



“community advisory boards” for each and every station. Both proposals are infringements on the editorial freedoms of broadcast licensees, a matter which will be addressed later in these comments.

The first part of these comments, however, will be devoted to addressing the FCC’s apparent ignorance about the invaluable service that WFMZ-TV-DT and other broadcast stations are delivering, without charge, to millions of viewers (and listeners).

**A. How WFMZ-TV-DT Addresses Community Issues and Problems**

1. News Programming.

WFMZ-TV’s program schedule – and also the schedule of simulcast WFMZ-DT – includes 34 and a half hours of live, local newscasts each week (including the Philadelphia market’s first (and until recently, only) local, daily half-hour Spanish-language newscast, beginning in 2002).<sup>1</sup> These newscasts include coverage of local news in the Allentown-Bethlehem-Easton metropolitan area (the third-largest metropolitan area in Pennsylvania), news from other communities in the Lehigh Valley (two half-hour nightly newscasts originated in Reading, Pennsylvania, focus on news of that community), Bucks, Montgomery, Chester and Delaware counties (part of the Philadelphia suburbs), the city of Philadelphia, and suburban New Jersey communities. The Spanish-language newscasts are directed to the entire Philadelphia DMA.

The WFMZ-TV-DT newscasts originate from three fully-operational studios, in Allentown, Reading and Philadelphia. The station also has a studio in Easton,

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<sup>1</sup> Beginning April 27, newscasts are now broadcast on WFMZ-DT in the high-definition format.

Pennsylvania. Virtually all of the content of WFMZ-TV-DT's news programming is available on the station's web site, [www.wfmz.com](http://www.wfmz.com), much of it continuously updated throughout the day.

During the recent Pennsylvania presidential primary, WFMZ-TV-DT broadcast literally hundreds of news stories concerning the campaign, and offered both Barack Obama and Hillary Clinton an opportunity to appear, without charge, on "Business Matters," a half-hour prime-time public affairs program. (Mrs. Clinton accepted, Mr. Obama did not.) On Election Day, the station broadcast three hours of election returns (as it has for every primary and general election for over last fifteen years), including returns for eleven different counties.<sup>2</sup> Generally, WFMZ-TV-DT offers free time during major elections for candidate debates for Federal candidates and candidates in significant state and local race. For example, recent election debates included mayoral candidates in Reading and Easton.

## 2. AccuWeather Channel

In 2001, WFMZ-DT became the first digital television broadcast station in the United States to offer a 24-hour-a day, seven-days-a week weather news and forecasting service (WFMZ-DT2), utilizing the resources of AccuWeather, Inc., based in State College, Pennsylvania, supplemented by WFMZ-TV's local meteorologists. The AccuWeather Channel features permanent cameras at six "SkyCam" locations across the region (providing up-to-the minute pictures of weather and key arterials from Reading to Easton), school closing announcements, and local, regional and national

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<sup>2</sup> Apart from the station's newscasts, live coverage of candidate appearances across the state was provided on the station web site.

news headlines. In addition to the over-the-air broadcast, the AccuWeather Channel is carried by the principal cable television systems in the region, and is also streamed online at [www.wfmz.com](http://www.wfmz.com).

### 3. Local public affairs programs

WFMZ-TV-DT currently broadcasts two local, half-hour, *prime time* public affairs programs each week. "Talk With Your Doctor," airing Monday evenings at 6:30 p.m., is a live call-in show produced by WFMZ-TV-DT and featuring expert physician hosts from St. Luke's Hospital. "Talk With Your Doctor" covers current issues in health care, promotes overall health and wellness, and offers insights into the latest treatments and technologies. "Business Matters," airing Monday evenings at 7:30 p.m., hosted by Greater Lehigh Valley Chamber of Commerce president Tony Iannelli, is the region's only local business show on commercial television. "Business Matters" gets inside the minds of business and community leaders to talk about their successes and challenges, as well as regional public policy issues and world trends. Topics range from legislation affecting the business community/community at large and economic development to corporate and technology news, but it is not solely about business. Many of the programs address important civic issues. Program guests (in addition to Hillary Clinton) have included former Speaker of the U.S. House of Representatives Newt Gingrich, U.S. Senators Arlen Specter and Bob Casey, and Pennsylvania Governor Ed Rendell. Through the station website, "Business Matters" viewers can submit questions and comments, obtain information about future programs, and access an archive of previously-aired programs.

Until recently, WFMZ-TV-DT also broadcast a third half-hour, an award-winning, locally-produced, weekly, prime-time public affairs program, “Law Journal,” on Monday evenings at 8:00 p.m. “Law Journal” aired on WFMZ-TV for *eighteen* years. It brought prominent attorneys (including attorneys from throughout the Philadelphia metropolitan area), judges, law school professors, legal experts and elected officials into an adversarial yet collegial atmosphere, at diverse on-location settings such as The National Constitution Center, The Union League and Temple University School of Law. Features included real-life legal arguments and editorials in “The High Court,” “You Decide” debates and “Perspectives,” some of which were produced in conjunction with *The Legal Intelligencer*, *American Lawyer* Media and the Philadelphia Bar Association.

The fate of “Law Journal” illustrates the consequences of FCC programming mandates. Because the AccuWeather Channel format does not accommodate children’s programming, the three hours of “core” educational and instructional programs required for each television channel every week must be broadcast on WFMZ-TV (because the station’s other digital channels do not have comparable cable penetration in the Philadelphia market). To meet the FCC’s children’s programming mandate, WFMZ-TV-DT gave up three hours of revenue-generating programs and was forced to move programs into different time slots, including the time period occupied by “Law Journal.” Already burdened by the cost of supplying closed-captioning, “Law Journal” became no longer sustainable and was discontinued in favor of programming that could generate revenue to financially support the additional non-remunerative children’s programs.

WFMZ-TV-DT is an active supporter of a major theatre/performing arts scholarship program for area secondary school students called “The Freddy Awards.” The program – which has won a Mid-Atlantic Emmy award, a number of Pennsylvania Association of Broadcasters awards, and has been nominated on numerous other occasions – encourages students to excel and seek careers in the performing arts through an annual competition including more than 25 area high schools. Two college scholarships are awarded each year, and the competition culminates with a three-hour live telecast on WFMZ-TV-DT on which awards are announced.

In sum, WFMZ-TV-DT provides a local programming service, and coverage of community issues and problems, that surpasses any reasonable expectation. For this service and coverage, it has been praised by numerous local leaders, including mayors, members of Congress and business leaders, and the general public.

#### **B. Unconstitutional Abridgment of Licensee First Amendment Rights**

Two proposals in the *LR&O* stand out for their interference with licensee editorial judgment and free speech, namely (1) adoption of “processing guidelines” for renewal applications which would require special justification and regulatory scrutiny for any deviation and (2) mandated appointment of “permanent” community advisory boards for every radio and television broadcast station.

Ironically, the Friday before the due date for these comments, the FCC released a revised version of *The Public and Broadcasting*, a manual each station is required to

keep in its public inspection file, which summarizes the limits on the FCC's authority and its policies concerning the content of programming selected by licensees for broadcast:

The First Amendment, as well as Section 326 of the Communications Act, *prohibits the Commission from censoring broadcast material and from interfering with freedom of expression in broadcasting.* The Constitution's protection of free speech includes that of programming that may be objectionable to many viewer or listeners. *Thus, the FCC cannot prevent the broadcast of any particular point of view.* In this regard, the Commission has observed that "the public interest is best served by permitting free expression of views." . . . Because the Commission cannot dictate to licensees what programming they may air, *each individual radio and TV station licensee generally has discretion to select what its station broadcasts and to otherwise determine how it can best serve its community of license.* Licensees are responsible for selecting their entertainment programming, as well as programs concerning local issues, news, public affairs, religion, sports events, and other subjects. . . . They also decide how their programs will be structured and whether to edit or reschedule material for broadcasting. In light of the First Amendment and Section 326 of the Communications Act, *we do not substitute our judgment for that of the licensee,* nor do we advise stations on artistic standards, format, grammar, or the quality of their programming.

*The Public and Broadcasting* (2008 ed.)(emphasis added).

The emphasized portions of the manual – the FCC's own declarations/admissions concerning its policies and the limitations on the powers granted by Congress – show that the proposed adoption of "processing guidelines" exceeds the FCC's authority and would violate long-established policies and infringe on licensee freedom of expression. Just as the FCC cannot interfere with freedom of expression in broadcasting and cannot prevent the expression of a point view, it follows that the FCC may not *compel* the expression of a point of view, or the broadcast of a particular program. Each licensee, therefore, has the discretion, and the right, to decide what programs a station will broadcast and how it will serve the interests of the community to which it is licensed. It is *not* the FCC's role to second-guess licensee

judgments. For there to be any exception, whether denominated as “processing guidelines” or otherwise, inevitably introduces *the FCC’s judgment* into programming decisions and crosses the barriers erected by the First Amendment and the Communications Act.

The FCC should not delude itself, or the public, into believing that “guidelines” are not “quotas” for programs of a particular type. “Guidelines” placing stations at the mercy of the FCC’s discretion and enforcement power are no more voluntary than the response of livestock to a nipping herder dog is voluntary. Everyone, whether licensee or sheep, ends up inside a fence.

The proposal in the *LR&O* is, if anything, more objectionable, and impractical, than the “processing guidelines” contained in renewal applications prior to 1985. Those guidelines quantified objectives for three categories of programming – news, public affairs and “other informational programming” – with different guidelines for network and independent stations. The *LR&O* proposes (§ 124) that “guidelines” be adopted for additional types of programs (e.g., “political”, or “locally-oriented”, and possibly others) and even the time of day. These additional “guidelines,” whether by category, time of day, or both, would produce a Balkanized programming schedule and significantly interfere with licensee freedom of expression.

Broadcast licensees, just like other media, have the right under the First Amendment to reach their own editorial judgments. For that reason, the proposal to mandate the appointment of community advisory boards for every broadcast station would impose a serious and unconstitutional burden on licensee First Amendment

rights. An institutionalized “advisory board” would be a forum for special interests, not community interests; invite second-guessing of licensee editorial decisions, and create a platform from which unsatisfied board members could vent their disagreements with station policies. No one would seriously suggest that the *Washington Post* or *Philadelphia Inquirer* should be required to appoint an external community board to advise regarding editorial policy or news coverage as a condition of continuing to publish, let alone that such a requirement would pass constitutional muster. Neither should a television station.

Moreover, such a board would be far less effective than WFMZ-TV-DT’s present efforts to be in dialogue with the community. Through its web site, WFMZ-TV-DT receives e-mails from viewers, on a daily basis, with comments, questions or suggestions regarding the station’s programming, including its news and public affairs programming. Through its News Department, and management involvement in community organizations, WFMZ-TV-DT reaches far more community leaders than could a “community advisory board” – unless that “board” was convened in a high school auditorium. The station president and general manager serves on the Board of Directors of the Greater Lehigh Valley Chamber of Commerce; other managers serve on the boards of a number of local charities and civic organizations (and through those organizations communicate with other community leaders).<sup>3</sup> Because these contacts are ongoing, and involve management and employees at every level in the station, they

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<sup>3</sup> WFMZ-TV-DT participates in and broadcasts PSAs for televised fundraisers for a number of local charities and civic clubs. Recently, a WFMZ-produced three-hour auction raised \$50,000 for the Rotary Club for facial and cosmetic surgery for children in third-world countries.

are more meaningful and more accurately reflect community issues and problems than a handful of periodic meetings.<sup>4</sup>

The FCC says it seeks greater diversity in programming; WFMZ-TV-DT provides exactly the sort of diverse programming the FCC claims to be seeking. Additional programming mandates such as those proposed in the *LR&O*, like closed-captioning, like additional children's programming, will continue to cannibalize program schedules and add layers of cost that directly affect the viability of other programming options. Which of WFMZ-TV-DT's news or public affairs programs does the FCC think should be displaced so that it can meet the programming demands of some new interest group?

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<sup>4</sup> WFMZ-TV-DT makes special efforts to project its presence into the community and make the station accessible to residents of the surrounding area. For example, after nine years of visiting hundreds of schools in the station's service area, Chief Meteorologist Ed Hanna now hosts special programs for school groups, on the average of twice per week, at the Da Vinci Science Center at Cedar Crest College in Allentown. At the "Weather Central" station in the "What On Earth?" exhibit area, young people get a chance to use some of the same equipment that professional weather forecasters use and create their own weather forecasts in a virtual television studio. The station's website, [www.wfmz.com](http://www.wfmz.com), includes a link to the Da Vinci Center to provide information about making reservations for the program. Other members of the WFMZ-TV-DT staff make appearances, without appearance fees, at events throughout eastern Pennsylvania and western New Jersey, as hosts or emcees, speaking to classes or appearing on panels. A mobile Kids News Set, including a replica of the station's news set, teleprompter, camera and lighting, regularly visits major community events. On the mobile set, young people of all ages learn how a newscast is produced, and can sit at the news set, read a prepared script from the teleprompter, and be recorded on a VHS tape to take home. During approximately eight months of the year, WFMZ-DT-TV employees conduct tours of the stations for schools, clubs and community groups (averaging about two tours a week). The tours include all aspects of the broadcast facility and tour group members are encouraged to pose questions to members of the News Department and other station employees.

The Spanish-language news program? The local awards program recognizing student achievement in theater and the performing arts?

Many groups claim their needs are not being met, when in reality they are – possibly by another station, in a different form. If all stations end up being the same because of “processing guidelines,” then who will be served? Real diversity will be sacrificed in favor of a placebo.

For the foregoing reasons, the FCC should dispense with any further consideration of “processing guidelines,” any additional program obligations on broadcast licensees, appointment of “advisory boards” or any other mandatory regime which second-guesses reasonable, good-faith judgments by licensees as to how to identify and respond to community needs and interests.

Respectfully submitted,

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