

Commission has good intent in granting these waivers, but just by judging from 1) the percentage of NCE main studio requests denied (~0.2 %), and 2) the existence of top 300 markets without even one NCE main studio (the examples here: Redding, CA, San Angelo, TX,) it could be concluded that the Commission's *case by case* system and 47 C.F.R. § 73.1125(a)(4) could use some "retooling" in light of the demand for localism.

Unequal Service Obligation: The main studio waiver treats the population of a satellite station's community differently than the community with the main studio: 1) The waiver allows the licensee to pick terms of service that often include casual stipulations, research, ascertainment, etc, in lieu of a local public file, but these terms do not impose any requirement for documenting these actions in a public file. 2) The Commission asserts the main studio exists to ensure a station "realistically meet[s] their obligation to serve their communities of license as outlets for local self-expression."<sup>23</sup>; however, the commitment of local expression is largely ignored under the waiver and not well defined, therefore the local service requirements are unequal. The FCC needs standardized, transparent requirements for all studio waived stations.

Based upon obsolete, traditional, and unproven standards: The Commission puts forth outdated justification for granting waivers in 1988: "*traditionally* addressed", "*in the past, we have recognized* the benefits of centralized operation"—and that was even twenty years ago<sup>24</sup>. The Commission didn't touch upon the subject of non-commercial

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<sup>23</sup> FCC Proposed Rulemaking, 35 FR 15305 (1970)

<sup>24</sup> *Amendment of Main Studio and Program Origination Rules*, 3 FCC Rcd 5026-27, (1988)

waivers in its reexamination of main studios in 1998<sup>25</sup>. The Commission has adapted rules regarding main studios, public service, ownership limits, etc many times over the decades to update regulations to reflect the current technology and marketplace. The Commission *once* recognized the benefits of centralized operation, but does it recognize, or has it measured, its detriment to localism? Our current sampling of markets in this document show that studio waivers have impacted several markets' ability to receive adequate locally originated programming. The Commission provides no contemporary data to base waiving its own rules to essentially all NCE licensees that ask to be exempt.

Based upon proposal, not actual operation: The Commission grants waivers “only granted if shown the local community would be served” (3 FCC Rcd 5027). The licensee only needs to comment upon how the licensee *could* serve the community, but the Commission never validates if this is put into practice. The Commission says waivers are “valid and will remain in effect as long as the stations continue to operate under the terms of the waiver” (3 FCC Rcd 5027), yet 1) the Commission never performs any audit on a regular basis to see if the if the terms of the waiver were implemented, 2) the terms of the waiver are dictated by the applicant, not by standard regulation upholding the public interest, 3) no reports or validation that the promises in the waiver are being heeded by the licensee. In other words, under a waiver, the licensee is not held accountable to serve the local public interest. The terms the licensee may give to serve the studio-waived community may contain no obligation whatsoever of the broadcaster to actually run any amount of programming to serve the community. For example, the *only* programming

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<sup>25</sup> 13 FCC Rcd 15691, *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files...* (1998)

stipulation in a waiver recently approved for KWRC, Hermosa, South Dakota, a satellite of KAWZ of Twin Falls, Idaho is for Calvary Church of Twin Falls (“CCTF”) to “provide programming responsive to the interests of Hermosa, South Dakota, and the other areas served by Station KWRC”<sup>26</sup>. Although they say they would become familiar and review matters of concern with the community, there is no enforceable rule or degree to which how thoroughly this is done, and there is no legal obligation to address any of these local concerns using even one second of airtime. If any member of the public wanted to challenge a studio-waived station for not serving the local public interest, there currently is no concrete definition of what “*not serving* the community” entails, or multiple cases from history that exemplify the conditions.

Does not account for upholding 307(b) transmission service: The Commission is required to uphold regulation for fair distribution of reception and transmission service<sup>27</sup>. The Commission enforces main studios because it believes an accessible main studio assures “interaction between the station and the community”<sup>28</sup>; this fulfills transmission service. Examples have been given where radio markets are in violation of NCE fair transmission service.

NCE funding and emphasis has changed: FCC asserts that NCE radio stations by nature have “limited funding”<sup>29</sup>; this lumps all NCE licensees into the same boat. The FCC is

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<sup>26</sup> *CCTF Main Studio Request for KWRC*, December 12, 2007

<sup>27</sup> Rulemaking concerning main studios, 15 FR 8993 (1950)

<sup>28</sup> *Amendment of the Main Studio Location* 52 FR 21684 (1987)

<sup>29</sup> A standard explanation for the Commission granting a waiver request; example: *Letter to Todd M. Stansbury, Esq., Re KGAC (FM), Saint Peter, MN* (October 16, 1998), *Letter to Jeffrey D. Southmayd, Esq., Re: Moody Bible Institute of Chicago* (December 10, 2002), etc

claiming that any entity with an educational program that does not exist to make profit will have financial difficulty in maintaining additional studios. On this list includes private universities with billion dollar endowments, state and regional governments with billions dollar budgets, EMF, with 56 million in revenue<sup>30</sup>, and mega-churches with millions in funds; the FCC never performs an audit. The main studio waiver originated before the Corporation for Public Broadcasting. The main studio waiver originated before the prevalence of 501(c)(3) organizations, which allows for the IRS tax deduction of donated amounts to a tax-exempt licensee. In 1960 *only 3000* 501(c)(3)'s existed, in 1970 *12,137*, in 1980 *49,100*, but as of 2004 *1,405,490* existed<sup>31</sup>. The main studio waiver additionally originated before the era of enhanced underwriting messages.

Today established NCE licensees have proven they are able to fork down millions of dollars to procure additional channels if desired—even commercial channels. The Commission occasionally cites that it recognizes “the ongoing problems of educational licensees in raising the necessary funds to expand and provide noncommercial educational programming to as many viewers [or listeners] as possible”<sup>32</sup>. We think the Commission should re-evaluate this assumption in the present day because:

- 1) In recent years, the price of building a local studio has dropped considerably.

With a personal computer, automation software, and even prosumer equipment you can originate a professional broadcast-quality audio anywhere. Programming is now delivered via IP from a myriad of on-demand sources, not via the mail on reel tape. Studio operators need not hold FCC licenses anymore, and broadcast

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<sup>30</sup> Source: *Forbes*

<sup>31</sup> 501(c)(3) organizations in the US; available from [www.data360.org](http://www.data360.org)

<sup>32</sup> *The Cederville College* 6 FCC Rcd 538 (1991)

equipment is easy to use. What once took a highly trained staff and can now be accomplished by an intern. Audio production is so cheap and easy that a kid could learn to do it with free software on his or her PC. Local studios aren't as expensive as "back in the day". The money spent from skipping the operation of a studio for the local public interest is recycled back into the organization as a mere a cost savings, not a continuance towards better programming. Volunteer LPFM and community NCE stations with only a couple hundred thousand dollar budgets are pumping out more local public affairs than satellite-relayed studio-waived networks. Cost savings on a studio studio-waived station *doesn't necessarily translate to any more local community service*<sup>33</sup>. In fact, the direct opposite could be proved very easily. The more stations a network has studio-waived actually means less community-specific programming for each additional community they serve compared to someone starting their own station in that community.

- 2) Expanding *general* NCE "to as many viewers as possible"<sup>34</sup> via established licensees is an outdated and even unfavorable concept relating to public service. First, virtually all the remaining open NCE channels have been applied for. The high demand for NCE channels in the October 2007 filing window, with most of the pending applications in mutually exclusive pools, indicate that *many* organizations are interested in providing NCE programming<sup>35</sup>. This boom of applicants is consistent with the exploding number of registered 501(c)(3)

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<sup>33</sup> The Commission states "the savings realized from not having to construct a main studio can be utilized to assist WAMC in expanding *quality* programming to a greater number of listeners." (from *Sound of Life* 4 FCC Rcd 8273 (1989).

<sup>34</sup> From *Sound of Life*, FCC Rcd 8273 (1989)

<sup>35</sup> The Commission received "approximately 3,600 applicants" (Public Notice DA 08-536, March 7, 2008)

nonprofits cited above. There are no “ongoing problems”<sup>36</sup> with “limited funding”<sup>37</sup>, as all of these applicants have validated funds needed to build facilities (transmission and main studio) and operate at least three months<sup>38</sup>.

Second, in the post October 2007 NCE filing window world we have entered a new age in which networks and NCE coverage have been extended to as many listeners as possible under non-commercial station placement rules<sup>39</sup>. At the same time, compared to just decades ago, towns that were once ‘hole in the walls’—receiving primarily translator-repeated and studio-waived programming—are now up-and-coming metros with developing communities of their own. Latino, Asian, Middle Eastern, etc, cultures now add to the diversity of these areas.

As we enter this new age of spectrum congestion, urban (MSA) growth, technology, and diversity, the original NCE policies of *first come first served* applications and *expansion of networks* are not serving the local public interest. There comes a time when a small community, serviced with primarily translators and studio-waived stations, develops into a full-grown radio market capable of economically supporting local-originated content. At this point—in theory—a studio-waived service should yield to new local content-savvy licensees if the studio-waived licensee cannot add a studio and/or increase local content. However, this is virtually impossible under the current rules. Local communities should be able to demand equal local service to the big cities, within

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<sup>36</sup> From *Sound of Life*, FCC Rcd 8273 (1989)

<sup>37</sup> From *The President and Board of Trustees of Miami University* 7 FCC Rcd 2902 (1992)

<sup>38</sup> FCC Form 340, Section II, Questions 15-17: NCE applicants must demonstrate financial qualifications.

<sup>39</sup> In the last NCE application window, most of the last remaining frequencies in populated areas were applied for. 47 CFR § 73.509, the contour overlap rules, predict the finite amount of channels to be open in all locations.

feasible means, under Section 307(b). Since the Commission has eradicated an ascertainment policy, the guidelines for what degree a network should serve each local community is ambiguous, and during license renewals, the public has no recourse for demonstrating good cause for a station license being revoked and used for more intensive local use.

Since ascertainment has been eliminated, a licensee only needs to claim the most general of terms—some election coverage, national news pertaining to local issues, coverage of some events in that community—to pass minimal local service requirements<sup>40</sup>. If the FCC does not prescribe exactly what it considers adequate local public service in advance, it is impossible for members of the public to show that a licensee is not serving a community when alleging complaints pursuant to Section 309(d). But more importantly, **it would be helpful if the Commission could reveal what exactly constitutes a licensee *not serving* a local community.** If there is no definite answer to this question, the idea of *public service* is undefined. If the answer to this includes a minimal service obligation that can be addressed chiefly with automation, without any local-specific programming—or if there is no difference between national, regional, and local programmed stations—the terms *localism* and *local studio* are meaningless. In *Georgia State Board of Education*, the Commission states that “the obligation of each broadcast licensee, commercial and noncommercial alike, is and always has been to serve the problems, need and interests of the communities which it is licensed” regardless of what kind of programming distribution (local station or network) the licensee has

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<sup>40</sup> See *Santa Monica Community College District*—defense of KCRI, 22 FCC Rcd 12951 (2007) for an example.

developed<sup>41</sup>. The FCC indicated that it grants stations with disregard to whether an organization considered itself a state network with a regional emphasis. We could then make the assumption that both studio waived stations, and local stations with studios, need to serve the the community of license equally regardless of main studio location, program origination location, or organizational structure. **If we know a station is to be programmed to include the local level, what differentiates local- from regional- or national-only programming (such as *Sirius/XM*), and what percentage of local-only programming constitutes appropriately addressing localism?** Due to the proliferation of main studio waivers in local, regional, and national networks, this issue needs to be defined if localism is to be addressed. Is “localism” a file cabinet labelled “public file”, and a studio staffed merely to take phone calls, mail public file documents, and have physical presence near the community of license? Is it a fulfillment of certain programming requirement?

Error in original logic for granting studio waivers: If licensing a second, third, fourth...(consecutive studio waived station), it is implied *any* new station is a financial burden. Then how does one explain the first station with a full staff and studio being licensed—the feasible operation in the first place—or any of the individually licensed NCE stations out there producing quality programming? (*Or how does one explain that an applicant answers FCC Form 340, Section II, Questions 15-17 and confirms money on hand to build a studio, but then declares it is a hardship later?*) The original logic behind the main studio waiver was that the licensee’s original station was in a prime market with enough population to support a full studio and quality local-produced

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<sup>41</sup>*Georgia State Board of Education, WVAN-TV license renewal 70 FCC 2d 948 (1979)*

programming. The satellite stations were traditionally in very small communities that couldn't support an entire new station. This would imply small population is the basis for studio waivers, but the modern basis for the waiver never hinges upon that original contingency, and it cannot enforce any "quality"<sup>42</sup> of community programming once demonstrated by the original state network, so the waiver is baseless under "good cause", but granted by tradition nevertheless.

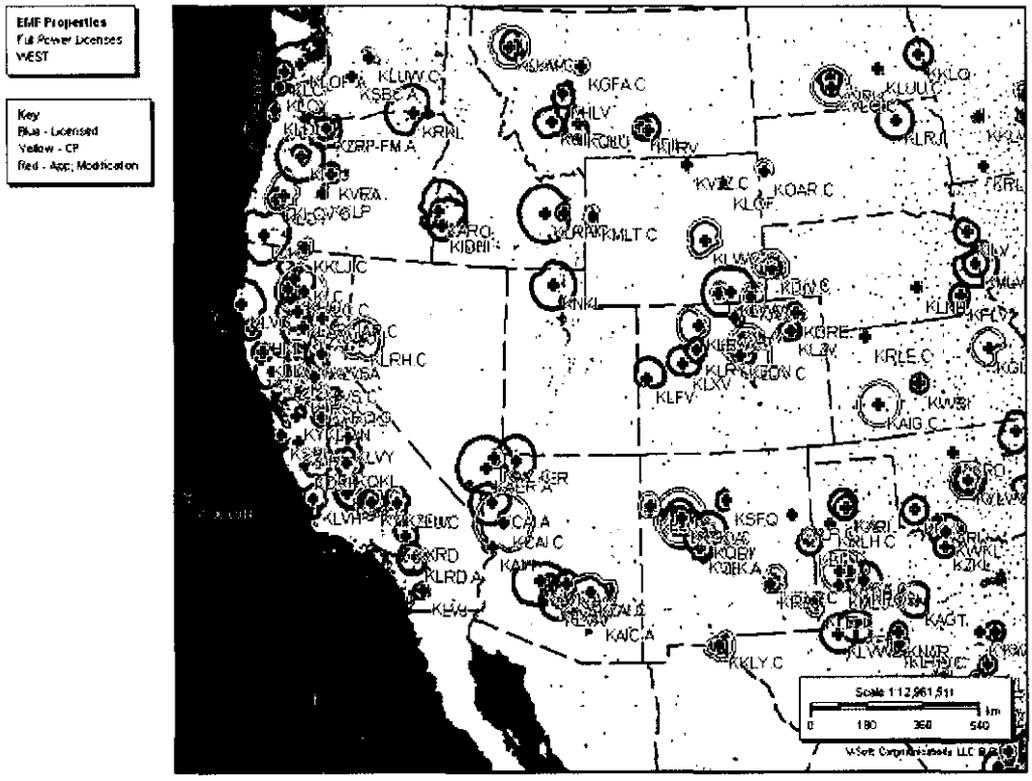
**Localism & Main Studio Waiver Example: Educational Media Foundation (EMF)**

EMF owns about 250 stations and 330 translators (with about a 1000 pending applications) across the United States<sup>43</sup>. It has studio-waived stations in major cities, but it is unclear that it is providing any programming in terms of local public service to any of its satellite station communities. Below is a combined plot of their FCC 60 dBu contours (excluding translators):

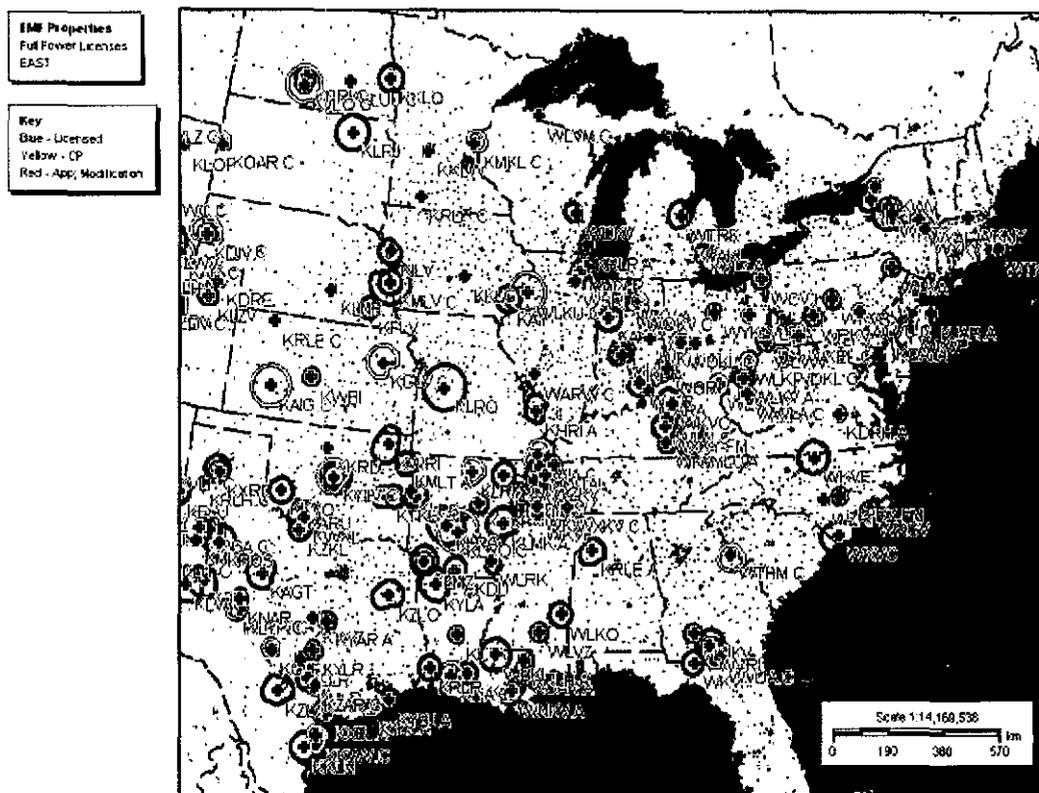
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<sup>42</sup>The FCC makes reference to "quality programming" in granting studio waivers (such as in *Miami University and Sound of Life*). The FCC is inferring that *all NCE programming is quality programming*, when it is not.

<sup>43</sup> Source: FCC database



**Figure 3: Educational Media Foundation, Full Power FM Network (West US Shown)**  
 Blue=Licensed, Yellow=CP, Red=Application/Modification



**Figure 4:** Educational Media Foundation, Full Power FM Network (East US Shown)  
Blue=Licensed, Yellow=CP, Red=Application/Modification

EMF, under the moniker KLOVE, has a main studio licensed to the community of Middletown, CA. Middletown has a population of 1,020 people. EMF also has an additional network called AIR 1. We are unsure how it is able to broadcast to a national audience (The United States) using a few main studios—with redundant signals and services in some cities—yet serve the local public interest at the same time. The Commission has applied the rules once utilized for a statewide network to build the largest radio network in the United States, chiefly using free NCE licenses. According to

the criteria used to grant these waivers, the FCC is allowing EMF to license an automated radio station network because it recognizes “financial difficulties”<sup>44</sup> that EMF has in raising the necessary funds to expand to reach all corners of the United States. If this is the true assumption, we intuitively realize that the granting of each additional studio waiver works against localism, with each additional satellite community meaning one less local NCE channel. More importantly, we realize the basis for studio waivers has outlived its usefulness in a world where there is high demand for educational organizations desiring to start local stations to serve their communities. EMF is fairly new, commencing in the 1980’s. It appears the last remaining urban NCE frequencies were chiefly granted for regional and national programming networks in the 90’s and early 00’s. As seen in our examples previous in this comment, most cities are devoid of even one full power community radio station to service the full spectrum of cultures, ages, music, and community affairs programming, while EMF enjoys redundant services in many cities.

Although EMF is a non-profit, it is able to buy both non-commercial and commercial frequencies across the US with ease, able to pay upfront for coveted frequencies (See Appendix A). Although EMF competes with commercial programmers, and air sound emulates a commercial station, they are allowed to operate as an educational broadcaster, which gives it the ability to waive local studios and not have ownership caps.

In cases where public and college licensees are strapped for cash, they are able to sell their local frequencies to national networks that in turn automate their programming from

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<sup>44</sup> From EMF main studio waiver request

some other part of the country. In these cases, educational channels are sold to the highest bidder in commercial-esque fashion; the new owner usually doesn't have any interest in serving the local community. In the case of KTPD Kilgore, Texas, Kilgore College (See Appendix A), the only public station in the area was sold to EMF and automated; the local community had no say in the transaction. Kilgore, Texas can receive five or six religious stations, but nothing else on the NCE dial.

**Example 1: Localism and Main Studio Waiver – KLOP**

In a recent request, EMF has asked the Commission for a minor modification of KLOP Ocean Park, WA. The station is additionally studio-waived, and receives a feed from its Middletown, CA station, KLVR. Plotting this station's coverage we see that it will cover almost everyone in Western Washington. It will be one of the largest FM providers in the station of Washington, reaching over 2.5 million listeners with a  $\Rightarrow 60$  dBu signal<sup>45</sup>, or receivable by 3 million people within audible reception (54 dBu L-R). The proposed FCC 60 dBu contour, reaches from the Pacific Ocean to Seattle, WA. (See Figure 5)

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<sup>45</sup> According to Longley Rice propagation plot.

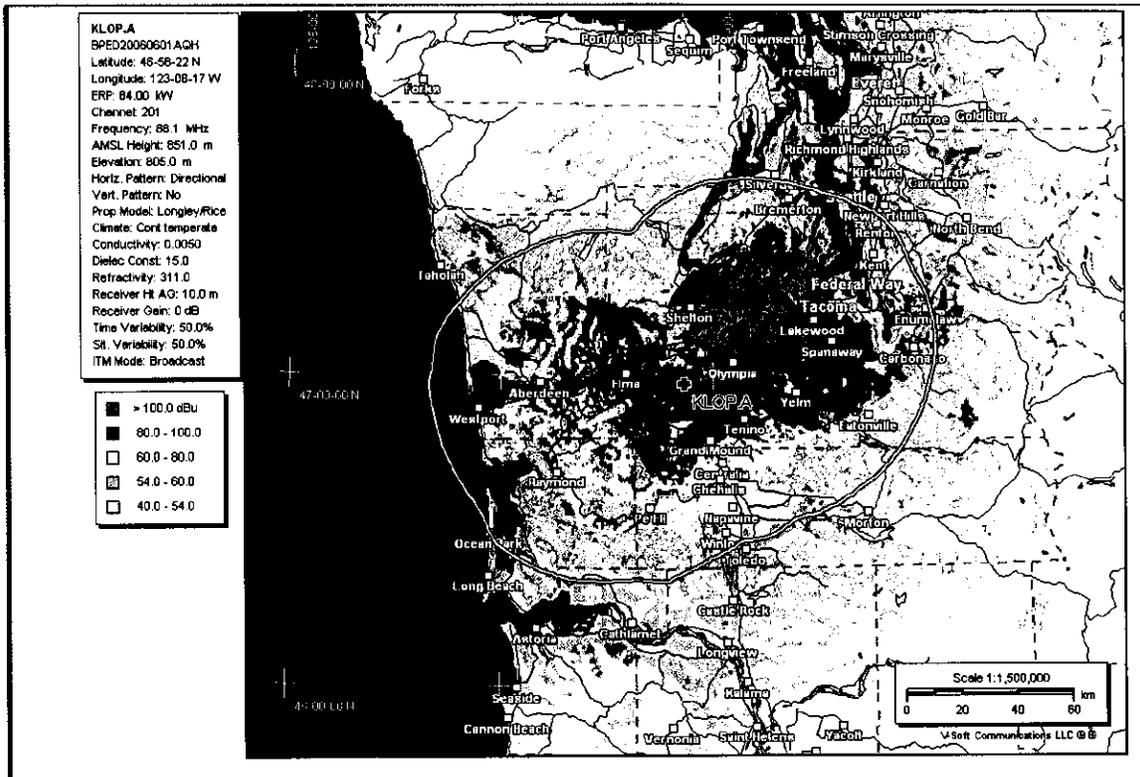


Figure 5: KLOP Proposed

We ask the Commission: How does waiving the main studio of a station that serves almost half of Washington State benefit the local public interest? How does this same model serve localism across the country?

**Example 2: Limiting Local Educational Radio**

As examined previous in this comment, the community of Bakersfield, California has no community or college NCE stations. All but one NCE service is by network. In 2007, a local arts group called the Empty Space set out to apply for a non-commercial frequency. Like many communities, there weren't any NCE channels available to directly serve Bakersfield. Regardless, they set out to apply for a frequency that may be able to impart a fringe signal into Bakersfield from 25 miles away with a couple hundred watts. Before

the filing window, EMF filed a minor modification to expand the coverage area of one of its 50 kW stations (on the adjacent channel to Empty Space’s application) by a few miles. This small modification limited Empty Space’s ability to get a fringe signal into Bakersfield, but Empty Space applied anyway. Soon after the NCE application window, they discovered their application was singleton. They contacted EMF to see if they could rescind their minor modification. According to KLOVE and AIR1 websites, EMF has four channels that serve Bakersfield (two full power stations—KYLU and KAIB—and two translators—K206FB and K284AO). An EMF signal specialist replied that they could not accommodate Empty Space’s request. We think it is unfortunate that a network that has four satellite-relayed signals in a market cannot accommodate a request from a group to start the only local community educational service in an area. Also unfortunate is the fact that the Commission doesn’t require EMF to provide any local programming whatsoever to Bakersfield. The public essentially has no resources for demanding local programming.

**Multiple Signals Per Market**

According to KLOVE and AIR-1’s websites EMF serves major cities—like San Francisco, San Jose, San Diego, Saint Louis—and has multiple services via translator or main studio waiver in cities like these:

Portland	4 channels: 2 <i>KLOVE</i> , 2 <i>Air 1</i>
Las Vegas	3 channel: 2 <i>KLOVE</i> , 1 <i>Air 1</i> (See Appendix B)
Phoenix	4 channels: 2 <i>KLOVE</i> , 2 <i>AIR1</i>
Austin	3 channels: 3 <i>KLOVE</i>
Oklahoma City	2 channels: 1 <i>KLOVE</i> , 1 <i>AIR 1</i>
Kansas City	2 channels: 1 <i>KLOVE</i> , 1 <i>AIR 1</i>
Louisville, KY	6 channels: 3 <i>KLOVE</i> , 3 <i>AIR 1</i>

In this case, how does EMF serve localism in satellite communities from its small town California studios? Additionally, does the compounded effect of multiple NCE networks in communities affect the local public's ability to secure access to the airwaves? How can studio waived networks effectively react to local emergencies in satellite communities? Regardless of being a nonprofit or not, organizations that have ample funds, and that can employ competitive professional practices, can use loopholes in the FCC's rules to plunder reserved channels that were originally meant to be set outside the competitive marketplace. Today we are in the same predicament that we were in decades ago when commercial stations started dominating the AM band, sparking the need for reserved educational channels.

In more general terms—studio waivers and translators—the FCC has given NCE licensees an exemption on any local public service requirement. For example, how does Calvary Chapel of Twin Falls, which serves the small town of Twin Falls, ID, serve the localism needs of Hawaiians with their 14 translators and one full power station fed via satellite to the state of Hawaii? One could say that Twin Falls, ID has more radio presence on the airwaves in Hawaii than many local Hawaiian groups combined. It is unfortunate that groups like URH, the student radio station at University of Hawaii at Hilo, need to stick with internet-only broadcasting (<http://radio.uhh.hawaii.edu/>) because the Commission has allocated channels in a way that favors non-local broadcasters with money. If all this passes current FCC localism standards, this could imply that the rules concerning non-commercial broadcast localism need some serious examination.

### **“Competitive Edge” of Networks Edge Out Independent, Local Alternative Voices**

Although we recognize and respect the quality public programming that NPR provides, and the free speech concerns of Christian broadcasters—as we are not against these movements—we are concerned that there is no room the remaining 99% of voices: local, cultural, historical, and independent music; viewpoints of youth, elderly, handicapped, booming cultural communities, farm workers, and unions; high school and college educational programs; religious (or non-religious)—Hinduism, Islam, Judaism, Quaker, Scientology, Atheist; city council meetings, local elections, and governmental access; community access, etc.

No matter how hard the public or the Commission pushes, realistically, if all of the Nation’s youth are listening to local hardcore punk and garage bands, you’re not going to get NPR to devote a show to it. If a community is 50% Latino, you’re not going to convince a Christian satellite broadcaster to broadcast a general non-Christian-themed Latino community affairs show to it. As the current public service requirements stand, only new services can provide this. We are concerned that there are no broadcast channels left for communities to directly serve themselves. During the last opportunity to apply for a NCE channel (October 2007), almost every channel in proximity to major urban areas was already taken before the window opened<sup>46</sup>. The key channels that were available within a year before the window were preemptively claimed by established broadcasters via minor modification, or by the help of the Commission’s recently

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<sup>46</sup> According to preliminary market studies performed through Radio for People Coalition and Public Radio Capital in 2006

changed community of license change rule<sup>47</sup>. Radio networks like EMF do not support the Commission's efforts regarding diverse access new non-commercial applicants—they did not support NCE application limits or LPFM service<sup>48</sup>. It appears services like EMF believe it is more important for them to have multiple services in satellite communities across the country instead of independent local community services. Because there are no full power channels left for the first local educational community-related radio service in many cities, we ask the Commission to re-examine its policies concerning radio networks and their impact on localism. We also would like the Commission to analyze the possibility of reserving additional full power non-commercial channels designated for local main studio service only in key markets dominated by studio-waved NCE services.

### **Overall Conclusion on Main Studio Waivers**

*NCE license usage has changed since its inception. The subject of studio waivers warrants further discussion in relationship to localism.* Between 1947 and now NCE usage has changed, but the motivation underlying the granting of main studio waivers has remained static. Even as far back as 1973, the Commission agreed with petitioners that non-commercial licensees no longer provided purely in-school instruction programming, but often competed with the programming of commercial licensees; this became an argument for commercial ascertainment policies being formally adapted to non-

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<sup>47</sup> Grand Rapids, MI, Stockton, CA, (west of) Albuquerque, NM, (south of) Phoenix, AZ, Melbourne, FL, (east and west of) Sacramento, CA, etc

<sup>48</sup> Re NCE filing limits: Educational Media Foundation (“EMF”) is the only party that argued against any method of limiting [NCE] applications” (regarding NCE filing limits, FCC Public Notice *FCC Adopts Limit for NCE FM...* FCC 07-179 (October 10, 2007)); On LPFM: “The speculative benefits of LPFM do not justify imposition of these definite harms.” “there is no guarantee that LPFM stations... will better serve the public interest than [translators]” *Comment to FCC* August 22,2005 Re: MM Docket No. 99-25

commercial stations<sup>49</sup>. Ascertainment addressed the evolving state of NCE studio-waived stations past purely educational goals, acknowledging the local public service responsibilities of NCE licensees. In the rescinding of community ascertainment requirements in 1981, re-examination of main studio waiver in relation to the local public service of non-commercial stations never took place.

In 1981, the Commission did acknowledge that NCE licenses were being used increasingly for the booming, well-funded public radio network: “The growth of public radio has been described as being remarkable...”<sup>50</sup>. Within the past couple decades NCE licenses have been increasingly used for entertainment and cultural uses, in addition to the dissemination of ideological beliefs. NCE licensees often compete programming-wise with commercial stations, and additionally for new channels with other non-commercial broadcasters. Today NCE licensees utilize local management agreements (LMA’s), which distance themselves from the original intent of the FCC license, with professionally trained staffs from commercial media backgrounds. This total change in NCE use—programming, competition, license-holder type, and funding—begs for a reassessment of the local public service obligations of main studio-waived licensee.

The Commission never anticipated that the centralized operation of NCE networks would reduce diversity of programming and crush localism in many communities, but that is what has happened. In some communities, such as in our examples of Bakersfield, CA, Redding, CA, and San Angelo, TX, out-of-town broadcasters networks monopolize the

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<sup>49</sup> *Ascertainment of Community Problems by Noncommercial Broadcast Applicants*, 41 FR 12424 (1976)

<sup>50</sup> From *In the Matter of Deregulation of Radio*, Appendix E “The Non-Entertainment Programming Guideline A Brief History of Programming Regulation”, para 102 within 84 FCC 2d 961- (1981)

NCE channels, locking out any future local NCE participation. In some communities you can receive the same NCE program feed on five channels. We realize that media consolidation and unlimited broadcast ownership in commercial media is dangerous because it concentrates profits among a small amount of owners; this is one reason why commercial stations have ownership caps. More importantly, ownership caps are in place to avoid concentration of ideological power over audiences. Some NCE networks now have approached the ownership levels of unchecked power, a disservice to American democracy. Our overall thought is that **we still support main studio waivers**, but we believe the Commission needs to make new rules that adequately address their purpose and implementation in relation to localism.

### III. Localism: Selective Issues of Importance

#### **1. The Public Needs a Definition of “Minimum Local Public Service”**

New station staffing, public file, studio location requirements would have minimal impact on overall programming if there is no clear definition of what *local public service* is. Although the FCC says a station must serve the community it is licensed to, there is no clear definition of what that means. In other words, what is the difference in definition between *a station that could serve a specific community* to *a station that could serve a national audience*? For example, a licensee’s main studio is located in Anchorage, AK, and they have studio-waived stations in Phoenix, AZ, Portland, ME, Hilo, HI, Edgewater, FL. Can local issues be addressed simultaneously with one general topic, say, on one public affairs show run in all these communities? If the answer is

“yes”, then localism may not be local-specific, and localism could be nationalism, and the idea of community service could be based upon nothing community-specific. But we realize that there are also endless local-exclusive topics that are specific to only one community (example—a call-in show where the mayor answers callers’ questions concerning a certain city). Many stations lack this type of community-specific programming.

### Local Public Service Analyzed

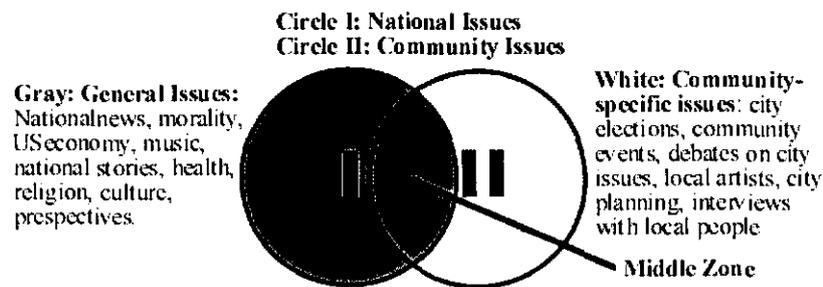


Figure 6: General and Community-Specific Issues

Above is a diagram of issues important to a community. Circle I represents general/national issues. Circle II represents community issues. The gray area represents general issues, some of which can be considered general community issues. The white area represents exclusive community issues (issues pertinent to one community). The problem with national, regional, and even local radio is that broadcasters tend to cover the “gray zone”. When a group or individual from a local community complains to the FCC that a station is not serving their community, they are usually referring to the “white zone” in Circle II. When the licensee defends itself, it emphasizes that it has fulfilled its

localism service by listing all the topics it has covered from the “middle zone” (part of the “gray zone”, I, and II), also enumerating local or regional topics that it covered by chance in its regional or national coverage. The middle zone refers to topics pertinent to the community of license, thus technically serving the community, but also relevant to the region or nation in general. **If this model is valid, then solely regional or national programming can fulfill localism, and a radio station has no legal obligation to cover any community-specific issues in the “white zone”.** Because broadcasters naturally gravitate to cover issues based upon ratings, licensee ideology, and/or cost, “white zone” topics will always be excluded. Thus, when the FCC grants studio waivers to licensees to cover another community, the larger these networks grow the more general issues they will cover to receive the most audience. Because of this, no individual community can demand to be served. **If the FCC wants to make new rules concerning localism, it has to address how a radio station needs to serve the “white zone” (“local-specific programming”, in the diagram above).**

## **2. Concerns of Broadcasters**

We do sympathize with broadcaster’s concerns when it comes to proposed changes that will not effectively increase localism. Changing rules that require a local studio to be moved within the boundaries of the community of license from the current rules is unnecessary. Current rules stipulate the studio is within any protected contour that covers the community of license, or 25 miles within the reference coordinates of the community. Changing the studio location by mere miles is not going to force a station to increase local coverage, nor will it allow the public to access the station any better. Most likely if

this rule is changed station owners will just change their communities of license to comply.

We agree with broadcasters that new automation technology has allowed stations to run smoothly without an operator on duty. Having someone present at a station 24 hours a day will achieve no added benefit. However, we do agree that local emergencies do require human intervention. We also agree that the current main studio rule for commercial broadcasters is also adequate to deal with local presence. No added localism in programming or community access will be achieved by moving a station headquarter a short amount of miles into a community of license. If anything, requiring stations to move short distances within their protected contours to comply with new regulations will only stoke filings to change community of license in order to comply.

### **3. Comments on Commercial Radio**

We concur with commercial broadcasters on the notion that broadcasting has changed in the last few decades. Competition from the Internet and mp3 players has the possibility of providing alternatives for news and entertainment. However, we do not entirely know the impact of these developments. Commercial radio has poorly responded to internet-age competition and has not increased quality of content; playlists have continued to tighten, and DJ-less formats such as “Jack-FM” have proliferated. Obtaining radio airplay for most artists has gotten so difficult that presently there are Grammy-nominated artists such as *Goldfrapp*, *Justice*, *Lily Allen*, and *LCD Soundsystem* —all associated with major labels in some fashion—that are not played on commercial radio. The artist *Feist*,

up for four Grammy nominations, had to obtain coverage in a television commercial before being granted any minimal airplay at all. Her album ranked #20 in comprehensive year-end Billboard Top Digital Albums yet didn't even place in on the radar for any of *Radio and Records* 2007 year-end airplay charts. It's worse for independent artists attempting to obtain airplay. In 2004 the indie artist *Bright Eyes* held both the #1 and #2 positions on the Billboard Hot 100 Singles chart, which had only been achieved once before in 1997 by *Puff Daddy*. However, the artist, on independent label *Saddle Creek*, wasn't even played on commercial pop music stations. A few alternative stations eventually picked up a single and played them for a very short duration.

Even when the public amazingly finds a way to favor artists in mass outside the strict playlist constraints of commercial radio, radio programmers refuse to veer from music promoters' grip on stations. Radio playlists are also devoid of any local artists. In fact, American indie artists are more likely to get airplay on European radio stations than American commercial radio. Ironically, US artists, such as *The Strokes*, *Interpol*, and *Yeah Yeah Yeahs*, needed to obtain buzz in the UK before accessing American radio; we can always thank BBC radio. When commercial broadcasters respond to decreased listenership, they often cite internet competition, not their decreased content, thus rallying for consolidation. They don't cite NPR, where listenership has actually increased by maintaining quality content<sup>51</sup>. They cite that new regulation would regulate them "back to the 60's". We agree; radio quality in the 1960's was *incredibly better* than it is now.

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<sup>51</sup> Arbitron report, "Public Radio Today: how America Listens to Public Radio"

## IV. Overall Conclusions and Recommendations

The Commission has asked for comment regarding new regulation that could improve broadcast localism. We delve into topics of interest below, weighing the concerns of the public and broadcasters to develop a prescribed solution for each broadcast ailment.

### Reassessment of Main Studio Waivers

We believe main studio waivers are still very relevant, but need to be better regulated:

A. Base the granting of main studio waivers contingent upon relatively low population in a service area: In the past, the Commission has accepted evidence that the population of the studio-waived community is too small in order to justify that it is unfeasible to locate a studio within the community<sup>52</sup>; we agree. If a small population exists in the area, it may not be able to support the cost of an additional main studio. There should be a minimum broadcast population cutoff defined, meaning any population under a certain prescribed level may be considered too small to support staffing a studio. The applicant should provide evidence, including population broadcast to (by verification of Longley-Rice 60 dBu coverage<sup>53</sup>), and cost speculation of studio and staffing, and speculation of

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<sup>52</sup> Examples include *Living Faith Ministries, Inc.*, 21 FCC Rcd 5046 (2006), *Letter to Russell C. Powell Re: Sound of Life May 20, 1996*

<sup>53</sup> In some cases, FCC 60 dBu diverges from actual received. In the case of mountainous terrain, the actual signal can be cut short and serve a smaller area. In case of line-of-sight transmitter locations on mountains overlooking valleys, FCC 60 dBu exceedingly underestimates coverage. We recommend Longley-Rice plotting be used as to accurately show true coverage.