

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

In the Matter of
Broadcast Localism

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MB Docket No. 04-233

REVISION TO FILED JOINT COMMENTS OF TELEVISION BROADCASTERS

The undersigned counsel submit this revision to add Draper Communications, Inc. and its television station, WBOC-TV, Salisbury, MD, to the signatory block to the Joint Comments filed yesterday in the above-captioned proceeding. A revised version of the Joint Comments is attached.

Please contact the undersigned with any questions.

Respectfully submitted,

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April 29, 2008

Counsel for Television Broadcasters

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JOINT COMMENTS OF TELEVISION BROADCASTERS

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JOINT COMMENTS OF TELEVISION BROADCASTERS

The undersigned Joint Broadcasters own and operate 73 television stations in communities as disparate as Detroit, Michigan, and Hannibal, Missouri — Miami, Florida, and Duluth, Minnesota. They serve markets that rank 10th in the United States and 199th. They are affiliated with all four major networks and with the CW and MyNetwork; some are independent stations. One attribute they have in common is a recognition of their responsibilities to serve their local communities. They live up to these responsibilities in a variety of ways, together delivering a service to the American public that is rich in responsiveness, in diversity and in local significance.

I. INTRODUCTION AND SUMMARY: BASIC PRINCIPLES.

The starting point of these Joint Comments is, therefore, to acknowledge that the Commission and these broadcasters share common ground — a belief that broadcasters must serve local needs. In the pages that follow, these Joint Comments will take issue with some of the proposals contained in the *Notice* that the Commission issued in the above-captioned

proceeding on localism (hereafter, “the *Localism Notice*”).¹ These concerns and disagreements should not obscure the fact that the Joint Broadcasters and the Commission seek the same ultimate goals.

Some of the Commission’s well-meaning proposals would not only fail to enhance localism, but would harm it. In place of diverse and creative responses to community needs, they would mandate sameness and rigidity. In place of practical and nuanced approaches to station-public interactions, they would create bureaucracy and uniformity.

- The proposal in the *Localism Notice* to require all 1700 television stations to establish community advisory boards is blind to the great variety of ways in which stations ascertain community issues and would elevate this single methodology above all others into a single required ascertainment procedure. The proposal was made without any apparent effort on the Commission’s part to understand whether community advisory boards were consistently effective in the past and are suitable for mandatory application to all stations in the future. If the Commission wishes to monitor more closely how broadcast stations keep informed of community issues, there are more effective, less rigidified ways of doing so.
- In its discussion of renewal processing guidelines, the *Localism Notice* seems bent on a similarly procrustean approach, apparently proposing the same quantitative standards whether a station is in a top-10 market or a small, rural market; whether it is affiliated or unaffiliated with a major network; whether it serves minority

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

populations or foreign language audiences; and whether it is succeeding economically or barely holding on.

- The *Notice*'s discussion of a local programming renewal processing guideline is more nuanced but also troubling. The *Notice* refers to “community-responsive programming,” “locally responsive programming,” and “localism programming performance” — concepts which seem to reflect the Commission’s long-standing recognition that localism interests can be, and often are, well-served by programming that does not originate within the market. Coverage of a governor’s press conference, even if the state capitol is located in another market, clearly serves localism goals, although the program may not be locally originated. National programming on immigration, the economy or health care also clearly addresses localism interests. But then the *Notice* (para. 124) seems to ignore this point in asking whether the proposed renewal processing guidelines should exclude programming that is not locally produced, however effectively that programming responds to community issues.
- The *Notice* also fails fully to appreciate the localism contributions provided by other broadcast material — public service announcements, whether national or local; service to minority groups; foreign language programming; access to the programming of fledgling networks; and children’s and religious programming. Finally, adopting requirements for “particular types of programming” as part of the renewal processing guideline, such as “local news, political, public affairs and entertainment,” would be inconsistent with the long recognized principle that local

broadcasters should exercise their discretion to decide which programming serves the needs and interests of their viewers.

- Another proposal in the *Notice* that would impose heavy costs without compensating localism benefits — indeed, with likely localism penalties — is the new studio rule suggestion. For 21 years numerous television broadcasters have strengthened their ability to serve their communities of license by taking advantage of the flexibility afforded by the existing rule to locate their main studios in locations outside the city limits of their licensed communities. By locating main studios in areas with higher populations, greater employment resources, greater proximity to advertisers and more access to the sources of regional news and information, stations have grown stronger and able to provide more vibrant and viable service to their smaller communities of license, in the form of satellite studios, news bureaus and coverage of weather, sports, news and other information pertaining to that community. Locating a studio outside the community of license is often justified by other factors and does not result in reduced service to the community of license. Eliminating this flexibility, as proposed in the *Localism Notice*, would be disruptive in the extreme, would cost hundreds of millions of dollars and would disserve the goals of localism. To the extent there have been problems in this area (and the record is bereft of any such evidence), more targeted remedies are surely available.
- The Commission's proposed termination of licensees' ability to operate unattended broadcasting facilities would cause stations to incur significant and unnecessary costs associated with after-hours staffing. In many cases, it would cause stations to

cut back on hours of operation or even local programming — a result directly at odds with the goals of this proceeding.

The *Localism Notice*'s discussion of the “concerns” associated with licensees’ service to their local communities relies on scant support. In the case of its proposed revisions to the current main studio rule, for example, it rests on a single statement at a single localism hearing (one out of six) that presumes a main studio needs to be located “within the local communities so that the local studios are, quote, part of the neighborhood.” See *Localism Notice* ¶ 41 (quoting testimony of Blanca Zarazua, Chair, Hispanic Chamber of Commerce of Monterey, California; Monterey, CA Localism Hearing Tr. 48-49). This solitary statement was made by an interest group representative who offered no specific examples of ways in which the main studio rule was preventing the station from serving her community or from being “part of the neighborhood.”² By contrast, the *Localism Notice* makes no mention of comments from the mayor of that community noting the significant benefits of main studio co-location to that same community derived from the Monterey-licensed television station’s co-location of its main studio with another station in nearby Salinas. See Comments of Mayor Daniel Albert, Monterey, CA Localism Hearing Tr. 34-35 (Ackerley Group’s co-location of Monterey-licensed KION-TV’s main studio with an LMA station in Salinas enabled it to rent its facilities to Monterey’s community media nonprofit organization at rates well below market value; “Ackerley enabled an amazing number of community voices by making its facilities available to the community.”).³

² Moreover, these concerns assume a false premise: as the Commission has recognized since adopting its Table of Assignments, broadcasters do serve “neighborhoods,” but they also serve towns, cities, metropolitan areas, and DMAs. See *infra* note 20.

³ Mayor Albert’s comments were generally noted elsewhere in the *Localism Notice*, see *Localism Notice* ¶ 13 note 24, but the specific public interest benefits he noted that are directly attributable to the current main studio rule were ignored.

Moreover, attendance at the FCC's field hearings was not representative of the public at large. The views of the public at large are knowable by their viewing habits and by opinion polls. These demonstrate that television, among all the media, is still the source of news that the public most trusts and most relies on,⁴ and *local* television news even outranks national television news in both the public's trust and overall viewing.⁵ Isolated comments by a self-selected group of field hearing participants should not outweigh the public's judgments.

II. THE COMMISSION SHOULD NOT ADOPT A RIGID COMMUNITY ADVISORY BOARD REQUIREMENT.

When the Commission ended its formal ascertainment requirements 25 years ago, its decision "was premised upon its conclusion that the benefits of such a methodology are far outweighed by the costs." *Office of Comm'n of UCC v. FCC*, 707 F.2d 1413, 1436 (D.C. Cir. 1983). In eliminating the formalities of the rigid requirements, it emphasized the "continuing obligation of all licensees to contribute issue-responsive programming and their responsibility to ensure that the strongly felt needs of all significant segments of their communities are met by market stations collectively."⁶ The Commission went on to accord broadcasters the flexibility to

⁴ See Report & Order, *In the Matter of 2006 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules* et al., MB Docket No. 06-121 et al. (rel. Feb. 4, 2008) ¶ 8 (most Americans rely heavily on their local television stations for local news) ("2006 Quadrennial Review Ownership Order").

⁵ See Lou Prato, "In Local TV News We Trust, But Why?" *American Journalism Review* (Nov. 1998); State of the News Media 2007: Local TV, available at www.stateofthenewsmedia.org/2007 (noting local TV news has "long [been] America's most popular information medium").

⁶ Report & Order, *Revision of Programming and Commercialization Policies, Ascertainment Requirements*, et al., 98 FCC 2d 1078 (1984) ¶ 23 ("TV Programming and Ascertainment Deregulation Order").

ascertain those needs “by whatever means they consider appropriate.”⁷ It also continued to require broadcasters to prepare and file quarterly issues/programs lists that “contained, in narrative form, a brief description” of local issues to which the licensee’s programming gave particular attention in the past three months, along “with a statement of how each issue was treated.”⁸

Licensees have utilized this flexibility to identify and assess community issues in a variety of ways that have supported strong, long-lasting bonds in their communities. These techniques have relied on in-person involvement, broadcast and telephone channels of feedback, and online outreach resulting in real-time, dynamic dialogue with viewers on issues of local concern. These strategies produce programming responsive to local issues in an efficient, effective, and tailored manner — something that the top-down, one-size-fits-all mechanism of a community advisory board that the Commission here proposes cannot do.

A. Licensees Already Use Various Methods For Effectively Staying In Touch With Their Communities.

Ongoing dialogue with community members. Licensees have a long history of engaging their service areas in dialogue regarding issues of concern. For example:

- WFIE-TV Evansville, IN, WALB(TV) Albany, GA, WSFA(TV) Montgomery, AL, and WMC-TV Memphis, TN all have formal editorial boards made up of community leaders who meet regularly with station management and news editors

⁷ See Report & Order, *Deregulation of Radio*, 84 FCC 2d 968, 972 (1981); see also TV Programming and Ascertainment Deregulation Order ¶ 47 (television licensees “may determine the issues in their community that warrant consideration by whatever means they consider appropriate”).

⁸ TV Programming and Ascertainment Deregulation Order ¶ 71.

to discuss local issues. These meetings often lead to tangible programming decisions.

- KSAT-TV, San Antonio, TX hosted regular meetings with San Antonio's deaf and hard of hearing community and was first in its market to ensure its newscasts' accessibility to viewers with special needs.
- KPRC-TV, Houston, TX has a "Community Involvement Committee," a group of station employees that meets twice monthly to discuss issues raised by community members and viewers via letters and emails to the station and regularly welcomes community guests to come to the station to discuss their organizations and issues, as well as station coverage of those issues, with staff. It also holds a "Community Reception" each year, which invites elected officials, leaders of nonprofit organizations, religious leaders, community activists, educators, and the like to the station to discuss station coverage of local issues and to solicit feedback.

Stations use a range of other mechanisms to engage station personnel with their communities and community concerns:

- WDIV-TV, Detroit, MI, KPRC-TV, Houston, TX, WPLG(TV), Miami-Ft. Lauderdale, FL, WKMG-TV, Orlando, FL, KSAT-TV, San Antonio, TX, WMC-TV Memphis, TN, WSFA(TV) Montgomery, AL, WTOG-TV Savannah, GA, WAFF(TV) Huntsville, AL, WIS(TV) Columbia, SC, WWBT(TV) Richmond, VA, WTNZ(TV) Knoxville, TN, WUPV(TV) Ashland, VA, and WXIX-TV Newport, KY all encourage their employees to serve in leadership positions in community-based service organizations such as the local United Way, Better

Business Bureau, Crime Stoppers, Food Bank, and Big Brothers/Big Sisters, with professional organizations such as the Chamber of Commerce and Rotary Club, and on cultural event boards such as arts councils and community festivals.

- WIS(TV) Columbia, SC personnel also participate in organizations like Homeworks of South Carolina, an organization that repairs houses for the elderly and handicapped, and the Columbia Luncheon Club, the first integrated luncheon club in Columbia, whose mission is to foster better relationships among people of different backgrounds.
- WTNZ(TV) Knoxville, TN's employees are involved with many local church groups that work with inner-city schools, health clinics, and child advocacy services, all of which assist the station in identifying community issues and needs.
- WSFA(TV) Montgomery, AL's Vice President and General Manager just completed a Leadership Montgomery year-long course, which was entirely focused on community-based issues; he and his colleagues in the course, who represented a cross-section of Montgomery's community leaders, met with hundreds of local groups.
- General managers and on-air personalities from WTOG-TV Savannah, GA, WALB(TV) Albany, GA, WIS(TV) Columbia, SC, KAIT(TV) Jonesboro, AR, KTRE(TV) Lufkin, TX, WSFA(TV) Montgomery, AL, and WTNZ(TV) Knoxville, TN frequently appear at speaking engagements for community groups, which provide another opportunity for station representatives to interact with their viewers.

Station-viewer interaction. Broadcasters also open the airwaves for dialogue on issues of local concern on a regular basis.

- WAVE-TV Louisville, KY airs two editorials per week, which always conclude with contact information and a request for viewer responses. The station also hosts a one-hour live call-in show, *WAVE 3 Listens*, which airs from 10 to 11 AM every weekday and is geared toward community issues and interests.
- WXIX-TV Newport, KY also produces two weekly commentaries and encourages viewers to respond and/or submit issues of local concern to the Newport, KY-Cincinnati, OH community for future coverage.
- KLTV(TV) Tyler, TX, WAFF(TV) Huntsville, AL, WOIO(TV) Shaker Heights, OH, WUAB(TV) Lorain, OH, KFVS-TV Cape Girardeau, MO, and KPLC(TV) Lake Charles, LA also air commentaries at least biweekly, and provide contact information for viewer responses.
- WDIV-TV, Detroit, MI, KPRC-TV, Houston, TX, WPLG(TV), Miami-Ft. Lauderdale, FL, WKMG-TV, Orlando, FL, and KSAT-TV, San Antonio, TX all air editorials at least twice weekly pursuant to Post-Newsweek policy.
- WMC-TV Memphis, TN reads viewer response letters to its editorials during its evening newscasts on a weekly basis, WOIO(TV) Shaker Heights, OH and WUAB(TV) Lorain, OH invite viewers to tape their responses for the station to air, and WSFA(TV) Montgomery, AL asks viewers to provide guest editorials on local issues.

Stations also use locally-produced public affairs programming to stay in touch with their communities and respond to community needs.

- WDIV-TV, Detroit, MI, KPRC-TV, Houston, TX, WPLG(TV), Miami-Ft. Lauderdale, FL, WKMG-TV, Orlando, FL, KSAT-TV, San Antonio, TX, WXIX-TV Newport, KY, WUAB(TV) Lorain, OH, WWBT(TV), and WLOX(TV) Biloxi, MS all air community affairs programming on local issues and interests at least weekly; most of these shows have a call-in component, which allows viewers to express their views and opinions over the air.
- WOIO(TV) Shaker Heights, OH opens its phone lines to viewer calls between its evening newscast hours of 4 and 6 PM biennially to ask viewers the stories and issues it should be covering.
- WWBT(TV) Richmond, VA volunteers staff the station phones from 11:00 AM to 1:00 PM every weekday and from 5-6:30 PM twice weekly to measure real-time viewer interest in consumer stories, neighborhood crime watches, and other community initiatives.
- WSFA(TV) Montgomery, AL's "On Tour" program visits various communities in its viewing area throughout the year, engaging in dialogues on issues important to those communities.

Innovative uses of online technology. In addition to the more traditional forms of station-viewer communication, licensees are also taking advantage of technology to engage in a dynamic, 24/7 interaction with the public.

- KLTV(TV) Tyler, TX and KTRE(TV) Lufkin, TX weave online polling questions with their local newscasts to solicit and gauge public sentiment on the stories they cover.

- WDIV-TV, Detroit, MI, KPRC-TV, Houston, TX, WPLG(TV), Miami-Ft. Lauderdale, FL, WKMG-TV, Orlando, FL, KSAT-TV, San Antonio, TX, WAFF(TV) Huntsville, AL, WSFA(TV) Montgomery, AL, WUAB(TV) Lorain, OH, WIS(TV) Columbia, SC, KPLC(TV) Lake Charles, LA, KHNL/KFVE Honolulu, HI and WECT(TV) Wilmington, NC communicate online with their viewers and incorporate polling results and other reactions on community matters into their daily newscasts.
- WMC-TV Memphis, TN’s website encourages viewer interaction, and its “Taking Back Our Neighborhoods” project studies ways to combat crime by soliciting emails and calls to a dedicated toll-free hotline. Many station websites also host viewer information and Q and As regarding the digital transition.

Community outreach. Finally, stations continue their longstanding practice of participating in community outreach and charity events.

- WIS(TV) Columbia, SC holds “phone bank” events, where station employees and other experts take calls from viewers and answer questions on a variety of topics, from tax filing to DTV issues to employment questions.
- WSFA(TV) Montgomery, AL airs numerous public service announcements each year for community groups, invites community members and groups to utilize its facilities for meetings, and hosts a yearly live auction in its studios for the Alabama Shakespeare Festival.
- WDIV-TV, Detroit, MI, KPRC-TV, Houston, TX, WPLG(TV), Miami-Ft. Lauderdale, FL, WKMG-TV, Orlando, FL, KSAT-TV, San Antonio, TX all

participate in charity events in their communities through direct sponsorship, fundraising, and pro bono donations.

B. Community Advisory Boards Are Not Necessarily The Optimal Ascertainment Methodology For All Or Even Most Stations.

The formal and highly specific provisions of the ascertainment requirements that held sway in the 1970s and 80s consisted of two parts: (1) interviews with community leaders (divided into 19 categories and governed by an elaborate set of detailed procedures) and (2) general public surveys in accordance with a similarly complex and rigid set of rules.

A relatively small number of stations established community advisory boards, often as part of a settlement with those who had filed petitions to deny in order to obtain grant of a transfer or assignment application or a contested renewal application. Some still exist, and in a few circumstances, they were and may still be of benefit. For the most part, however, their use has faded out, apparently because they were not particularly helpful. To take three examples, KHNL/KFVE Honolulu, HI's management met monthly with a community advisory board until recently, and years ago WJXT(TV), Jacksonville, FL had a "4 On The Road" team which would attempt to meet with community members in Town Hall meetings to that local issues. Community members' participation and input in both cases was sporadic at best, and the stations found that other, more direct methods of community interaction were more efficient and provided more substantive information.⁹ WPLG(TV), Miami-Ft. Lauderdale, FL has found that having regular forums with community members representing a single group or focused on a single issue, such as health care, education, congestion or neighborhood safety, are far more

⁹ A few examples of the other methods stations use to engage their communities are discussed above. It may also be true that various ascertainment methodologies are successful for awhile but then grow stale. This is another reason why a flexible approach to ascertainment most effectively serves the public interest.

effective than advisory boards with people representing various segments of the community, since the former promote more focused discussions and result in more and better-developed story and programming ideas.

There is no indication that community boards of the kind the Commission is currently contemplating were especially successful even in the limited circumstances for which they were employed, just as there is no record that the means by which stations currently engage in dialogue with their communities are deficient or that stations' current quarterly issues/programs lists inadequately reflect either community input or station responsiveness to local issues.¹⁰

This is not to say that community advisory boards are an inherently flawed concept. There may well be instances in which they are suitable to encourage station dialogue with the community, particularly for a limited duration or a limited purpose. But to convert a methodology that may be useful in certain limited circumstances into the single required ascertainment methodology to be imposed on all 1700 television stations for the indefinite future would gravely disserve the public interest. A more flexible and effective (and less bureaucratic) approach might be to ask television broadcasters to summarize in their issues/programs lists the methodologies they use to ascertain community issues.

* * *

The Commission recognized more than 20 years ago that “broadcasters do not operate in a vacuum.” The top-down procedures it imposed then to ensure licensees have “knowledge of

¹⁰As the Commission has noted:

“Ascertainment procedures were never intended to be an end in and of themselves. Rather, these procedures were intended as a means of ensuring that licensees actively discovered the problems, needs and issues facing their communities, thereby positively influencing the programming performance of stations by affecting the process of program decision-making.”

TV Programming and Ascertainment Deregulation Order ¶ 48.

the[ir] communit[ies]” were “clearly not the exclusive means of acquiring this knowledge,” and they were “certainly not the most efficient.” Then, as now, licensees, like other citizens, were constantly exposed to issues of importance to their communities through “newspapers, newsletters, town hall meetings,” and other events. This is far more true today in the age of the Internet than it was then. By attempting to impose a single specific ascertainment procedure — community advisory boards — on its licensees, the Commission would be imposing a solution of its own design to a problem of its own invention.

III. IN CONSIDERING PROGRAM STANDARDS AS A SAFE HARBOR FOR LICENSE RENEWALS, THE COMMISSION SHOULD ACCORD LICENSEES CONSIDERABLE DISCRETION TO DEAL WITH A VARIETY OF CIRCUMSTANCES.

The *Localism Notice* tentatively concludes that the Commission should “reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their localism programming performance.”¹¹ The *Notice* suggests that these specific guidelines would be expressed as “hours of programming per week or, as in the past, percentages of overall programming.”¹² A rigid approach that imposes the same set of standards on all licensees would undermine the goals of localism and public service.

A. Licensees Operate In A Variety Of Different Circumstances, And The Commission’s Renewal Process Should Appreciate The Value Of Diverse Licensee Strategies.

Television licensees operate in a variety of different circumstances. A substantial number operate without a major network affiliation.¹³ A very large number operate in smaller

¹¹ *Localism Notice* ¶ 124.

¹² *Id.*

¹³ The Commission has consistently noted the public interest benefits of unaffiliated television stations in local markets. *See, e.g., 2006 Quadrennial Ownership Review Order* ¶ 99 (finding it (continued...))

markets — sparsely populated Southeastern towns or rural service areas covering broad swaths of Western countryside. Struggling smaller stations in large markets may face different situations and devise different strategies to serve the public and maintain viability. Others target their service to Spanish-speaking populations or to other demographic groups. Regrettably, an increasing number also operate at significant financial loss, and cannot afford to air locally produced newscasts or can afford to do so on only a limited basis. But these stations may, nevertheless, importantly serve the needs of their local communities, by, for example, airing entertainment, religious or other programming popular with minority viewers.¹⁴

Adopting a license renewal safe harbor standard that relies on a single set of program percentages or hours of a certain type of programming would damage economically weaker stations, stifle diversity, severely impinge on licensee discretion and undercut the goal of localism by incentivizing stations to make programming choices consistent with programming percentages rather than community needs. Depriving licensees of the flexibility to address their communities' issues through a range of programming choices would run counter to the public interest.

The Commission has itself noted that programming other than traditional news broadcasts contributes to debate and understanding on local issues. *See Report & Order and Further Notice of Proposed Rulemaking, In the Matter of 2002 Biennial Regulatory Review —*

“important that there be a sufficient number of such stations that are truly independent of the major network stations in each market and that will therefore vigorously compete with each of the major network stations for viewers”).

¹⁴ Before its merger with WB to form the CW, UPN aired several programs, such as “One on One” and “Half & Half,” which were not ranked in the top 100 shows nationally, but ranked in the top 11 among African Americans. After the merger, the CW continued to air programming such as “Everybody Hates Chris” and “Girlfriends” which was popular with African American audiences.

Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al., MB Docket No. 02-277 et al., 18 F.C.C. Rcd. 13,620 (rel. July 2, 2003), ¶ 33, *remanded on other grounds*, Prometheus Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004) (“content other than traditional newscasts also contributes to a diversity of viewpoints” on issues of local concern). Even the Commission’s new Form 355 recognizes this point, since it requires broadcasters to list national programming that “include[s] significant treatment of community issues.” See Enhanced Disclosure Order at Appendix B, Question 2(b)-(c). Stations also serve the public interest in their service areas in other ways, such as through PSAs and children’s and minority-focused programming, which could fall through the cracks of a programming percentages metric. Such a metric might also fail to take into account specials and other irregularly scheduled programming, like campaign and election coverage, about which the *Localism Notice* seems particularly concerned.¹⁵

B. The Commission Has Long Recognized The Value Of Local Broadcasters’ Discretion To Choose Programming That Serves The Special Needs And Interests Of Their Service Areas.

Relatedly, the Commission has firmly upheld the local station’s discretion to determine how best to serve the needs and interests of its service area. As the Commission has stated time and again, the licensee has broad latitude to exercise editorial and journalistic judgment in deciding what to air.¹⁶ There are sound policy reasons for such an approach, because no two

¹⁵ See *Localism Notice* ¶ 36 & note 79. Thus, if the Commission were to adopt local programming percentages or a minimum hours requirement for campaign and election coverage, television licenses could fail to meet these standards for the simple reason that there were fewer local elections during the particular renewal term in question. In fact, this will almost always be the case in smaller markets.

¹⁶ See, e.g., *In re WOIC Renewal*, 39 FCC 2d 355, 367 (1973); *In re KTVI-TV Renewal*, 53 FCC 2d 966, 977 (1975); *In re WNBC(TV) Renewal*, 14 FCC Rcd. 9026, 9031 (1999) (“licensees are accorded a great deal of discretion in the scheduling, selection, and presentation of programs and (continued...)”).

communities are alike and broadcasters need the flexibility to tailor their programming choices to suit the needs of the public. Conversely, viewing communities have different needs and interests, whether it is high school football in East Texas or weather reports in North Michigan. To take one example, KSAT-TV, San Antonio, TX has had phenomenal successes with its diabetes coverage and related community service projects, which are especially important because of the area's majority Hispanic population, a community in which diabetes is prevalent. To force the station to choose between that programming and a category of programming that the Commission's renewal standards give more "credit" for at renewal time would disserve the public interest.

Accordingly, the *Localism Notice's* question as to whether the Commission's renewal guidelines "should ... cover particular types of programming, such as local news, political, public affairs and entertainment" should be answered in the negative. Adopting particular programming categories would interfere with licensees using their familiarity with local needs

announcements to be aired by their stations," and to deny a license renewal application a petitioner must show "a licensee is failing to address issues facing the community in its overall programming, not merely that a particular issue is not being addressed"); *American Broad. Cos., Inc.*, 83 FCC 2d 302, 305 (1980) ("the choice of what is or is not to be covered in the presentation of broadcast news is a matter left to the licensee's good faith discretion," and "the Commission will not review the licensee's news judgments"); *Third Coast Press*, 21 FCC Rcd. 14,415, *7 (2006) (citing *American Broad. Cos.*). The Commission's hot-off-the-presses update of *The Public and Broadcasting* explicitly recognizes this discretion. See *The Public and Broadcasting* (April 2008 ed). at p. 11 ("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. ... 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.").

and interests to program responsively to those needs and interests. Localism values would be injured, not promoted.

C. The Commission Long Ago Discarded The Inaccurate Presumption That Locally Responsive Programming Must Be Produced Locally.

The *Localism Notice* presumes that a renewal safe harbor should include a standard for locally oriented programming but then asks whether it must be limited to programming that is locally produced. The Commission's focus should not be so limited. National, regional and state-wide news coverage often addresses issues of local concern. A Chicago television station's coverage of the Illinois governor's speech on a new jobs program before the state legislature in Springfield or a network newsmagazine's story on teen pregnancy aired in Luna County, New Mexico, where birth rates are among the highest in the country unquestionably deals effectively with issues of interest to local communities, and should therefore be included in the category of locally responsive programming. The Commission has previously found that "coverage of local issues does not necessarily have to come from locally produced programming."¹⁷ In fact, the Commission's prior rejection of local program origination requirements recognized that not only were they ineffective in advancing the goal of localism, they could actually *harm* localism.¹⁸

¹⁷ TV Programming and Ascertainment Deregulation Order n. 28; *See also In re WPIX, Inc.*, 68 FCC 2d 381, 402 (1978) (premise that local needs can be met only through programming produced by a local station lacks presumptive validity). Indeed, one of the commenters upon whom the Commission is relying upon to conclude local programming guidelines are necessary recognizes this distinction, even if the Commission itself may be thinking about abandoning it. *See* Comments of Blanca Zarazua, Hispanic Chamber of Commerce of Monterey, California, at Monterey Tr. 48-50 (locally oriented programming is "programming of interest to the local community, *regardless of the source*") (emphasis added).

¹⁸ *See* Main Studio Rule Relaxation and Program Origination Elimination Order ¶ 39 ("We can no longer justify a requirement that stations originate a stated minimal percentage of their programming from their main studios or other points within their communities. We do not believe the original rationale of the rule, to facilitate locally-oriented programming by indirectly promoting the use of local talent and ideas, is still valid. In addition, we now believe the rule (continued...)

IV. READOPTING THE PRE-1987 MAIN STUDIO RULE WOULD BE UNDULY RESTRICTIVE AND CONTRARY TO THE PUBLIC INTEREST.

In 1987, the Commission found the main studio rule's requirement that television stations locate their main studios in their communities of license to be unnecessary "in light of current production methods and the actual means of contact between stations and their communities."¹⁹

This finding is more compelling today.

A. The Current Rule Allows Broadcasters To Operate Effectively In Small And Underserved Communities.

As the Commission has consistently recognized, many stations licensed to small and underserved communities are simply unable, as a matter of economic viability, to locate their main studios in those communities. In these circumstances, situating the main studio in a nearby community in the same service area can be critical to enabling that station to serve its community of license more effectively. In other cases, a broadcaster licensed to a smaller, underserved community which has never been able to support a main studio may co-locate its studio with a station licensed to a larger community. The resulting enhancement of the station's economic viability may allow it to place a news bureau or other staff in the community of license, while leaving expensive technical operations and greater staffing in the main studio in the larger community. Technical improvements, such as digital upgrades, also become more feasible, resulting in better service to the community of license.

imposes unnecessary costs and *may actually preclude the presentation of responsive programming.*") (emphasis added).

¹⁹ Report & Order, *In the Matter of 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), ¶ 10 ("Main Studio Rule Relaxation and Program Origination Elimination Order").

If the Commission were to revert to the pre-1987 rule, it would be faced with numerous situations where the main studio rule would oblige broadcasters to locate main studios in smaller communities unable to support them. Broadcasters would be forced to incur the cost of requesting waivers of the rule, and the Commission would expend significant administrative resources to review hundreds of waiver requests seeking to maintain main studio arrangements that unquestionably benefit the community of license. Or worse, broadcasters would be unable to serve those communities at all.

B. The Current Rule Allows Broadcasters Serving Multiple Communities To Be More Responsive To The Public.

While the Commission licenses stations to particular communities, hundreds of Commission licensees serve DMAs that are “hyphenated markets”; that is, they incorporate more than one city. In fact, 98 of the 210 Nielsen DMAs cover hyphenated or parenthetical communities. Most of these DMAs are in smaller markets. Stations in these markets often use the current rule’s flexibility to place their main studios in locations that most benefit their community of license as well as their broader, hyphenated service areas.²⁰

Barrington’s KHQA-TV is one such station. While its community of license is Hannibal, its main studio is located in Quincy, IL across the Mississippi River. Placing its main studio in Quincy, instead of Hannibal, which is permissible under the current rule, allows the station to better serve the community of Hannibal, as well as the entire Quincy, IL-Hannibal, MO-Keokuk,

²⁰ The *Localism Notice* cites Section 307(b) of the Act as supporting reimposition of the old, highly restrictive main studio rule. See *Localism Notice* ¶ 41. But Section 307(b) does not support this interpretation. In adopting its Table of Assignments in 1958, the Commission knew full well that stations would be providing service to more than their communities of license and this has always been regarded as a consequence that serves the public interest. To restrict the main studio rule in such a manner would therefore be a frustration, not a fulfillment, of Section 307(b).

IA DMA. Quincy is the largest of the three metropolitan areas covered by the market, Quincy's population is twice the size of Hannibal's and four times the size of Keokuk's, and locating its main studio in Quincy allows KHQA-TV to be closer to its main viewership, local advertising base, and many area newsmakers. The increase in economic viability from placing the studio in Quincy allows KHQA-TV to provide better service to Hannibal, including the maintenance of a news bureau and stand-alone office there. While the communities of Hannibal and Quincy are geographically close, there is no direct access between the two across the Mississippi River, and placing the main studio in Quincy allows KHQA-TV to be closer to a larger employee recruitment base. KHQA-TV's enhanced economic viability allowed it to build a state-of-the-art main studio in Quincy in 1997 and thereby facilitated its inauguration of digital broadcasting. Requiring KHQA-TV to locate its main studio in Hannibal, as would be the case if the Commission were to re-adopt the pre-1987 main studio rule, would cripple its ability to serve Hannibal, as well as Quincy and Keokuk and other communities in its service area.

Another Barrington station, WPDE-TV, is licensed to Florence, SC, but in the early 2000s it relocated its main studio to the rapidly growing community of Myrtle Beach. Moving from the slow-development part of the Myrtle Beach-Florence DMA has allowed the station to be closer to the preponderance of viewers, local advertisers, and newsmakers. With the move, WPDE-TV's ability to attract and retain diverse employees has significantly improved. Like KHQA-TV, WPDE-TV keeps an office in its community of license, which hosts smaller news and sales staffs. The service WPDE-TV provides Florence is higher quality and more economically viable because of its ability to place its main studio in Myrtle Beach.

Similarly, Raycom station WDAM-TV serves the hyphenated, 168th-ranked, Hattiesburg-Laurel, MI DMA, and is licensed to Laurel. The two communities are located approximately 25

miles apart. The current main studio rule allows WDAM-TV to situate its main studio almost exactly in between Hattiesburg and Laurel on a connecting highway, near the small southern Jones County community of Eastabuchie. WDAM-TV also has news bureaus in each of the two cities. The current rule permits WDAM-TV to place its main studio in a location that allows it to be a presence in and cover both Laurel and Hattiesburg. It would be precluded from doing so under the pre-1987 rule.

C. Various Other Circumstances Justify Locating The Main Studio Outside The City Limits Of The City Of License.

In a variety of other circumstances as well, main studio locations outside the city limits of the communities of license enhance the stations' ability to serve the public interest. These studio sites may be more accessible to important population centers or they may be well served by major highways or public transportation in ways that a site within the city limits could not offer. WPLG(TV), Miami-Ft. Lauderdale, FL, is investing millions of dollars in a new studio and technical facility outside the Miami city limits, unlike its present studio which is located just inside the Miami city limits. But the new studio, unlike the old one, will be outside South Florida's mandatory hurricane evacuation zone. The new studio will therefore be fully operational during periods of severe weather.²¹ It will also be located halfway between the cities of Miami and Fort Lauderdale, and accessible to both major population centers in its service area. In fact, the market is hyphenated; it is designated "Miami-Fort Lauderdale." The new studio location, which would be barred by the proposal in the *Localism Notice*, will serve the public interest more effectively than the current studio.

²¹ The *Localism Notice* notes WPLG(TV)'s commendable efforts in providing accurate and up-to-date hurricane preparedness information to its viewers. See *Localism Notice* ¶ 33.

D. There Has Been No Harm To Localism By Allowing Stations Flexibility In The Siting Of Their Main Studios.

1. Main studio location is not a valid proxy for service to the public.

The current main studio rule improves rather than impedes localism. As the Commission recognized when it relaxed the main studio rule, there is no reason to believe that locating a station's main studio in the community of license necessarily results in improved local service. Moreover, the voluminous record in the proceeding shows not a single specific instance where a station has placed its main studio outside of its community of license to the detriment of that community.²²

2. The Commission's new public file requirement further undercuts the rationale for an in-community main studio location requirement.

Two decades ago, the Commission stated: “[T]o assure meaningful public participation in our licensing process, a local public file and the ability of residents to communicate with the station must be maintained. Therefore, we will require that every station locate its public inspection file in the community of license.”²³ But the Commission has recently adopted a rule in its *Enhanced Disclosure* proceeding requiring stations with websites to post their public files on the Internet. In so doing, the Commission noted “it may well be that the requirement of physically going to the station and viewing the file during normal business hours has discouraged public interest in viewing the public files,” and “[b]y making the file more available through the Internet, we hope to facilitate access to the file information and foster increased public

²² As noted above, the Commission's “concerns” regarding the possible harmful effects of the current main studio rule on localism rest on the vague comments of a single speaker at the Monterey public hearing, *see Localism Notice* ¶ 41, but the *Notice* ignores more specific, more credible evidence from the same hearing pointing to main studio co-location's benefits to that community. *See supra* page 5.

²³ Main Studio Rule Relaxation and Program Origination Elimination Order ¶ 38.

participation in the licensing process.”²⁴ The “development of the Internet over the past decade,” the Commission said, has allowed viewers to avoid the “inconvenience” of “travel[ing] to the station during business hours.”²⁵ Accordingly, any argument that a restrictive main studio requirement facilitates access to the station’s local public file has been largely undercut by the new website requirement.

3. Technological advances that enhance station-viewer interaction make it even less necessary for main studios to be located within city limits.

The Commission noted more than 20 years ago that a strict main studio community-of-license requirement is not necessary to sustain local interaction between broadcasters and their service areas. Even before the advent of instantaneous viewer-licensee communication via the Internet and e-mail, the Commission found “community residents generally contact the station by letter and telephone and rarely, if ever, visit the main studio,” “contact between residents and the station is often initiated by station management and staff,” and “accessibility considerations have changed as transportation facilities have improved and metropolitan areas have expanded with modern highways and mass transit systems.”²⁶ In addition, in granting a number of waivers of the current main studio rule, the Commission has relied on the licensees establishing toll-free telephone lines between their communities of license and their main studio, as well as a requirement that licensees widely publicize these numbers. These points, which support retention rather than tightening of the existing main studio rule, are even more compelling today than they were in the 1980s.

²⁴ See Report & Order, *In the Matter of Enhanced Disclosure Requirements*, MM Dockets No. 00-168 and 00-44 (rel. Jan. 24, 2008), ¶ 12 (“Enhanced Disclosure Order”).

²⁵ *Id.* ¶ 39.

²⁶ Main Studio Rule Relaxation and Program Origination Elimination Order ¶ 17.

Another rationale for the old community-of-license studio requirement presumed that local programming production occurred only at the main studio. *See* Main Studio Rule Relaxation and Program Origination Elimination Order ¶ 6 (“the purpose of the rule is clear; it is to assure that licensees meet their local service obligations by providing an accessible studio within the community of license for the origination of a substantial portion of those programs dealing with local needs and interests”).²⁷ In 1987, however, the Commission recognized that “current production methods and the actual means of contact between stations and their communities” merited relaxation of the rule. *Id.* ¶ 10; *see also id.* ¶ 30 (“Due to these changes, the role played by the main studio in the production of programming has diminished.”). Significant advances in mobile studios, satellite trucks and other ENG facilities, lighter, and more flexible and more mobile cameras and other production and transmission facilities have further undercut this rationale. In 2008, a television station goes to where the news is, not the other way around.

4. Reverting to the old restrictive rule would cause public interest harms.

An in-community-studio requirement would deprive viewers of the numerous public interest benefits that flow from the flexibility provided by the current main studio rule. In recognition of the havoc modification of the rule would cause on existing licensees’ local service, the Commission might be tempted to adopt the new stricter rule but grandfather the hundreds of licensees whose main studios are currently located outside their communities of license. In at least two very important respects, grandfathering would provide inadequate relief.

²⁷ Another impediment to relying on this rationale in support of tightening the main studio rule is the Commission’s rejection of the proposition that local programming should be produced locally. *See* Section III.C. *supra*.

First, grandfathering would not give to current licensees the flexibility to relocate their main studios to sites outside of their communities of license where they could better serve their public. WPDE-TV, discussed above has used this flexibility to benefit the public interest. When the viewership, advertising, and potential employment base in the station's DMA shifted from Florence to Myrtle Beach, the station's main studio moved with it. That sort of beneficial adaptation to demographic shifts should not be thwarted in the future.²⁸

Second, if grandfathered status did not survive a transfer of control or assignment of license, the impact on the marketability and value of a television station could be confiscatory, and the original valid justification for siting the studio outside the city of license would be frustrated. Potential purchasers would be scared away by the requirement to move the station's main studio to its community of license to the detriment of the station's viability and its service to the public. Such a condition would have particularly adverse effects on minority and women buyers.

* * *

Nothing in the record supports adoption of an unnecessary and harmful modification to the main studio rule. If the Commission is concerned with assuring a line of communication between the main studio and the community of license, it could require licensees whose main studios are outside of their communities of license to maintain a dedicated, toll-free phone line between the studio and the community of license. The Commission often favorably considers

²⁸ In addition, in the short to intermediate term, significant numbers of stations may have relied on the current rule to plan relocation of their operations outside their communities of license. If the new rule were to go into effect today, it could block WPLG(TV)'s planned studio move in Miami on which it has already expended many millions of dollars.

this arrangement in granting waivers to the current rule. Such a requirement would ensure that main studios remain accessible to the public in their cities of license.

V. REQUIRING THAT LICENSEES “MAINTAIN A PHYSICAL PRESENCE AT EACH BROADCASTING FACILITY DURING ALL HOURS OF OPERATION” WOULD DISSERVE THE PUBLIC INTEREST AND WOULD SERVE NO PUBLIC POLICY OBJECTIVE.

Joint Broadcasters have effective and responsive emergency information systems that are responsive to the concerns raised by the Commission in the *Localism Notice*.²⁹ If the Commission adopted the proposal to require a physical presence during all hours of operations, smaller stations might decide because of the expense involved to reduce service during overnight periods. This would lead to the exact opposite result from what the Commission desires, because it would take stations off the air in times of emergency. Instead, the Commission could adopt less intrusive and more effective measures to assure prompt dissemination of emergency information by television stations. For example, it could require that each station equip those employees with the ability to air emergency information with 24-hour ring-through access to the station’s phone line. It could also require that these employees be reachable by public safety personnel in the event of an emergency.³⁰

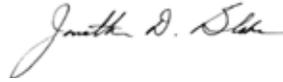
²⁹ The Commission’s consideration of whether to impose a physical presence requirement during all hours of operation should take into account, *inter alia*, the possible effect of such a rule on satellite stations. Satellites are exempt from the ownership rules precisely because they are insufficiently viable to support stand-alone operations.

³⁰ In the alternative, the Commission should leave consideration of emergency information issues, including the effect of “unmanned” operations on television station licensees’ ability to disseminate disaster warnings to their communities of service, to its Emergency Alert System rulemaking. The filers in that docket will have more knowledge and expertise regarding local broadcasters and public safety providers’ joint efforts to distribute emergency information. See Second Report & Order and Further Notice of Proposed Rulemaking, *Review of the Emergency Alert System*, 22 FCC Rcd. 13,275 (2007). As the Commission has said, “the EAS was specifically designed for unattended operations.” *In the Matter of Digital Audio Broadcasting Systems*, 22 FCC Rcd. 10,344, 10,391 (2007), ¶ 118.

CONCLUSION

The well-intentioned proposals in the Commission's *Localism Notice* are unduly blunt and burdensome instruments that would not achieve the localism goals that Joint Broadcasters share with the Commission. The record contains little information that demonstrates that problems exist, but if the Commission concludes that remedial action is needed, more flexible, more practical and less intrusive measures should be preferred.

Respectfully submitted,



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WNWO-TV, Toledo, OH
WEYI-TV, Saginaw, MI
WBSF(TV), Bay City, MI
WSTM-TV, Syracuse, NY
WSTQ-LP, Syracuse, NY
WACH(TV), Columbia, SC
KGBT-TV, Harlingen, TX
KXRM-TV, Colorado Springs, CO
WPDE-TV, Florence, SC
WPBN-TV, Traverse City, MI
WTOM-TV, Cheboygan, MI
WHOI(TV), Peoria, IL
KVII-TV, Amarillo, TX
KVIH-TV, Clovis, NM
KRCG(TV), Jefferson City, MO
WFXL(TV), Albany, GA
KHQA-TV, Hannibal, MO
WLUC-TV, Marquette, MI
KTVO(TV), Kirksville, MO

Bonten Media Group

WCYB-TV, Tri-Cities, TN-VA
WCTI-TV, Greenville-New Bern-Washington, NC
KRCR-TV, Chico-Redding, CA
KAEF(TV), Eureka, CA
KTXS-TV, Abilene-Sweetwater, TX
KECI-TV, Missoula, MT
KCFW-TV, Missoula, MT
KTVM, Butte-Bozeman, MT

Draper Communications, Inc.
WBOC-TV, Salisbury, MD

Dispatch Broadcast Group
WBNS-TV, Columbus, OH
WTHR(TV), Indianapolis, IN

Paxton Media Group
WPSD-TV, Paducah, KY

Post-Newsweek Stations, Inc.
KPRC-TV, Houston, TX
WDIV-TV, Detroit, MI
WPLG(TV), Miami-Ft. Lauderdale, FL
WKMG-TV, Orlando, FL
KSAT-TV, San Antonio, TX
WJXT(TV), Jacksonville, FL

Raycom Media, Inc.
WOIO(TV), Cleveland, OH
WBTW(TV), Charlotte, NC
WXIX-TV, Cincinnati, OH
WFLX(TV), West Palm Beach, FL
WMC-TV, Memphis, TN
WAVE(TV), Louisville, KY
WTNZ(TV), Knoxville, TN
WTVR-TV, Richmond, VA
WTOL(TV), Toledo, OH
KOLD-TV, Tucson, AZ
KHNL(TV), Honolulu, HI
KHBC-TV, Hilo, HI
KOGG(TV), Wailuku, HI
KFVE(TV), Honolulu, HI
KFVS-TV, Cape Girardeau, MO
KSLA-TV, Shreveport, LA
WIS(TV), Columbia, SC
WAFF(TV), Huntsville, AL
WLBT(TV), Jackson, MS
WAFB(TV), Baton Rouge, LA
WBXH-TV, Baton Rouge, LA
WTOC-TV, Savannah, GA
WFIE(TV), Evansville, IN
KLTV(TV), Tyler, TX
KTRE(TV), Lufkin, TX
WSFA(TV), Montgomery, AL
WTVM(TV), Columbus, GA

WECT(TV), Wilmington, NC
KCBD(TV), Lubbock, TX
WALB(TV), Albany, GA
WPGX(TV), Panama City, FL
WLOX(TV), Biloxi, MS
WDAM-TV, Hattiesburg, MS
WDFX-TV, Dothan, AL
KPLC(TV), Lake Charles, LA
KAIT(TV), Jonesboro, AR