

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of
Broadcast Localism

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MB Docket No. 04-233

COMMENTS OF THE OHIO ASSOCIATION OF BROADCASTERS

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Summary

In the instant proceeding, the Commission seeks comments on several proposals concerning broadcasters' communication and interaction with their local communities and provision of issue-responsive programming. Among these localism proposals are proposals to (1) require stations to convene and consult with local advisory boards, (2) prohibit unattended operation, (3) re-institute license renewal processing "guidelines" with respect to locally-oriented programming, (4) require stations to maintain their main studios in their communities of license, and (5) require stations to report on the airplay of music from local artists. The OAB and its members are generally opposed to each of these proposals.

As a general matter, there is simply no factual basis to support the need to adopt these potentially burdensome—and non-productive—regulations. The record in the instant proceeding and the experiences of OAB member stations overwhelmingly demonstrate that Ohio broadcasters are committed to localism and are already accomplishing the goals the Commission says it desires to advance in this respect. The Commission's regulatory decisions simply cannot be based on speculation, surmise, or administrative "hunch" or "feel," but rather must be based on reasoned decision-making in light of *actual*—not presumed—facts. Moreover, the nature and extent of the Commission's proposals risk upsetting the delicate balance between the First Amendment on the one hand and appropriate and warranted Commission oversight of programming on the other.

In practical effect, a new requirement for stations to convene and consult with local advisory boards would re-institute the Commission's formal ascertainment mandates from the 1970s. As demonstrated in the record and by the operations of OAB member stations, the

justifications for the Commission's abandonment of those formal ascertainment mandates in the 1980s remain true today. The record in this proceeding is filled with examples of ways in which broadcasters creatively and effectively exercise their localized discretion in communicating with local residents, determining local issues, and broadcasting local issue-responsive programming. As such, OAB and its members oppose the Commission's proposed community advisory board requirement.

Similarly, the experience of OAB members demonstrates that the adoption of a prohibition on remote station operation is unwarranted and unnecessary. Unattended operation simply does not affect the ability of stations to convey emergency information or otherwise to provide issue-responsive programming, and requiring full-time attended operation would impose a significant burden on smaller stations with the potential, unintended effect of some stations ceasing overnight operations.

As with the proposed community advisory board requirement, the Commission's proposal to reintroduce renewal application processing guidelines also harks back to requirements abandoned many years ago. OAB member stations, as well as most other stations throughout the country, provide an overwhelming amount of issue-responsive programming. To require all stations to broadcast programming that satisfies Commission-mandated processing guidelines would unnecessarily restrict an individual station's discretion in serving the local needs of its niche viewers or listeners and would risk the creation of a bland, duplicative homogeneous marketplace of local programming. Moreover, with the Commission's issues/programs list and new enhanced disclosure reporting requirements, and the license renewal and petition to deny process, there are already regulatory mechanisms in place to ensure

stations are broadcasting issue-responsive programming. As such, the Commission's proposal is unnecessary.

The Commission's proposal to require stations to maintain their main studios in their communities of license is also unnecessary. OAB submits that the current main studio rule continues to satisfy the Commission's expressed goal of striking a balance between ensuring reasonable access to main studios and minimizing regulatory burdens. In the experience of OAB member stations, the current rule has afforded many public interest benefits. To change the rule now would require some stations to incur significant costs, which could in some cases result in putting broadcasters out of business. As such, OAB and its member stations oppose the Commission's proposed modification to its main studio rule.

Finally, as with the Commission's other proposals, the proposal to require broadcasters to report on local artist airplay is unnecessary and impracticable. Many broadcasters play local artists' songs; local artists are often featured in special shows, including talent shows and charity and non-profit events; and local artists are often used to provide music for local commercial productions. And, the practical problems with the proposed rule are limitless. For example: Would it apply to talk radio stations? Would it apply to all radio formats? Who is a "local" artist? Who is an "artist"? The FCC, as it has earlier recognized, simply cannot dictate (or define) what specific music should be played on the radio or what specific news and entertainment programming should be broadcast on television.

In sum, the Commission's localism proposals are unnecessary, potentially burdensome, and lacking any factual predicate. As such, OAB respectfully requests that the Commission decline to adopt its localism proposals discussed herein.

* * * *

Michigan, Pennsylvania, and West Virginia. OAB has 52 television station members and 276 radio station members.

OAB's comments herein on broadcast localism and the Commission's proposals in the *Notice* are based on discussions with OAB member stations and an April 2008 survey of the OAB membership. While station operations vary and regulations impact stations differently, these discussions and survey responses overwhelmingly demonstrate that, as is the case with most stations throughout the country, OAB member stations are important leaders in their respective communities, are committed to broadcast localism, and share the view that their current broadcast station operations already are accomplishing the goals the Commission says it desires to advance in the instant proceeding. Specific comments from individual OAB member stations are included in these comments.

II. GENERAL COMMENTS

The Commission's *Notice* seeks comments on several localism issues and is based on the record developed earlier in this docket in connection with the Commission's 2004 Notice of Inquiry.² The *Notice* recites a purported need for regulatory guidance in order to ensure that broadcasters remain accessible and responsive to the needs and interests of their communities, suggesting that "many stations do not engage in the necessary public dialogue as to community needs and interests" and that "the dialogue between broadcasters and their audiences concerning stations' localism efforts is not ideal."³ These conclusory assertions are not grounded in fact. As discussed in Section III below, the operations and experiences of OAB member stations belie the Commission's speculation.

² *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425 (2004).

³ *Notice*, ¶¶ 1-2.

It is noteworthy that, while the *Notice* repeatedly recites the conclusion that broadcasters' current efforts to achieve the goal of local and issue-responsive programming fall short,⁴ the *Notice* cites to no specific evidence—none—that most or even many stations in fact fail to communicate effectively with their communities.⁵ In fact, in recent years, when community organizations have challenged broadcasters' efforts to serve their local communities, the Commission has routinely rejected such claims and concluded that individual broadcasters were appropriately exercising their discretion in serving the public interest.⁶

The Commission is required, as a matter of law, to give “reasoned consideration to all the material facts. . . .”⁷ In the absence of a factual record to justify the proposed regulations, the Commission is without authority to impose them. It is a fundamental precept of administrative law that the Commission “must engage in reasoned decision-making, articulating with some clarity the reasons for its decisions and the significance of facts particularly relied on.”⁸ The Commission's decisions simply cannot be based on speculation, surmise, hunch, or

⁴ *See, e.g., id.* ¶ 15.

⁵ For example, in paragraph 1 of the *Notice*, the citation in “support” of the claim that there is a communication problem between broadcasters and their communities plainly does not support the claim. *See id.* ¶ 1, n.2 (citing Testimony of Martin Kaplan, Associate Dean, Annenberg School for Communication, University of Southern California (delivered by Joseph Salzman, Associate Dean, Annenberg School for Communication) (Monterey Tr. 63-68)).

⁶ *See, e.g., Entercom Portland License, LLC*, DA 08-495 (2008); *KUFO-FM*, DA 08-387 (2008); *New York AM Radio, LLC*, DA 08-367 (2008); *Infinity Media Corporation*, DA 08-348 (2008); *WGCH(AM)*, DA 08-308 (2008); *Wine Country Broadcasting Company*, 22 FCC Rcd 12894 (2007).

⁷ *Central Florida Enterprises, Inc. v. FCC*, 598 F.2d 37, 49 (D.C. Cir. 1979).

⁸ *Id.*; *see also Cascade Broadcasting Group Ltd. v. FCC*, 822 F.2d 1172 (D.C. Cir. 1987); *Greater Boston Television Corp. v. F.C.C.*, 444 F.2d 841, 852 (D.C. Cir., 1970).

“administrative feel”⁹ and “must supply a reasoned analysis explaining [a] departure from its prior policies.”¹⁰ The record here, which acknowledges that many broadcasters are, in fact, engaged with their communities and provide programming that addresses community needs and interests, simply does not suggest that burdensome and intrusive regulation is necessary to achieve the Commission’s stated goal of enhancement of issue-responsive programming.

Although the need for new/additional regulation is not evident, the costs associated with the Commission’s proposals are. As discussed in Section III below, all of the Commission’s proposals in the *Notice* would result in considerable additional operational costs for broadcasters. While certain regulatory costs are clearly understandable and justifiable, the imposition of unnecessary regulatory costs on stations diverts station resources from actually producing and broadcasting locally responsive programming. It is a fundamental economic truth that financial and personnel resources devoted to regulatory compliance cannot be devoted to improving a broadcaster’s program performance: “[T]o the extent the licensee is compelled to follow specific procedures, resources are diverted and the opportunity for licensee discretion is foreclosed.”¹¹ And thus, “[t]he 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.”¹²

OAB lauds the Commission’s efforts to strike the appropriate balance between regulation designed to further the important goals and policies of localism and its longstanding recognition

⁹ *Central Florida Enterprises, Inc.*, 598 F.2d at 50.

¹⁰ *Monroe Communications Corp. v. FCC*, 900 F.2d 351, 357 (D.C. Cir. 1990).

¹¹ *The Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1076 (1984) (“*Television Deregulation Order*”), ¶ 53.

¹² *Id.*

that market forces, rather than regulation, often provide the most effective assurance that broadcasters will remain responsive to the needs and interests of their communities. More than twenty years ago, the Commission struck the balance in favor of lessening the inevitable burdens of content regulation:

[M]arket incentives will ensure the presentation of programming that responds to community needs and provide sufficient incentives for licensees to become and remain aware of the needs and problems of their communities. [Deregulation] reflects the importance and viability of market incentives as a means of achieving [the Commission's] regulatory objectives and will provide . . . broadcasters with increased freedom and flexibility in meeting the continuously changing needs of their communities.¹³

Nothing in the *Notice* suggests that broadcasters generally are failing to meet their obligation to provide issue-responsive programming or that the flexibility to identify and respond to community issues cited as the basis for the Commission's deregulatory efforts in the 1980s has been misused or is no longer producing (or capable of producing) the desired results. Indeed, nothing in the *Notice* provides any reasoned basis for the Commission's return to the regulatory imbalance of the early 1980s.¹⁴

Moreover, the Commission's proposals raise fundamental First Amendment concerns. OAB recognizes that the Commission is obligated to ensure that broadcast licensees serve the public interest and that certain Commission oversight of programming is an aspect of

¹³ *Id.* ¶¶ 2-3.

¹⁴ The D.C. Circuit aptly noted, in the appeal of the Commission's *Radio Deregulation Order*, that "abrupt shifts in policy do constitute 'danger signals' that the Commission may be acting inconsistently with its statutory mandate." *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413, 1425 (D.C. Cir. 1983) (footnote omitted). That "danger signal" is all the more pressing here, where the Commission has already considered the burdens and benefits of enhanced regulation on such matters as ascertainment and license renewal processing guidelines and concluded that ordinary market forces rather than potentially costly and burdensome regulation provide the best assurance that broadcasters will satisfy their mandate to program in the public interest.

each licensee's public interest stewardship. However, the Commission's proposals trigger the obvious concern of how much Commission oversight of broadcasters' programming is consistent with the First Amendment. In eliminating its formal ascertainment requirement, programming requirement, and other regulatory requirements in the 1980s, the Commission, itself, acknowledged the First Amendment implications of an excessively intrusive programming regulatory scheme. The nature and extent of the Commission's current proposals skew the balance against the First Amendment on the one hand and in favor of unjustifiable, intrusive regulatory oversight of programming on the other.

III. COMMENTS ON SPECIFIC PROPOSALS

As described in the *Notice*, the specific localism items under consideration by the Commission include the following proposals:

- (1) A requirement that stations convene and consult community advisory boards made up of local officials and other leaders to help identify issues for and produce local issue-responsive programming;
- (2) Modification of the remote station operation rules to require stations to be staffed during all hours of operation;
- (3) Adoption of detailed, program-specific license renewal processing "guidelines" that require stations to report on the amount of locally-oriented programming they broadcast;
- (4) Amendment of the main studio rule to require broadcasters to maintain their main studios in their communities of license; and
- (5) A requirement that stations report the airplay of the music and other performances of local artists.

OAB and its members oppose each of these proposals for the reasons addressed in detail below.¹⁵

A. Community Advisory Boards

Harkening back to regulations abandoned by the FCC nearly 30 years ago, the *Notice* proposes to require broadcasters to convene advisory boards made up of officials and other leaders from a station's local community. The proposal assumes—without supporting factual evidence—that the regulation is necessary to ensure that stations regularly solicit information from community representatives to help inform programming decisions and suggests that stations hold meetings at least quarterly with community advisory boards.

While the *Notice* disavows any intent to reinstate the Commission's formal ascertainment mandates from the 1970s, which required formal consultation with specific community representatives throughout a station's license term,¹⁶ the practical effect of the Commission's new proposal is the same: The Commission again proposes to prescribe a uniform formal process that all licensees would be required to follow in order to communicate with local community representatives about issues of importance, notwithstanding the Commission's acknowledgement that many broadcasters already “strive to actively ascertain the needs and

¹⁵ OAB takes no position on the Commission's proposal to require networks to provide affiliates with an opportunity to review network programming in advance of airtime. Individual OAB television members belong to network affiliate associations that are filing separate comments on this proposal.

¹⁶ *Notice*, ¶ 25 (“[N]ew efforts are needed to ensure that licensees regularly gather information from community representatives to help inform the stations' programming decisions, but we are not persuaded that the appropriate measure should be reinstatement of the former ascertainment mandates.”).

interests of the communities they serve and air programming that reflects those needs and interests.”¹⁷

Adoption of a “new” community advisory board requirement would contravene the Commission’s own precedent. Key to the FCC’s deregulation and elimination of its formal ascertainment mandates in the 1980s was the acknowledgement that “it is the programming and not the process that is the most important component of the broadcaster’s efforts, the public’s attention, and the Commission’s concern.”¹⁸ That is, “broadcasters should maintain contact with their community on a personal basis as when contacted by those seeking to bring community problems to the station’s attention. What is not important is that each licensee follow the same requirements dictating how to do so.”¹⁹ The Commission therefore determined that affording broadcasters maximum flexibility to determine issues facing their communities, together with the requirement that each broadcaster prepare a representative issues/programs list, would best achieve the goal of localized and community-responsive programming:

[T]o the extent the licensee is compelled to follow specific procedures [for ascertaining community needs and interests], resources are diverted and the opportunity for licensee discretion is foreclosed. 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.²⁰

¹⁷ *Id.* ¶ 15. Indeed, the Commission recognized that at present, “some broadcasters engage in substantial, inventive, and ongoing efforts to identify the needs and interests of the members of their communities of license as a first step in formulating and airing locally oriented, community-responsive programming that will meet those needs.” *Id.* ¶ 13.

¹⁸ *Deregulation of Radio*, Report and Order, 84 FCC 2d 968 (1981) (“*Radio Deregulation Order*”), ¶ 71.

¹⁹ *Id.* ¶ 69.

²⁰ *Television Deregulation Order*, ¶ 53.

Although the proposed “community advisory board” requirement goes by a different name, it represents an unwarranted and unnecessary return to the primacy of “process” over “programming” reflected in the abandoned formal ascertainment requirements.

The justifications relied upon by the Commission for rescission of its formal ascertainment requirements in the 1980s apply with equal—if not with more—force today. The record in this proceeding reveals no need or rational basis for a departure by the Commission and re-imposition of the burdens and costs of a proposed new community leader ascertainment rule. Indeed, the record is replete with examples of ways in which broadcasters creatively and effectively exercise their discretion in communicating and interacting with local residents to determine local issues and broadcast local issue-responsive programming.²¹ Some broadcasters already use advisory boards, some sponsor town hall meetings, some use listener and viewer surveys, some routinely interact with listeners and viewers using phone calls, e-mail and station websites, some consult with leaders and viewers and listeners while participating in local organizations, and some consult local leaders and public officials upon their visits to local stations. Countless measures are employed by Ohio broadcasters to identify issues confronting their service communities. Mandatory community advisory boards simply are not required to ensure that Ohio stations regularly and systematically obtain information to help them make informed local programming decisions. For example:

- WCDK(FM), Cadiz, Ohio, ascertains community needs by “participation on local non-profit boards, covering local news, inviting community leaders to appear on the radio and from unsolicited feedback from the public.”
- WAKR(AM), Akron, Ohio, is represented across its community “on the Boards of Trustees of many local organizations including the United Way, Red Cross, Catholic Social Services, CYO, Jewish Community Board,

²¹ See, e.g., *Notice*, ¶ 27.

Victims Assistance Program, Salvation Army and others.” In addition, WAKR(AM)’s “employees volunteer across many other organizations and [its] news organization has daily contact with community leaders from all walks of life.” WAKR(AM) states that “[o]ur involvement in the community is such that very few events are planned without checking first, to see whether WAKR (or one of its sister group stations) will be able to participate.”

- WCLT(AM), Newark, Ohio, maintains its awareness of community issues and provides responsive programming based on its staff’s involvement with “serving on non-profit Boards of Directors, organizing, attending, and broadcasting ‘town hall’ meetings, candidate debates, project fund raisers, and most importantly just ‘listening’ to the people” in its community. WCLT(AM) states that the “effort required to recruit, organize, and maintain” an advisory board “would come at the expense of the broader and more effective system that we presently use.”
- WTLW(TV), Lima, Ohio, which produces 10 local programs, states that it is “operated by a ten member board of directors who are leaders in their communities located within our broadcast area. They help us keep in touch with local issues that affect families within those communities. WTLW encourages our viewers to contact us via email and phone by airing spots throughout our broadcast day stating such.”
- Johnny Appleseed Broadcasting Co., the operator of WMFD-TV, Mansfield, Ohio; WVNO-FM, Mansfield, Ohio; WRGM(AM), Ontario, Ohio; and WOHZ-CA, Mansfield, Ohio, states that “By not only having many staff members serving with and on numerous non-profit agencies, Board of Directors and advisory committees, we devote over 30 hours a week to local programming and community based public affairs programming. We encourage the community to be a part of our stations by calling, writing, visiting or emailing us any concerns or programming issues they would like addressed.”
- Media-Com, Inc., the licensee of WJMP(AM) and WNIR(FM), Kent, Ohio, states that “We currently use our website for ascertainment and get an excellent response from the Community. This is in addition to the significant unsolicited feedback we get from the community daily thru email.”
- Jackson County Broadcasting, Inc., the licensee of WCJO(FM), Jackson, Ohio, and WKOV-FM and WYPC(AM), Wellston, Ohio, states that “We are [located in] a very small community/county. We talk with our customers and our listeners every day through both business and personal transactions. In a small community that means we are most likely

conversing with about 75 to 80% of our listeners and prospective listeners every month.”

In short, it is clear that Ohio broadcasters are actively engaged on an on-going basis with their communities in determining local issues and needs. A specific requirement that stations implement community advisory boards is unnecessary and, as the Commission recognized in 1981, would elevate process over results by obscuring “the issue of responsiveness and exhaust[ing] otherwise valuable recourses in meaningless minutae [sic].”²² In re-adopting such a requirement, the Commission would contradict its earlier policy determination to “assure that broadcasters . . . have the maximum flexibility to be responsive to issues important to their [community], with the minimum amount of governmental interference.”²³ As such, OAB and its members respectfully oppose the Commission’s proposal to require stations to form and consult community advisory boards.

B. Remote Station Operation

The Commission’s *Notice* expresses concern about “the prevalence of automated broadcast operations, which allow the operation of stations without a local presence, and the perceived negative impact that such remote operation may have on licensees’ ability to determine and serve local needs.”²⁴ In response to that concern, the Commission is considering whether broadcasters should be required to maintain a physical presence at each broadcast facility during all hours of operation.²⁵ There is no need for a return to the former rule.

²² *Radio Deregulation Order*, ¶ 70.

²³ *Id.* ¶ 25.

²⁴ *Notice*, ¶ 28.

²⁵ *Id.* ¶ 29.

OAB filed comments in the *Digital Audio Broadcasting* proceeding urging, in relevant part, that the Commission take no action at this time with respect to the radio remote station operation rules.²⁶ OAB pointed out then that advances in automated technical equipment are such that it is not necessary to have a physical presence at every control point.

The Commission's current remote station operation rules, which were adopted in 1995, have achieved the Commission's goal of "providing for the most flexible, cost-effective station operation possible."²⁷ Continued technical advances since the adoption of the rules have ensured that stations are able to continue to serve the public interest during remote operations and demonstrate that the Commission's primary rationale for revisiting the rule—increasing the ability of a station to provide local emergency information—does not justify re-adoption of the former rule. The operating experience of OAB member stations has shown that remote operations do not limit a station's ability to respond to unanticipated contingencies. In addition to automated EAS alerts, technological advances now permit station personnel to go live on the air from virtually any location via telephone and computer Internet connections. In addition, most stations have an emergency protocol to return personnel to the station promptly in the event of an emergency. The following comments from OAB member stations illustrate the reasons why it is unnecessary to require a physical presence at each station during all hours of operation:

- Johnny Appleseed Broadcasting Co., the operator of WMFD-TV, Mansfield, Ohio; WVNO-FM, Mansfield, Ohio; WRGM(AM), Ontario, Ohio; and WOHZ-CA, Mansfield, Ohio, states that "Our stations can be controlled remotely thru the internet. All city, county officials, police,

²⁶ See *Joint Comments of the North Carolina, Ohio, and Virginia Associations of Broadcasters*, FCC Docket No. 99-325 (filed Oct. 15, 2007), p.9.

²⁷ *Amendment of Parts 73 and 74 of the Commission's Rules to Permit Unattended Operation of Broadcast Stations and to Update Broadcast Station Transmitter Control and Monitoring Requirements*, Report and Order, 10 FCC Rcd 11479 (1995) ("Unattended Operation Order"), ¶ 8.

sheriff and EMA have a list of all key staff members cell phone and home address numbers.”

- With respect to emergency situations during remote operation, WCKY-FM, Tiffin, Ohio, states that “We have employees with access from home as well as employees that live within a 5 minute drive to the operation to be on call for these situations.”
- WEEC(FM), Springfield, Ohio, states that “We can access our studio computer via phone or computer from anywhere in the country.”
- The operator of WVNO-FM, Mansfield, Ohio, and WRGM(AM), Ontario, Ohio, states that “EAS and our on call system allows assigned personnel to take control of the stations from anywhere they are, via computer.”
- WTUZ(FM), Uhrichsville, Ohio states that “We have an after hours ‘Disaster Plan Call Tree.’ All department heads contact their supervised employees when the disaster plan is activated. Each employee has an assigned duty when the plan is activated.”
- WNDH(FM), Napoleon, Ohio, states that in the event of an emergency, the “police and sheriff offices contact the station’s General Manager by calling his home phone number and cell phone. The General Manager then activates staff as needed.”
- On the overnight phone message for WDLW(AM), Lorain, Ohio, the station gives a phone number for a “on call” staff member who, when called, will call staff to come into the station to respond to and report on emergencies as the situation warrants.
- The owner of WATH(AM), Athens, Ohio, and WXTQ(FM), Athens, Ohio, states that during its daily 3 hours of remote operation, “local authorities have the phone numbers of several key personnel including [the owner] and any of us can seize control of our audio to disseminate a critical message quickly. We would then roll out of bed and get to the station to continue our duty of dealing with that situation.” And while it only takes a few minutes for the owner to return the station, the station further notes that technology has come a long way: “Using my cellular phone, I can interrupt programming and air important information from anywhere.”

As the comments make clear, OAB member stations are fully capable of providing emergency information to their viewers and listeners even during times when the stations are operating

unattended. Indeed, as the Commission recognized when it adopted the unattended operation rules, the Emergency Alert System was designed to function precisely in such circumstances.²⁸ The addition of a “new” requirement that station personnel be on site during all hours of operation would impose a burden with no corresponding benefit, as emergency information would be disseminated in precisely the same (automated) manner as it is under the current regulations.

The burden inherent in the requirement proposed by the *Notice*, however, is not insignificant. Particularly for smaller stations, the increased station payroll costs that would result if the remote operation rules were eliminated would come at the expense of underwriting its public service programming and other initiatives to serve their communities. The additional operating expenses will inevitably lead to financial cutbacks in other areas. Some small market stations, unable to shoulder the additional costs of staffing around the clock, would likely go off the air overnight. The sure result would be a loss of emergency information broadcasts during the overnight hours, contrary to the very public service goals the *Notice* intends to advance. In other words, the elimination of overnight broadcasts by some stations would be an unintended, but a very real-world, consequence of this unnecessary and misguided regulation.

While Ohio broadcasters oppose elimination of the remote station operation rules, it should be noted that many OAB member stations do not, in fact, operate unattended for any sustained period of time. Many OAB members, including both television and radio stations, staff their control point 24/7. While, as demonstrated above, a full-time physical control point presence is not necessary to best serve the public, the factual evidence—the practical operating experiences of Ohio broadcasters—demonstrates that the remote station operation rules are not

²⁸ *See id.* ¶ 14 (“The new EAS . . . is specifically designed for unattended operation and does not require human involvement.”).

being abused, but rather that they afford stations important flexibility to serve the public without unnecessary, and in some cases cost-prohibitive, regulation. Like the community advisory board proposal, the remote station operation proposal is a “solution” in search of a problem, because the factual predicate necessary to support the Commission’s proposal has not been demonstrated. Again, vague perceptions and “administrative feel” are insufficient grounds upon which to base an expensive and unjustifiable regulatory regime.

C. License Renewal Processing Guidelines Relating to Programming

The Commission’s *Notice* tentatively concludes that it should “reintroduce renewal application processing guidelines” to ensure that broadcasters are providing locally-oriented programming.²⁹ Under the proposed guidelines, stations would receive routine Bureau-level processing of their license renewal applications if they have met or exceeded prescribed minimum percentages of different types of local programming³⁰—essentially the renewal processing system in place prior to the Commission’s deregulation of radio in 1981 and television in 1984.³¹

The *Notice* provides a litany of examples of locally-oriented programming provided by broadcasters, including “substantial amounts of local news programming relevant to the issues that face their communities of license,”³² “in-depth, locally oriented investigative reports, health advice, crime reports, weather, sports, consumer advocacy, family issues, cultural events,

²⁹ *Notice*, ¶ 40.

³⁰ *Id.*

³¹ *Radio Deregulation Order*, ¶ 20.

³² *Notice*, ¶ 31.

business matters, and topics of importance to minorities,”³³ and “local public affairs programming, including material involving education, minority issues, health matters, violence, consumer topics, women’s issues, and religion.”³⁴ In fact, with the ability to broadcast digital multicast channels, some digital television stations and digital radio stations now have entire channels dedicated to local and community-related programming.

The efforts of OAB members to provide local issue-focused programming are as diverse as they are impressive. Here are but a handful of examples:

- WLIO(TV), Lima, Ohio, produces and airs a 30-minute program called “News Perspective”, which addresses current needs and topics of interest to its community of license. And as do most stations, WLIO(TV) runs PSA announcements for numerous causes and organizations.
- Another OAB television member produces and airs a 30-minute program called “Hola Cleveland”, which addresses issues of interest to Hispanic viewers. The station also provides vignettes each day about medical and consumer topics and various PSA’s on a number of topics to help the station’s Hispanic viewers.
- WMOA(AM), Marietta, Ohio airs a community bulletin board several times daily, a local program called “Talk of the Town” twice a week, a 30-minute local program called “Talkin’ Tourism”, and a 30-minute program featuring an update from the Chamber of Commerce.
- WRFD(AM), Columbus-Worthington, Ohio, states that “We have approximately 20 hours of live local talk shows covering a variety of topics each week. We broadcast an interview with a local pastor each week. And we host one or more local fund-raising campaigns each year to assist our community.”
- WBNS(AM) and WBNS-FM, Columbus, Ohio, locally produce and air a weekly one hour public affairs program with all local Columbus content.
- WFCO(FM), Lancaster, Ohio, airs a local show called “Community Accent” every weekday at 8:30 AM and 5:30 PM. The show features

³³ *Id.*, ¶ 32.

³⁴ *Id.*, ¶ 33.

discussions with political leaders, city and county leaders, private groups, and agencies like the Red Cross and United Way.

- WFIN(AM) and WKXA-FM, Findlay, Ohio, produce several vignette-type features that focus on specific issues, which air several times throughout a week. The stations' programming covers a variety of local issues, including issues relating to local health care, diet, exercise, child obesity, education, retirement, money-issues or leisure activities, and watershed and river flooding concerns.
- WCPO-TV, Cincinnati, Ohio, airs a local community affairs show on Sundays called "A New Day", hosted by the station's community affairs director.
- WDLW(AM), Lorain, Ohio, states that "We do a lot of public affairs programming from specific weekly shows to specific marketing campaigns addressing issues we see as important to our community. We have almost daily on air interviews which we call 'Music and Conversation' during which we invite community leaders to come on air and talk about current events and issues affecting our community."
- In addition to weekly news and public affairs programming provided on its primary channel, WOUB-TV, Athens, Ohio, provides a digital multicast channel that is "24/7 news and public affairs."

Nonetheless, the *Notice* expresses the Commission's concern that some broadcasters may not be complying with their obligation to air sufficient issue-responsive programming.³⁵ Again, OAB respectfully submits that both the concern and the Commission's proposed remedy are unfounded.

The examples provided by OAB members, along with the several examples cited in the *Notice*, illustrate the commitment of the vast majority of broadcasters to broadcast issue-responsive programming. And, the Commission's tentative conclusion to impose unnecessary program processing guidelines on *all* stations ignores the rules already in place that allow the public and the Commission to monitor, comment on, and assess each station's performance. For

³⁵ *Id.* ¶ 34 ("[T]he record also reveals that others feel that broadcasters are not complying with their obligation, as public trustees, to air sufficient programming that is responsive to local needs and interests.").

more than 20 years, broadcasters have been required to maintain and make available for public inspection quarterly lists of information on programs that provide the station's most significant treatment of community issues.³⁶ These issues/programs lists are maintained in a station's public inspection file for at least the duration of the station's current license term and are available for inspection by the public and the Commission at any time in advance of and in connection with a station's license renewal application.³⁷ As has been demonstrated during the last license renewal cycle, the Commission's petition to deny procedure provides ample opportunity for the review of a broadcaster's issue-responsive programming.³⁸ In fact, the Commission recently modified the issues/programs list rule to require the filing of an enhanced disclosure form, which, among other things, would require each station to describe its issue-responsive programming and the efforts undertaken by the station to identify and meet community programming needs. In short, the rules already in place allow the public to monitor and enforce a broadcaster's obligation to air issue-responsive programming.³⁹ The Commission should not ignore this existing regulatory "safety valve" in its haste to re-institute renewal programming guidelines. Indeed, the elimination of the flexible issues/programs rules in favor of a far more restrictive "guidelines"

³⁶ See 47 C.F.R. §§ 73.3526(e)(11), (e)(12), 73.3527(e)(8).

³⁷ The Commission recently noted that "issues/programs' lists are a significant and representative indication that a licensee is providing substantial service to meet the needs and interests of its community." *In re WIWS(AM), Beckley, WV*, Letter from Peter H. Doyle to Mr. R. Shane Southern, DA 08-365 (Feb. 14, 2008), pp. 2-3.

³⁸ See, n.6, *supra*.

³⁹ In connection with the *Radio Deregulation Order*, the Commission noted as much: "If a station is not addressing issues, citizens will be able to file complaints or petitions to deny. We continue to encourage citizens to meet with their local broadcasters to discuss their concerns, but if they do not receive satisfaction, they should take the complaint or petition to deny routes. These long standing channels will allow the Commission to continue to monitor the performance of licensees, and indeed will better indicate the responsiveness of licensees than do fixed guidelines." *Radio Deregulation Order*, ¶ 109.

approach—particularly in the absence of evidence that there is in fact a significant lack of community-responsive programming—would be arbitrary and capricious.

In fact, as with ascertainment, the Commission’s proposed processing guidelines hark back to similar requirements contained in the pre-1981 (for radio) and pre-1984 (for television) regulations, which the Commission abandoned upon finding that the guidelines were simply a “numbers game,”⁴⁰ “arbitrarily set,”⁴¹ and “of limited effect and . . . of no substantial utility.”⁴²

In eliminating the processing guidelines for television stations, the Commission noted:

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 several 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.⁴³

In abandoning the processing guidelines, the Commission specifically relied on the creation of the issues/programs lists requirement as a check on broadcasters’ exercise of their discretion in providing issue-responsive programming.⁴⁴ That check remains in place today. The Commission cannot now simply declare the existence of a lacuna of public interest programming without establishing that there is a factual basis for its conclusion.

⁴⁰ *Id.* ¶ 52.

⁴¹ *Television Deregulation Order*, ¶ 19.

⁴² *Radio Deregulation Order*, ¶ 24.

⁴³ *Television Deregulation Order*, ¶ 8 (citations and footnote omitted).

⁴⁴ *See, e.g., Radio Deregulation Order*, ¶ 33.

Not only do the Commission's reasons for rescinding its processing guidelines in the 1980s apply with equal force today, but the re-imposition of such guidelines would, indeed, jeopardize the great diversity of local broadcast programming currently available. More so today than ever before, broadcast formats are greatly diversified, offering a host of ever-changing niche formats such as sports talk, news talk, religious programming, Hispanic programming, Korean programming, educational programming, public affairs programming, and innumerable distinct music formats. To require all stations to broadcast programming that satisfies Commission-mandated processing guidelines would unnecessarily restrict an individual station's discretion in serving the local needs of its niche market and would risk the creation of bland, homogeneous, government-mandated local programming. More than two decades ago, the Commission recognized that the elimination of a "rigid mold or fixed formula for station operation" in favor of allowing "the most licensee flexibility" was the most appropriate and least intrusive means of assuring the presentation of programming that addresses community interests and needs—and avoiding homogeneity in programming that would not serve those interests.⁴⁵ Indeed, the D.C. Circuit cautioned 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."⁴⁶ The OAB and its member stations therefore strongly urge the Commission to refrain from re-instituting its license renewal program processing guidelines and returning to a one-size-fits-all format in broadcasting that in fact *disserves* community programming interests.

⁴⁵ *Id.* ¶¶ 25 & 34.

⁴⁶ *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 355-56 (D.C. Cir. 1998).

D. Main Studio Rule

In the *Notice*, the Commission proposes to re-impose its former main studio rule to require each broadcast station to maintain a main studio in its community of license. Currently, a station's main studio may be located either within 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.⁴⁷ The current version of the rule was most recently amended in 1998 to "strike an appropriate balance between ensuring that the public has reasonable access to each station's main studio and public file and minimizing regulatory burdens on licensees."⁴⁸ The current main studio rule continues to satisfy these goals and has not negatively impacted any station's ability to serve the local needs of its community of license. Accordingly, an amendment to the rule is unwarranted.

The public interest benefits of the current main studio rule are numerous. With the growth and improvement of the transportation infrastructure, the rule allows stations flexibility to locate their main studios in easily-accessible locations. The rule creates numerous efficiencies for broadcasters that result from the ability to co-locate their studios with their transmitter sites and consolidate them with other commonly-owned stations in the same market, or to locate their studios in readily accessible, but less expensive, areas. These efficiencies have a direct impact on a station's financial ability to serve its community of license and to produce issue-responsive programming. Moreover, with the growth of technology and the multitude of communications options, such as the Internet, websites, e-mail, and text messaging, residents of a station's

⁴⁷ See 47 C.F.R. § 73.1125.

⁴⁸ *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691 (1998) ("1998 Main Studio Order"), ¶ 5.

community of license easily and routinely communicate with broadcasters without leaving their homes. In fact, the Commission recently issued a new rule requiring that television stations that operate websites post their public files on-line, so that community members will be able to access the public file via the Internet without leaving their homes.⁴⁹ Even with respect to the station's public file, then, the prevalence of the Internet and the proliferation of station websites make it both possible and simple for the public to communicate with broadcasters any time of day or night without need of physical proximity to the studio.

All of these public interest benefits were the foundation of the Commission's decision to update and modify the main studio rule in 1998,⁵⁰ and those benefits have only strengthened in the 10 years since the Commission adopted the current rule. The experience of OAB member stations reinforces the point. For example:

- Johnny Appleseed Broadcasting Co. notes that the current main studio rule permits its stations to be "located at the major intersections of 2 main highways." This makes access to their facilities much easier compared to a location within the community of license.
- WBDT(TV), Springfield, Ohio, states that its current studio location permits better news coverage for its city of license and wider community. The station's studio location permits better access to local services, colleges, and business, all of which assist the station in its community efforts.
- WXIX-TV, Newport, Kentucky, notes that "By being located in downtown Cincinnati, it has allowed WXIX News easier access to the entire Tri-State area including Kentucky, Indiana and Ohio."
- The main studio for WHIZ-TV, Zanesville, Ohio, is co-located with two co-owned radio stations. The station notes that this arrangement permits it to take advantage of numerous efficiencies that enable it to give back to the community.

⁴⁹ See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Report and Order, 23 FCC Rcd 1274 (2008).

⁵⁰ *1998 Main Studio Order*, ¶ 3.

- The licensee of stations WNUS-FM, Belpre, Ohio, WRVB-FM, Marietta, Ohio, and WLTP(AM), Marietta, Ohio, notes that the ability to co-locate in one main studio “makes it very easy for people to get in touch with us. When there is a need for fund raising or other public service we are able to marshal everyone in the building on a specific project.”
- The owner of WCLT(AM) and WCLT-FM, Newark, Ohio, states that its studio location permits it to tap into a much wider volunteer base, which helps cut operational costs.
- WDLW(AM), Lorain, Ohio, notes that absent the current main studio rule’s flexibility, the station would likely be off the air at this point: “When we purchased the station in 2001 it was very distressed and plans were under way to shut it down. Being able to move it to shared facilities in fact probably saved the other station too. It is very difficult to operate stand alone stations, especially if like ours they are both small and low powered AM frequencies. Because we were able to share overhead, we were able to grow our news department and we now air local high school games on both our stations. If they were dark this wouldn’t happen. We also give approximately \$250,000 worth of Public Service Announcements per station to the local communities.”

The benefits described above are derived from stations’ reliance on the FCC’s current main studio rule. Stations have made considerable financial investments in real estate and lease commitments, and in reliance on financial efficiencies afforded by the current rule. For many, the costs involved in relocating their main studios would be prohibitive, if not fatal. As explained by OAB member stations, such costs, which would include, among others, lease termination fees, real estate acquisition fees, renovation expenses, technical fees, equipment fees, furnishings, and employee expenses, could be in the millions of dollars and in some cases could put broadcasters out of business:

- One OAB member notes that “I cannot imagine I could continue in business under this circumstance. We are a small, independent business. The first problem is asking a bank for a loan to build new studios that will not provide any new income to pay the loan. More than half of our expenses already go to personnel expenses. Staffing two studios would not be feasible. Add in additional rent, utilities, taxes, etc and the radio stations would not generate enough income to cover cost of operations.”

- In addition to securing a new studio location, other members state that there would also be technical expenses, such as new studio-to-transmitter links and communications towers.
- Another OAB member notes that relocation of its studio would entail “breaking a long term lease, loss of easy access to listeners and clients, and loss of staff who are unable or unwilling to commute to the new location.”
- If the main studio rule is changed, the owner of 2 co-located stations states that the stations may “not be able to remain in the building that we have been in since the radio stations went on the air in 1962. This relocation of one or two miles would be the largest equipment expense in the entire history of the radio station. In addition, the massive new ongoing monthly costs would devastate our budget to produce locally-responsive programming. In other words this complete diversion of funds would have the exact opposite affect that was intended. [sic] Also by splitting up our operations our ability to continue to operate would be in doubt.”
- Another OAB member, an owner of 3 small-market stations, states that “We would have to either construct or lease locations in each city of license. We would have to relocate transmission equipment, recording, equipment, etc. to each location. And don't forget antenna requirements and line of sight. We would have to staff each location. We would have to buy or lease office equipment for each location. We would incur utilities costs for each location. We would incur additional personnel costs because we would be required to hire administrative and programming/production personnel for each location. . . . The costs would truly, and this is not an exaggeration, put our small stations out of business. We would be forced to sell or close at a loss.”
- Other member stations note that the financial costs to relocate could range from tens of thousands of dollars to several million dollars.

Requiring stations to incur such significant costs to relocate main studios where their present locations and other business considerations were determined in good faith reliance on the Commission’s current main studio rules would be wholly unfair and unjustifiable given the public interest benefits that continue to derive from the current rule. As such, OAB and its

member stations strongly encourage the Commission to retain its current main studio rule without modification.

E. Local Artist Airplay

In the *Notice*, the Commission seeks comment on whether it should require broadcasters to report on their airplay of music and other performances of local artists. Not only is such a requirement unnecessary, it is impracticable and raises substantial constitutional concerns.⁵¹

It is clear from the experience of OAB member stations that broadcasters provide ample opportunities for local artists. Many radio stations play local artists' songs; local artists are often featured in special shows, including talent shows and charity and non-profit events; and local artists are often used to provide music for local commercial productions. For example:

- The licensee of WCLT(AM) and WCLT-FM, Newark, Ohio, notes that “Over the years we have had several members of our community attempt to enter the music profession. We have, and continue to, air music that fits within our format and is of a professional nature.”
- For 18 years, WWCD(FM), Grove, City, Ohio, has aired a regular weeknight show called “Frontstage”, which highlights local artists. The station also plays local artists in its daily programming.
- WFCJ(FM), Miamisburg, Ohio, has a live monthly broadcast with an audience that features local artists. The station also has a weekly broadcast featuring CDs by local artists.

⁵¹ Although the *Notice* disavows any intent to require broadcasters to air the works of “local” artists, the Commission proposes to collect information about local artist airplay for use in license renewal proceedings. *Notice*, ¶ 112. The Commission’s proposal raises a serious concern that broadcasters will feel obligated to air local artists, contrary to the First Amendment prohibition on compelled speech. *Cf. Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 353-54 (D.C. Cir. 1998) (“It cannot seriously be argued that this screening device does not create a strong incentive to meet the numerical goals. No rational firm—particularly one holding a government-issued license—welcomes a government audit. . . . [W]e do not think it matters whether a government hiring program imposes hard quotas, soft quotas, or goals. Any one of these techniques induces an employer to hire with an eye toward meeting the numerical target.”).

- On a weekly basis, WXIX-TV, Newport, Kentucky, highlights performances from local area music artists in its morning newscasts.
- In keeping with the German heritage of its community of license, WNDH(FM), Napoleon, Ohio, airs a weekly one hour Polka program featuring many local bands and singers.
- For the past 4 years, WHIZ-TV and WHIZ-FM, Zanesville, Ohio, broadcast a talent show featuring all local singers.
- WDLW(AM), Lorain, Ohio, states that “We have found local artists to be important to our programming and we encourage them to come into the studios from time to time. We promote local shows as a public service and we are the local sponsors of the Colgate Country Showdown which is a talent search competition. One of our finalists two years ago went on to become runner up in this National Competition.”
- Ohio University, the licensee of WOUB-TV, WOUB(AM), and WOUB-FM, Athens, Ohio; WOUC-TV and WOUC-FM, Cambridge, Ohio; WOUH-FM, Chillicothe, Ohio; WOUL-FM, Ironton, Ohio; and WOUZ-FM, Zanesville, Ohio; states that “We regularly broadcast local concert specials (live and recorded), and frequently spotlight local artists using interviews and music.”

While stations often embrace and feature local artists, a requirement that stations report to the Commission information on airplay of local artists would amount to a *de facto* requirement to play music of local artists—a requirement that raises constitutional concerns and would be unworkable in any event. First and foremost, any such requirement ignores the nearly limitless variety in format among stations. In the radio context, for instance, it could be confusing to listeners if a news talk or sports talk station were required to interrupt its normal programming to feature the music of a local artist. Indeed, such a requirement could very well create copyright licensing challenges for spoken-word-format stations, which typically have limited music performance licenses. Even music-format stations might find a local-artist requirement operationally challenging, as not all formats lend themselves to providing airplay for local artists. It would not be a logical programming choice for a classical music station to play a mix-tape

from a local amateur hip-hop rapper, for instance. Those practical difficulties would only be compounded in very small communities, where the pool of local talent is naturally smaller, and the “fit” between a particular local artist and a particular local station therefore even more unlikely.

The practical problems with the proposed rule do not end there. Even at the outset, the proposed rule is unworkable because it is unsusceptible of clarifying definition. In the abstract, it is extremely difficult, if not impossible, to define who are “artists,” which ones are “local,” and what constitutes a “local performance.” Is anyone with a guitar an “artist”? Can widely recognized and successful artists with national airplay be considered “local” by virtue of some local connection? Does the “boy band” from the 1990s, 98 Degrees, qualify as a “local” Cincinnati “artist” because some of its members grew up Cincinnati? What about O.A.R., a chart-topping rock band formed by residents of Maryland while they were students at Ohio State? What about Peter Frampton, an English musician who also has connections to Cincinnati? Can “artists” be considered “local” in multiple places? Is the Commission only concerned about “unsuccessful” local artists? What level of success would justify an artist’s “entitlement” to local airplay? What if a community has no local artists? Who makes that determination? Is an artist who resides in the same state but not a station’s community of license considered “local”?

These questions demonstrate the sheer impracticability of the Commission’s proposal. Furthermore, radio and television are research-intensive businesses. No one is more knowledgeable than a local radio or television broadcaster as to the interests and sensitivities of their station’s listeners or viewers. As such, and given that stations often already include local artists in their broadcasts, OAB and its member stations oppose the Commission’s proposal to require stations to report on local artist airplay.

The Commission has been down this road before. The government cannot dictate (or define) what music should be played on the radio or what news and entertainment programming should be broadcast on television. In affirming the FCC's 1976 decision not to regulate radio station formats and instead to leave the choice of programming to the discretion of station licensees, the U.S. Supreme Court noted that Commission decisions "should not turn on the Commission's presuming to grasp, measure, and weigh the elusive and difficult factors involved in determining the acceptability of changes in entertainment format. . . . The Commission is convinced that its judgments in these respects would be subjective in large measure and would only approximately serve the public interest. It is also convinced that the market, although imperfect, would serve the public interest as well or better by responding quickly to changing preferences and by inviting experimentation with new types of programming."⁵²

Conclusion

We do not take exception to the Commission's *overall* oversight of our programming stewardship. But a regulatory scheme that places the Commission in a position to dictate whose music is to be aired and whose is not transcends the delicate balance required to be struck by the Commission in balancing its regulatory scheme with the constraints of the First Amendment.

Ohio broadcasters agree that localism is fundamental to a broadcaster's obligation to serve the public interest. For the foregoing reasons and as illustrated by the practices of its member stations, the Commission's proposed new localism regulatory requirements are simply unnecessary, overly burdensome, and are likely to have the contrary and unintended effect of restricting broadcasters' ability to provide programming that serves the needs and interests of their communities.

⁵² See *FCC v. WNCN Listeners Guild*, 450 U.S. 582, 600-01 (1981).

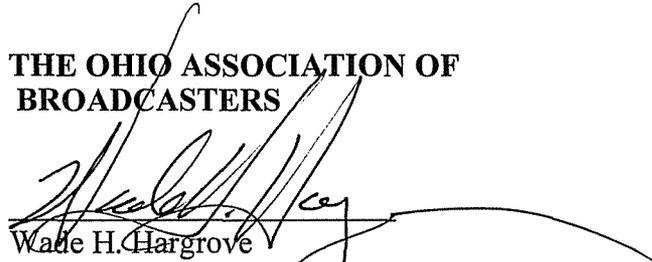
The Commission's tentative conclusion that burdensome regulation is necessary to correct a lack of localism is simply unsupported by the record evidence and the experience of OAB members. The record evidence in fact clearly demonstrates that broadcasters are engaged with their local communities, understand the issues facing their local communities, and provide programming responsive to community needs. The discretion currently afforded to broadcasters permits broadcasters to best determine how to address and respond to these local issues and needs. And, the Commission, through its issues/programs list requirements, petition to deny procedures, and other current regulatory mechanisms, already has sufficient tools to ensure that stations serve the interests of their communities. The evidence of record does not support the intrusive, burdensome regulatory scheme the Commission has proposed. The Commission cannot, by law, base its regulation on a "hunch," for the courts have long held that such "intuitional forms of decision-making . . . fall somewhere on the distant side of arbitrary."⁵³

For the foregoing reasons, OAB respectfully requests that the Commission not impose the proposed new rules discussed herein.

⁵³ *Central Florida Enterprises, Inc.*, 598 F.2d at 50.

Respectfully submitted,

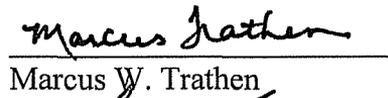
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BROADCASTERS**



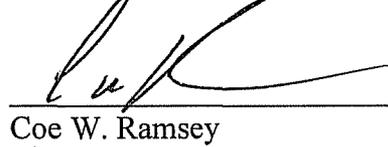
Wade H. Hargrove



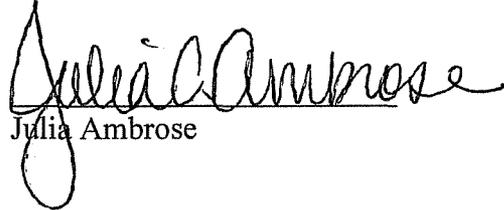
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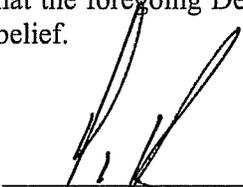
Declaration of Coe W. Ramsey

I, Coe W. Ramsey, 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.
3. The quotations and summaries from OAB members referenced throughout OAB's comments are drawn directly from surveys completed by OAB 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 OAB.

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



Coe W. Ramsey