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April 17, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
235 Massachusetts Ave, N.E.
Suite 110
Washington, D.C. 20002

FILED/ACCEPTED

APR 17 2008

Federal Communications Commission
Office of the Secretary

Re: Broadcast Localism
MB Docket No. 04-233

Slone Broadcasting, LLC

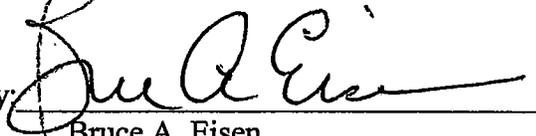
Dear Ms. Dortch:

On behalf of Slone Broadcasting, LLC, there is transmitted herewith an original and four (4) copies of its Comments in the above-referenced proceeding.

Should there be any questions concerning this matter, kindly communicate directly with the undersigned counsel.

Respectfully submitted,

KAYE SCHOLER LLP

By: 

Bruce A. Eisen
Counsel to
Slone Broadcasting, LLC

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
BROADCAST LOCALISM) MB Docket No. 04-233
)

TO: The Commission

COMMENTS

Slone Broadcasting, LLC (“Slone”), by its attorneys, hereby submits its comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned matter, FCC 07-218, released January 24, 2008 (“NPRM”). In support thereof, the following is respectfully shown:

Background

Slone is the licensee of Radio Station KCEE(AM) at Cortaro, Arizona (“KCEE”). It’s principal, Jim Slone, is a long time resident of Tucson, Arizona, who has owned and operated many stations in and around that community since 1972. He is a member of the Arizona Broadcasters Hall of Fame and, as can be expected, has watched the Commission’s regulation closely over the past years. KCEE is the only facility that he presently owns.

KCEE notes that the NPRM includes various measures that threaten to roll back several aspects of deregulation that have freed broadcasters for at least a decade. KCEE believes that some of the proposed re-regulation is reasonable, but that other aspects of the NPRM are unjustified and likely to place a significant burden on smaller broadcast stations like KCEE without providing significant corresponding benefits to the public.

Community Advisory Boards

The Commission has asked for comments regarding the possible adoption of rules or guidelines that would require licensees to convene permanent advisory boards comprised of officials and other leaders from the service areas of broadcast stations. The Commission believes that such boards will serve to alert each broadcaster to the issues that are important to its community of license and which should be addressed by programming. It has raised questions as to how members of such board should be selected or elected, as well as whether the former ascertainment guidelines should be a starting point to identify the segments in the community with whom the licensee should consult.

KCEE believes that the institution of community advisory boards can have a positive affect on a station's ability to identify the problems and needs that need to be addressed by programming in the relevant service area. Nevertheless, it wishes to point out that there are dangers in such a proposal because there is a prospect of reinstating regulations that have previously been eliminated for good cause in light of existing marketplace conditions. See, Radio Deregulation, 84 FCC 2d 716, 721 (1981). In short, KCEE does not oppose the required establishment of community advisory boards, but it believes that the Commission should not compel its licensees to follow strict guidelines to do so. KCEE submits that the manner in which the board should be selected and the composition of such boards should be left totally to the discretion of the licensee which should only be required to certify that at least one management level staff person has met with the community advisory board bi-annually in order to receive the board's input. If it can be demonstrated at renewal time that a given licensee has not utilized a community advisory board to properly ascertain community problems and needs, then

appropriate action could be taken at that time. Short of that, a return to anything approaching the old ascertainment rules would be both unnecessary and unwise.

Renewal Application Processing Guidelines

The Courts and the Commission have often noted the vast variety of choices enjoyed by the public in receiving information, both of a general and a local nature. See, e.g., Loveday v. FCC, 707 F.2d 1443, 1459 (DC Cir.) cert denied, 464 U.S. 1008 (1983). Indeed, when ascertainment guidelines were fashioned and imposed upon broadcasters, many of these diverse choices hardly existed at all. KCEE believes that some of the proposals in the NPRM run contrary to what the Commission has attempted to accomplish in the past decade and are unnecessary given the present marketplace. Specifically, the proposed renewal application processing guidelines are highly objectionable and may actually compromise the First Amendment.

Main Studio Location

The NPRM also addresses whether or not the Commission should turn to its repealed 1987 main studio rule which required that each station have a main studio located within its community of license. That rule has been relaxed over the past 20 years so that the present rule requires a station's main studio to be located within either (a) the principal community contour of any station, of any service, licensed to its community of license, or (b) 25 miles from the reference coordinates of the center of its community of license. The Commission is concerned that the present regulation allows broadcasters to locate their main studios at a far flung distance from their communities of license. The Commission appears to conclude that the accessibility of the main studio will increase interaction between the station and the community of license to

counter the problem that many stations do not engage in the necessary public dialogue as to community needs and interests.

KCEE submits that a proposal to roll-back the regulatory clock to the pre-1987 rule is wholly unjustified. First, the mere requirement that the main studio must be physically placed in the community of license does nothing to enhance the notion that it will increase interaction between local residents and the licensee. There are many communities of license throughout the country where it may actually be more desirable to place a studio in an economically desired location that is far removed from pockets of residents. Indeed, simply by requiring a main studio within a community of license does not guarantee that the main studio will even be the site of programming production. In other words, mandating a particular location does not necessarily create local programming as the Commission envisions.

The costs of maintaining studio facilities in a community of license is another reason why bringing back the pre-1987 rule would be bad. Of course, the major economic woes fall to the smaller and middle-sized broadcast licensees who might have to hire full-time managers, face higher rents and utility costs, and possibly have significant expenditures for improvements to roads, access to the studio, etc. In the case of brokered stations, which the Commission still freely permits, the savings accomplished through consolidated operations could be permanently lost by imposition of the rule.

KCEE is unaware of any body of relevant evidence to demonstrate that the rule as proposed would help insure community access to station personnel and stimulate station involvement with the community. More importantly, there are other ways of achieving Commission stated objectives. Many stations have internet sites that provide a far more realistic and easier way for the public to communicate with the station. Hence, technology and real world

considerations are much more persuasive here than the comfortable idea of each station physically maintaining its presence in its community of license.

The Commission has tentatively concluded that "guidelines" are necessary in order to process applications for renewal of licenses, and that the guidelines should be based on localism programming performance. If stations meet their prescribed minimum percentages of locally-oriented programming, the Staff would process the renewal application to conclusion. The full Commission would consider applications for renewal where licensees did not meet the prescribed minimum.

The Renewal application processing guidelines that require a specified minimum percentage of programming to address local issues carry the danger of a "chilling effect" on speech. It is true that the Supreme Court has determined that the electronic press has less protection from government regulation than does the print press. See, e.g., Red Lion Broadcasting Co. v. FCC, 395 U.S. 367 (1969). However, that case was decided well in advance of the technology explosion. The Court noted that its views on content regulation could change if there was evidence of a chilling effect. Quantitative guidelines can actually suppress free speech because it compels broadcasters to air a particular kind of programming even though there is surfeit of public affairs and talk formats on AM, FM and television stations throughout the country.

It is more than interesting to note that the present proposal has been offered by the Commission during a difficult time for radio broadcasters in particular. The need to formulate more local programming may not be an effective strategy if a terrestrial radio broadcaster attempts to compete with satellite radio, the internet, and various MP3 devices. If listeners determine that more localism means more relevancy to the station, additional advertising time

will likely be sold to local sponsors and the business model will succeed. Hence, whether or not the FCC institutes quantitative processing guidelines expressed as hours per week or as a percentage of overall programming, the significant First Amendment considerations remain.

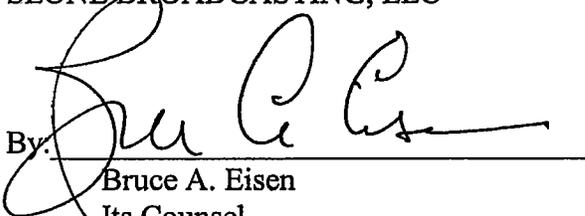
The Commission questions whether or not categories of local programming should be established, such as news, public affairs, etc. But when the Commission in the 1980s repealed detailed programming requirements, it carefully noted how burdensome, especially for small stations with limited staffs, such requirements had been. The whole idea of imposing its own views of what was in the public interest - - without regard to format or demographics - - was controversial and of debatable effectiveness. There is enough media diversity that the marketplace is the only logical arbiter of what serves the public interest. A broadcaster can be expected to act responsibly because there is an economic incentive that results from the fear of audience loss to a competitor who serves the public better.

Advances in media technology and such regulatory initiatives as Docket 80-90 has markedly increased the number of broadcast stations over the past 25 years. There is no legitimate basis by which the Commission should impose new obligations on licensees that will complicate the license renewal process. Quantitative standards are unnecessary because broadcasters, like KCEE, have implemented varying and effective strategies to ascertain the needs of their listening areas. KCEE maintains a strong bond with its local audience even though it may establish those bonds through programming that would not necessarily meet the quantitative guidelines laid down by the Commission, i.e., public affairs programs, news programs, etc. The concept of quantitative programming standards also raises difficulties with regard to just how much local programming would satisfy any Commission guidelines. It would also place a significant burden on broadcasters who would have to shift many staff hours to the

regulatory and paperwork aspects of broadcasting. It would place concomitant burdens upon the Commission's processing staff in its attempts to review and evaluate specific renewal showings. In the end, it is the small and mid-market broadcast licensees, like KCEE, that would have to bear the brunt of this regulation, and these are the very entities that can least afford increased regulation in the present difficult economic environment.

Respectfully submitted,

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