and resources now spent in community outreach and participation may decrease as attention is diverted towards administrative filing requirements. And it is ironic that the more local content that is provided, including participation in community events, the greater the burden of information to be reported; those most actively meeting localism objectives will be the most burdened by the new reporting requirements.

It is questionable whether filling out multiple forms will truly increase a station's commitment to local content. It is widely accepted that especially in small market radio, failure

to associate with the communities' needs is tantamount to a "death sentence." Analyzing, categorizing, and writing lengthy "programming summaries" will not increase the amount of programming. Instead, it simply will divert the staff resources and funding available for such content production to a "paperwork" function, and in light of the increased paperwork burden associated with the programming, may even discourage such programming's presentation.

Further, what function will listing "all" public-interest programming serve? Clearly, at some point, even an "incomplete" list is sufficient to demonstrate that a station is meeting its "public interest" FCC requirement. Beyond that, the listing of such programming would amount to nothing more than burdensome "busywork" that serves no useful regulatory purpose. An illustrative listing of programming is all that should be necessary for the Commission and the public to ensure that a particular station is satisfying its localism responsibilities.

Finally, it certainly should be recognized that the appropriate quantum of "news and informational programming" that is needed, or even desired by the listening audience, may differ market by market. That is to say, if a market already is saturated by news and informational programming, why should the FCC literally "force" a particular station with a particular programming niche or audience to do that which another station already is doing? For example, if issues unique to a certain ethnic population already are being addressed by a specific station, is it really important that those issues be addressed by each and every other station in the market? Isn't it possible that the specific station catering to that particular demographic better serves that particular audience, and more competently and completely addresses those particular issues because of the particular station's devotion to and knowledge of those particular issues?

In short, a station should not have to be all things to all people. "More" is not always better.

Additionally, whether the programming is "locally-produced" or not should be irrelevant. The Commission always has expressly recognized that non-locally produced programs can be responsive to ascertained problems and needs. *Doubleday Broadcast Co.*, 88 F.C.C.2d 1181, 1191 (1982). Moreover, regulation of content by the FCC runs afoul of the First Amendment.

Adoption of the FCC proposals will punish the many for the sins of the few. Members of the public have the ability to themselves review licensee's public files and themselves compile statistics concerning licensee's public service programming. In those instances where a *prima facie* case is made that a particular licensee is not fulfilling its responsibilities[2], increased reporting requirements can be imposed upon that particular licensee. *Unless* and *until* that showing is made, onerous reporting requirements should not be imposed.

The FCC's requirement for *comprehensive* compilation smacks of attempts to regulate and monitor content in an overblown fashion, and should not be adopted in this manner.

[2] See, e.g., *Simon Geller*, 90 F.C.C.2d 250 (1982) (licensee that not presented programming responsive to the needs and interests of his service area not entitled to renewal expectancy).

Proposed Modification of the Main Studio Rule

Most threatening to the small broadcaster is the proposed modification of the Commission's main studio rule (47 C.F.R. § 73.1125), whereby the Commission proposes to require licensees to locate studios strictly within the station's city of license. The purported goal is to require licensees to become "part of the neighborhood," which purportedly will increase stations' accessibility in a way that currently is lacking. While well-intentioned, the effect of this proposal will be devastating to the economic well-being stations and their service to the communities they serve.

At one time, all broadcasters were required to maintain their main studios in their communities of license. In 1987, however, the Commission changed its rules to allow a station to locate its main studio at any location within the station's principal community contour.[3] In 1998, the Commission further liberalized the rule to allow the studio to be located within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license, whichever location the licensee chooses.[4]

The proposed change to the main studio rule should be rejected. As noted above, the current main studio rules allows station studios to be located up to 25 miles from the reference coordinates of their communities of license. This flexibility allows stations to compete efficiently in at least two ways. First, for multiple station owners who own multiple stations licensed to multiple cities, the current rules allow licensees to enjoy efficiencies of scale in the organization of their broadcast facilities and station personnel, allowing one studio to be

[3] *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,* 2 FCC Rcd at 3215 (1987).

[4] *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations,* 13 FCC Rcd 15691 (1998).

established where two or more would be otherwise needed. Second, for single station owners and group owners alike, the rule allows licensees to exercise individual business judgment to decide the location from which the station can most effectively operate to be competitive with other competing advertising media while still fulfilling their basic underlying requirement to serve the public interest.

The Commission proposal, if adopted, will essentially destroy the benefits bestowed on the public over the years through relaxation of the Commission's multiple ownership rules. "Efficiencies of scale" have specifically been cited by the Commission in the past to be in the public interest. In 1992, the FCC recognized the rigorous competition that even then was facing radio owners, necessitating a relaxation of rules:

> The Report and Order detailed the dramatic increase in competition and diversity in the radio industry over the last decade, noting that there are now over 11,000 radio stations in the United States. We observed as well that the number of non-radio outlets competing with radio stations for audiences and advertising revenue has risen substantially over the same period. There are, for example, nearly 1,500 operating television stations, and cable television now serves 64 percent of U.S. homes, up from only 25 percent in 1980. Cable services directly competitive with the popular music services that are central components of commercial radio programming have also emerged. MTV and VH-1 are available to more than 56 million and 41 million homes, respectively, while the number of 24-hour cable radio networks has more than doubled since 1984. We concluded in the Report and Order that this intense inter- and intra-industry competition has produced an extremely fragmented radio marketplace in which existing and future radio broadcasters will be subject to increasingly severe economic and financial stress. We noted that between 1985 and 1990, the growth rate of radio station revenues dropped nearly in half to, on average, six percent, while real per station revenue during this period remained virtually unchanged. Operating profits, on a per station basis, have fallen dramatically since peaking in 1988, and radio's share of local advertising revenues remained essentially flat throughout the 1980s. More than half of all radio stations lost money in 1990, and almost 300 stations are currently silent. Moreover, the Report and Order found that the competitive changes producing this stress are not cyclical or transient in nature, but persistent and likely to create even greater pressure on radio broadcasters in the future. The picture is especially bleak for small market stations, which comprise the bulk of the industry. Given these circumstances, the Commission concluded that radio's ability to serve the public interest has been substantially threatened.
>
> In the face of this threat, the Commission rigorously reevaluated the validity of its existing ownership restraints to determine whether they <u>unduly restricted the flexibility of radio licensees to adapt to changing market conditions and to obtain the substantial efficiencies that common ownership can provide</u>. These efficiencies include the

> opportunity to "combine administrative, sales, programming, promotion, production and other functions as well as to share studio space and equipment." Ultimately, we concluded that continued insistence on absolute ownership diversity at the local level and restraint of national ownership at existing 12-station levels would needlessly deny radio broadcasters the benefits of broader common ownership at a time when these benefits may prove critical to their survival. Indeed, we found that increased levels of common ownership could directly advance our underlying interest in promoting diversity and competition. Stations that are silent or severely stressed financially cannot provide the service to the public which the Communications Act contemplates. Moreover, the very robustness of competition in radio markets which is largely responsible for the economic distress many licensees face today also attenuates our concern for the impact on diversity and competition that permitting increased ownership levels might entail.

Revision of Radio Rules and Policies, 7 FCC Rcd 6387, ¶¶ 2-3 (1992) (emphasis added; footnotes omitted). As the Commission later stated in *Review of the Commission's Regulations Governing Television Broadcasting*, 14 FCC Rcd 12903 (1999):

> In considering the changes we have proposed to our local television ownership rules, we must assess the costs and benefits of such modifications in light of both our diversity and competition objectives. Our multiple ownership restrictions must strike a balance between the benefits to the industry and to the public of common ownership, such as economies of scale which can result in stronger stations and improved service to the public, and the reduction in the diversity of ownership and competition in a market that may arise from consolidation of station ownership. We must also take into account marketplace developments and the increased competition broadcasters are facing from other mass media outlets.

Id. at ¶16. Similarly, when relaxing the main studio rule, the Commission stated:

> Reasonable accessibility of the main studio and the public file has been our benchmark for facilitating public involvement at the station. We also believe that it would serve the public interest to provide stations greater flexibility in locating the public inspection file and main studio given the increased number of same-market, multiple-station owners under the new radio ownership rules. As described in our discussion of the main studio rule, supra ¶8, this is consistent with the relaxation of these rules because it allows stations to avail themselves of economies of scale and allows them to channel their resources in ways that would better serve the public.

Review of the Commission's Rules Regarding the Main Studio and the Local Public Inspection File of Broadcast Television and Radio Stations, 12 FCC Rcd 6993, ¶ 21 (1997) (emphasis added).

In today's business environment, the current flexibility afforded to the location of main studio is essential. The competition recognized by the Commission as long ago as 1992 is even

more acute, and no concrete evidence is provided that "location" of a studio has any effect, whatsoever, on a licensee's ability to successfully serve the needs of its community of license. First of all, despite one commenter's belief that a station should be a "part of the neighborhood" (*NPRM* ¶ 41 and n.101), there is no strong evidence provided that residents ever seek to "visit" local broadcast facilities (just as they do not "visit" local newspapers, cable systems, Internet news providers, etc.). Generally speaking, the only time that even a request is made to inspect a "local public inspection file" of a station is when an inspector for the FCC comes on a periodic, surprise visit. Otherwise, other than invited guests or advertisers, "visits" to a main studio are infrequent at best or non-existent. As to the need to maintain accessibility for such guests, that is and should remain an independent business decision, free from government intervention. Moreover, even under the current rules, as to all residents in the community of license, if a studio is not literally inside a given community of license, licensees must provide photocopies of public file materials in response to telephone requests. 47 C.F.R. § 73.3526(c)(2)(i). Therefore, "accessibility" to the file already exists *regardless* of where the studio is located. Also, for discussions about programming (even though those, also, hardly ever occur) as always, a station's management is only a phone call or e-mail away.

A station, to survive, interacts with its community of license as well as the surrounding area. Its employees are predominantly local. Its advertisers predominantly are local. The news it reports on predominantly is local. The location of the studio that serves as the licensee's base of operations from which it feels it successfully can perform its obligations should remain up to licensee's discretion. Also, it should not be forgotten that a licensee's public responsibilities do not literally end at the "geographic border" of a community. A licensee has broad responsibility

to serve the needs and interests not only of its community of license but also the needs and interest of its entire service area.

As long ago as 1960, the Commission announced that "the principal ingredient of the licensee's obligation to operate his station in the public interest is the diligent, positive and continuing effort . . . to discover and fulfill the tastes, needs, and desires of his community or service area, for broadcast service." *Network Programming Inquiry, Report and Statement of Policy*, 25 Fed. Reg. 7295 (1960). Licensees were advised that they could meet this obligation in two ways: by canvassing members of the listening public who could receive the station's signal, and by meeting with "leaders in community life . . . and others who bespeak the interests which make up the community." *Id*. at 7296 (emphasis added). Similarly, the Commission's *1965 Policy Statement*, identified as one of the public interest objectives to be achieved was "best practicable service to the public," which was defined as service that best "meets the needs of the public in the area to be served, both in terms of those general interests which all areas have in common and those special interests which areas do not share." 1 F.C.C.2d at 394. See also, *Policy Regarding Character Qualifications in Broadcast Licensing*, 87 FCC Rcd 836, ¶ 24 (1981) ("the single consistent objective of the Commission's attempts to define service in the public interest over the years has been the provision of quality programming oriented to the needs and interests of the licensee's service area").

To pretend that a licensee's focus should be solely on its "community of license" is contrary to decades of precedent. In reality, the Commission's flexible studio standard no doubt enhances a licensee's ability to serve this broader mandate.

Moreover, any change in the main studio rule will seriously injure the broadcast industry in the important area of availability of capital for investment, which is an area focused on

repeatedly by Commission over the years. In the recent *Report and Order* in P*romoting Diversification of Ownership in the Broadcasting Services*, FCC 07-217 (2008), the Commission modified its attribution rules after finding that:

> We find sufficient evidence in the record to show that difficulty in accessing capital investment currently is inhibiting diversity of ownership of broadcast stations and new entry.

Id. at ¶ 34. The Commission also expressed concern that the Commission's rules may have been inhibiting investment in "eligible entities" in particular.

To the extent the Commission's new attribution rules represents a step forward in addressing those problems, modification of the main studio rule in the manner proposed by the FCC will represent a giant step *backwards*. Any money is lent premised on solid business proposals, presentations of budgets and financial projections, etc. All those proposals, budgets, etc., are premised upon a certain expectation that the *status quo* will be reasonably maintained; and that capital expenditure for items such as studios, and staffing costs for personnel, will remain as established previously. To be sure, revenues may fluctuate, but budget items are expected to remain reasonably predictable.

The Commission's proposal tosses that expectation of continuity out the window. While single-station licensees have established a "home" at a given location that maximizes service, convenience, and cost, the FCC now has raised the specter that such location may not be acceptable in the future, which will impact the station owner's business planning and business continuity. While group owners may have purchased station clusters (licensed to differing cities) based on the certainty that despite their cost, the stations could operate efficiently though a combination of sales staffing and programming personnel, while avoiding leasing multiple offices, the Commission's rules threatens to toss "out the window" all of that careful financial planning, as well. Without the ability to plan with any degree of accuracy, and possibly without

the ability (if the new rules are adopted) to operate efficiently, it certainly can be anticipated that financial investment in broadcast facilities will dry up, thereby undoing any progress the FCC has made in its efforts in other areas.

The effects on individual broadcasters serving small rural markets will be singularly devastating. For example, some broadcasters provide "bonus spots" on AM stations located in small towns with little or no earned revenue of their own to advertisers who buy time on the broadcasters' FM stations. These small AM stations would not independently exist at all without the ability to use automation and to combine studios for stations licensed to communities that are closely co-located. If a significant capital investment were required to move studios and rent additional locations, then either service would be curtailed or eliminated altogether, as it would become more cost-effective to sign off during late night and overnight hours when those hours offer little or no revenue generation. In addition to rent, staffing, utilities, cable, phone, and engineering costs all will increase, without an offsetting increase in revenue, so as to alter to the cost structure to where operations become infeasible.

In summary, it is common for small market stations to share resources across multiple stations; shared studio location is the formula for economic sustainability. The studios are usually located in a centrally-accessible area of commerce with a sufficient infrastructure (e.g., the required cabling, a reliable network of roads, etc.) to support station operations. These stations often share technologies and advanced facilities such as radar that would be cost prohibitive for a small market alone. If required to discontinue co-location under the main studio rule, the end result is that broadcasters will not be able to afford to spend the same amount of resources on community coverage and may be forced to curtail or abandon operations in some markets altogether. The likely effect of the proposed changes is therefore a reduction in service

to small market rural areas, and it is precisely the opposite effect of that intended by the FCC. The FCC is creating barriers to service with this legislation.

<u>The Commission's Proposed Staffing Requirements</u>

The proposal to require staffing during all hours of operation is similarly devastating to smaller market broadcasters. In the *NPRM*, the FCC states that "Requiring that all radio stations be attended can only increase the ability of the station to provide information of a local nature to the community of license." *NPRM* at ¶29. The FCC then goes on to relate this to the event of severe weather or a local emergency and states that having attended operations increases the likelihood of each broadcaster being able to relay critical life-saving information to the public.

Requiring staff to be present at the radio station 24 hours a day, 7 days per week would create a particular hardship to small market radio stations. Many of these stations used to sign off the air at midnight but with the introduction of more stable equipment and technology that allows immediate control of transmitters and programming, these stations were able to expand their service to all hours of the day. Small market stations often operate in rural areas where the economy is stagnant and advertising revenues are at best level or diminished. The limited resources of these stations should be committed to local news and community information and not wasted on overnight caretakers whose roles already are adequately served by automation equipment.

The FCC's conclusion that requiring all stations be attended "can only increase the ability of the station to provide information of a local nature to the community of license" (*NPRM* at ¶29) is logically unsound. The goal of this requirement is to ensure that broadcasters are available when necessary to alert the public in the event of an emergency. This goal, however, will not be realized if stations cut back their operations because they cannot finance the cost of

24/7 staffing. The public would be less likely to be informed, not better informed, and community involvement would suffer as well.

Additionally, it is important to note that in many small markets, it is already difficult to find qualified personnel to perform the job functions required at these stations – and these markets simply may not have the available labor pool to allow staffing a station to be staffed on a 24/7 basis.

This requirement also does not take into account the fact that there are multiple media sources today that allow for emergency transmissions, including cell phones, mobile Internet devices, and pagers. City and county governments, for example, have started to ask residents to register email addresses and/or cell phone numbers in a database for emergency alerts. These alerts can be carried across wireless telecom devices as a supplement to the residents' use of portable radios. In fact, radio is now being broadcast and carried on Internet platforms today. With the convergence of media platforms, one may argue that the role of the radio broadcaster in emergency response alerts has changed significantly; the fact of the matter is that some populations, particularly the younger age groups, are less reliant on radio today. Therefore, the FCC's argument that 24/7 attendance of radio stations is a requirement for ensuring adequate emergency response operations is unavailing.

In reference to emergency response, the role of government agencies and other parties must also be considered. Broadcasters are prepared to relay emergency information to the public, but the stations are dependent on the actions of state and county governments and civil defense organizations. The decision that the public must be notified of an emergency alerts does not originate from the broadcaster. In some cases, it has been noted that local law enforcement officials have not taken advantage of the EAS systems, for whatever reason. It has also been

noted that some stations' EAS systems are controlled by the weather bureau directly at any hour of the day and that the weather bureau can automatically access broadcast stations as needed.

For many broadcasters, the requirement to staff during night-time hours would be financially devastating. Station costs are estimated to rise, with some of those estimates ranging up to 15% or 20%. At the same time, the increased hours of operation would provide little or no incremental revenue. Many stations are simply unable to afford the cost of increased staffing mandated by this requirement. The net effect would be that stations would have to sign off the air earlier than they do currently; in some cases, a station may be forced to shut down altogether. The incentive to build additional stations in small markets would disappear. The end result is that service to the community would be significantly diminished, not improved. The proposal for requiring staffing during all times of operation will in fact ensure that no life-saving information be relayed during the hours that a station is now off the air due to the new rules; it may also lead to having no broadcast vehicle to relay this information to constituents without mobile Internet devices or other telecomm devices, such as the economically disadvantaged or elderly populations.

In 1987, the Commission eliminated its rule requiring a broadcast station to originate a majority of its non-network programming from its locally situated main studio.[5] This action was based, in part, on technical advances in the production and distribution of programming during the prior 35 years. In 1995, in response to continuing improvements in the stability of station monitoring and transmission equipment, the Commission authorized unattended technical operation of broadcast stations and expanded the ability of stations to control and monitor station

[5] *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*, 2 FCC Rcd 3215 (1987)

technical operations from remote locations. Since that time, the reliability of such equipment only has improved.

Again, while well-intentioned, the FCC's proposed modification of the unattended operation rules is (i) overbroad; (ii) will not in any way increase emergency preparedness in a significant manner; (iii) will have an excessive negative financial impact on broadcast stations, and (iv) may well *disserve* the public interest through the overall *decrease* in the diversity of programming, news, information, and emergency information available at night.

For all these reasons, in the present proposed form, the rule modification should not be adopted.

The Future of Broadcasting and Proposed Solutions

In this proceeding, the traditional roles of the broadcaster and station manager are under attack. What is the role that the broadcaster or station manager would play under the new proposed regulations? In one scenario, the broadcaster becomes a mediator; in another, the broadcaster becomes a talent scout. Most broadcasters or station managers today are unprepared and ill equipped for these roles, and to require such again places an unreasonable burden that will exacerbate costs.

In addition to the economic factors already cited, uncertainty around the new rules may make it more difficult for the small broadcaster, including traditionally-underrepresented populations, to gain access to capital. To gain funding, a new broadcaster has to develop a business plan that indicates equipment requirements, staffing and other operating costs. Any business plan in the current environment becomes outmoded under the new rules, and a savvy lender may refuse financing for any new venture until the new rules are clarified. Also, stations that currently have financing on the basis of an existing business plan may find their financing

threatened, as their costs will increase under the new rules, if they can no longer use automation and are required to build new studios in multiple locations and to man those stations 24 hours a day, 7 days a week. Access to capital could conceivably evaporate under the FCC's new rules. As noted earlier, ironically, to the extent the FCC just recently adopted new rules to take "several steps to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses, which historically have not been well-represented in the broadcasting industry" (*Promoting Diversification of Ownership in the Broadcasting Services 2006 Quadrennial Regulatory Review of the Commission Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, FCC 07-217 (2008)), this very proceeding will serve to undo much of the progress sought to be achieved in that proceeding.

It is the goal of the proposed FCC rules to ensure that broadcasters provide content to meet the needs of the local audience, including those communities that are traditionally underserved. And it is the small market radio stations that do this well, offering specialized programming, including religion, religion, foreign language, ethnic and alternative programming of a variety of forms. These types of stations also serve as gateways for new entrants seeking business opportunities in broadcasting, increasing ownership among those traditionally underrepresented. The financial disincentives created by the FCC's proposed rules will create barriers to entry that will threaten these segments. The net effect is the opposite of that intended by the FCC; service will be both diminished and less diverse.

In summary, the FCC should not punish or impose sanctions on the many when only a few may require it. Broadcasters need the flexibility to adapt the FCC's well-intentioned goals to the dynamics of the individual markets served. While there is no disagreement with the

underlying intent of the FCC's proposal, it is necessary for broadcasters to have flexibility in how the goals are met.

The following alternatives are proposed for consideration as alternative to the current proposed rules:

- Provide small business consulting services through the Small Business Administration specifically designed to assist new broadcasters in establishing a station, including a primer on FCC rules and regulations. These services also will include the development of public service announcements designed to promote this consulting assistance to potential new broadcasters.

- Require broadcasters to do the following:

    - Post quarterly information on both their individual websites and the FCC's website as to the extent of their local content and community efforts, but without requiring the degree of specificity Enhanced Disclosure Form. In the event it is deemed that information akin to that required in the Enhanced Disclosure Form is necessary, compilation of such information should only be required for discrete periods of time, *i.e.*, once for only one month during every license term.

    - Broadcast daily announcements of the location of local public files and invite members of the public to suggest community issues to be discussed or addressed during station Public Service Announcements or public-affairs programming. The FCC's current rule provides that licensees that locate their public file outside a community of license must provide photocopies of public file materials in response to telephone requests. This requirement could be expanded to (i) allow for e-mail requests, (ii) include requiring the provision of materials from a licensee's political file by mail; and (iii) require that this option be *publicized* in the daily announcements.

    - Establish a list of local civic groups, and in lieu of requiring formal Advisory Boards, on a quarterly basis stations would solicit written input from the groups. The list of civic groups conferred with on a regular basis would be maintained in the station's Local Public Inspection File. Any group that wishes to participate in this informal quarterly advisory solicitation would be added by the licensee upon submission of a simple request to the licensee.

- Require broadcasters to develop a detailed public emergency response plan for the broadcast of emergency information. The Commission can require broadcasters to post on both their individual website and the FCC's website their Emergency Response Plan, delineating how an Emergency Alert is to be distributed during times

of both on-site and at times of remote-control (*i.e.*, overnight) operation. The FCC should require municipalities to participate in establishing the plan.

- Develop incentives for broadcasters to increase local content. If local content increases from an established baseline filed with the FCC the year before, then the station would be eligible for an "economic stimulus package" in the form of a reduction in the FCC annual regulatory fees.

As always, members of the public will be free to submit comments with respect to the FCC at renewal time concerning the licensee's performance. It is noted, however, that under Commission precedent, the FCC's level of scrutiny is limited, and it should remain so. See, e.g., *The Greenwich Broadcasting Corporation*, DA 08-308 (MB 2008):

> While we recognize the Objectors' concerns about the quality of WGCH(AM)'s programming, the role of the Commission in overseeing program content is limited. The First Amendment to the United States Constitution[8] and Section 326 of the Act[9] prohibit the Commission from censoring program material or interfering with broadcasters' free speech rights. Generally, the Commission will not take adverse action on a license renewal application based upon the subjective determination of a listener or group of listeners as to what constitutes appropriate programming.[10] A licensee has broad discretion to choose, in good faith, the programming that it believes serves the needs and interests of the members of its audience.[11] We will intervene in programming matters only if a licensee abuses that discretion.[12]

[8] U.S. Const. amend. I.

[9] Section 326 of the Act states in part: "Nothing in this chapter shall be understood or construed to give the Commission the power of censorship . . . and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication." 47 USC §326

[10] See WGBH Educational Foundation, Memorandum Opinion and Order, 69 FCC 2d 1250, 1251 (1978).

[11] See, e.g., License Renewal Applications of Certain Commercial Radio Stations Serving Philadelphia, Pennsylvania, Memorandum Opinion and Order, 8 FCC Rcd 6400, 6401 (1993) ("Philadelphia Station License Renewals") (citing Time-Life Broadcast, Inc., Memorandum Opinion and Order, 33 FCC 2d 1081, 1082 (1972), and Office of Communications of United Church of Christ v. FCC, 707 F2d 1413 (DC Cir 1983) (subsequent history omitted)).

[12] Philadelphia Station License Renewals at 6401.

Id. at 2-3. The standard should not change as a result of anything decided in this proceeding.

It is believed that, in general, incentives will be more effective than sanctions in encouraging broadcasters to increase localism. The FCC's proposed new reporting requirements can be adopted, as modified above, to encourage its localism objectives.

WHEREFORE, it is respectfully requested that these Comments be accepted.

Respectfully submitted,

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