



Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, NW | Washington, DC 20037-1122 | tel 202.663.8000 | fax 202.663.8007

Richard R. Zaragoza
Phone: 202.663.8266
richard.zaragoza@pillsburylaw.com

May 23, 2008

VIA ELECTRONIC DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
Portals II Building
445 Twelfth Street, S.W.
TW-A325
Washington, D.C. 20554

Re: NOTICE OF EX PARTE PRESENTATIONS
Report on Broadcast Localism and Notice of Proposed Rulemaking
MB Docket No. 04-233

Dear Ms. Dortch:

On behalf of the Massachusetts Broadcasters Association and the New Hampshire Association of Broadcasters, this is to inform the record in the above-captioned proceeding that, on May 21, 2008, separate meetings were held at the headquarters of the Commission among the following Offices of Commissioners and representatives of radio and television broadcasters from Massachusetts and New Hampshire:

From the Commission were:

- Commissioner Michael J. Copps and Rick C. Chessen, Senior Legal Advisor, Media
- Commissioner Robert M. McDowell and Cristina Chou Pauze, Legal Advisor, Media
- Office of Chairman Kevin J. Martin, Elizabeth Andrion, Acting Media Advisor
- Office of Commissioner Deborah Taylor Tate, Wayne Leighton, Special Advisor

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Representing the Massachusetts and New Hampshire radio and television broadcasters at each of the four meetings were:

- Mr. B. Allan Sprague, the President of the Massachusetts and New Hampshire Associations of Broadcasters;
- Ms. Deanna Elliott, Vice President of the Massachusetts and New Hampshire Associations of Broadcasters;
- Mr. Ron Frizzel, owner of Mt. Washington Radio and Gramophone Company, L.L.C. and his wife Diane;
- Ms. Diane Sutter, owner of ShootingStar Broadcasting/My TV New England;
- Mr. Donn Deane, an owner of Deane Brothers Broadcasting Corp.;
- Mr. Alex von Lichtenberg, General Manager, WUNI-TV, Worcester, Massachusetts; and
- Richard R. Zaragoza and Emily J. H. Daniels, Pillsbury Winthrop Shaw Pittman LLP, counsel for the Massachusetts and New Hampshire Associations of Broadcasters (collectively, the “parties”).

The purpose of the meeting was to discuss some of the Commission’s proposals contained in its “Report on Broadcast Localism and Notice of Proposed Rulemaking,” released on January 24, 2008 in MB Docket No. 04-233, and related matters. The attachment hereto identifies the matters that were discussed and the points raised. While it is recognized that the customary course is to file separate Ex Parte letters for each meeting, it was thought best to submit a single letter describing the meetings in the aggregate rather than attempting to capture precisely what point was made at which meeting.

Please associate this Ex Parte letter with the Commission’s record in the proceedings referenced above.

Should there be any questions, please contact either of the undersigned.

Very truly yours,

/s/

Richard R. Zaragoza

Emily J. H. Daniels

*Counsel for the Massachusetts and New Hampshire
Associations of Broadcasters*

cc: Commissioner Michael J. Copps
Rick C. Chessen
Commissioner Robert M. McDowell
Cristina Chou Pauze
Elizabeth Andrion

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Wayne Leighton
B. Allan Sprague
Deanna Elliott
Ron Frizzel
Diane Sutter
Donn Deane
Alex von Lichtenberg

ATTACHMENT

General Points:

As a whole, the broadcast localism proposals will end up penalizing the vast majority of broadcasters for the undefined “sins” of an unidentified few.

Each proposal is in the nature of a “one-size-fits-all” solution in search of a nonexistent problem.

The entire proceeding has created so much uncertainty about increases in operating costs if these proposals are adopted that it is now impossible for broadcasters to come up with the realistic multi-year budgets that their investors and lenders require.

Because the foreseeable effect of the broadcast localism proposals is to increase station operation costs and regulatory oversight and thus risk, the smaller broadcasters, including first time minority and female broadcasters, will be disproportionately harmed by them.

Specific Issues and Points

- 1. Proposed Requirement that Broadcast Stations be Attended During All Hours of Operation (“24/7 Staffing”)**
 - The parties discussed the dire consequences of imposing a 24/7 staffing requirement, specifically the fact that it is virtually certain that a large number of stations, particularly those in smaller markets, would be financially forced to reduce their hours of operation at night should the proposed 24/7 staffing requirement be imposed. The parties stressed that this unintended consequence would work at cross-purposes with the ultimate goal underlying the proposed rule – insuring adequate, reliable communications between emergency management authorities and broadcasters so that the public could always be informed of emergencies impacting where they live or work.
 - For example, Ron Frizzell, who owns WBNC(AM), WMWV(FM), and WVMJ(FM), indicated that such a staffing requirement would force his stations to go off the air between 9 p.m. and 12 a.m. each evening. These stations are currently operated using unattended operations overnight. However, these stations receive no commercial revenue after 9 p.m., and the station finances could not bear the costs of additional staffing for attended overnight operations.
 - The parties further addressed the fact that requiring a person to be on staff during late-night hours of operation does not in and of itself assure emergency

management access to station decision makers. In such instances, the staff member would have to call a station decision-maker for instructions. As Diane Sutter discussed for her station WZMY-TV, which is currently staffed 24/7, an emergency call received overnight would be answered by the staff member at the station. This staff member would then have to call either Ms. Sutter or her chief engineer in order to address the emergency situation.

- In fact, full-time staffing is not necessary to assure emergency management access to station decision-makers. Any person can call a station. Most if not all have menus and call options, including an option for if the call is about an emergency. In addition, or in lieu thereof, stations routinely provide emergency management with the after hours telephone numbers of persons who are either decision-makers or have immediate access to them. All stations owned by the parties have provided local police and fire departments with the contact information of multiple station employees. In short, an emergency management person does not need to speak with a person on station premises to get quickly to a station decision-maker that can act fast. For example, should someone call one of Ron Frizell's stations after hours, he or she would receive a message providing an emergency contact phone number. This phone number would then be forwarded to the cell phone of the station's chief operator. Should he not answer, the call would be forwarded to Ron's personal cell phone, and if not answered, to his son's cell phone.
- The parties volunteered, in lieu of a 24/7 staffing requirement, to complete an annual form provided by state broadcasters associations or by the Commission certifying that emergency contact information has been disseminated to local police and fire departments.

2. Proposed Reversion to Pre-1987 Main Studio Rule

- The parties discussed the negative implications of reversion to the pre-1987 main studio rule which would require that each station's main studio be located within the station's community of license. Such reversion would be both costly and would undermine localism. Stations would be forced to sell the existing main studio and acquire or build a new main studio in order to comply with the pre-1987 main studio rule.
- Alex von Lichtenberg, the general manager of WUNI-TV, discussed the reasons that his station's main studio is located outside of the community of license. WUNI-TV is a Univision affiliate owned by Entravision Communications Corp. that serves the Hispanic market west from the station's transmitter site past Worcester (the station's community of license), east to Boston, north to Manchester, NH and south to Providence, RI. The station's culturally distinct "community" is geographically widespread. The station's main studio, compliant with the FCC's requirements, was moved to a more centralized location between Worcester and Boston so that from its

centralized location the station's news crew could more easily travel in all directions to gather news of interest to the Hispanic community through the station's service area. Furthermore, because of its proximity to Boston, the station is more readily able to hire qualified bilingual staff. Reversion to the pre-1987 main studio rule would waste the efficiencies currently enjoyed, burden the station financially, and ultimately result in less locally produced programming responsive to the vast geographic spread of the Hispanic community which the station currently serves.

3. Proposed Requirement that Stations Convene Permanent Community Advisory Boards

- The parties discussed the unintended consequences of requiring stations to convene permanent community advisory boards. It is likely that the Commission's goal of diverse station ownership would be undermined by such a requirement.
- As Diane Sutter addressed, in providing funding, lenders and equity investors are investing in the station owner's experience, decision-making acumen, and his or her plan for running the station and operating the business. The adoption of a "permanent" community advisory board requirement will be seen by investors as a layer of bureaucracy in a station's decision-making process that could be used to frustrate and slow that process. This, in turn, will reduce investor confidence in broadcasters and in broadcasting. The Commission has not made it clear what role these permanent advisory boards would serve in the decision-making process over the station's programming which is the most important driver not only for the public interest but for the business itself. Further, the Commission has not addressed the burden imposed on station's by potentially being forced to establish legal entities or to pay the directors and officer's insurance and other fees for these advisory boards. In light of the uncertainty created by this and other proposed requirements, lenders and equity investors will be increasingly hesitant to invest in new market entrants.
- Small station owners and new entrants into the broadcasting industry are often female and minorities. In hindering these entrants with requirements and creating regulatory uncertainty that would undermine their ability to receive funding, the Commission undermines its own diversity goals.

4. Proposed Requirement for Stations to Complete and File FCC Form 355

- Requiring each station to gather the information necessary to complete and file proposed FCC Form 355 will cost the broadcast industry a staggering amount of money. That burden will disproportionately burden small station owners. For example, Dianne Sutter indicated that she would be forced to hire

an additional staff member to maintain all records necessary to complete the form.

- Donn Deane who, along with his two brothers, owns WJDF(FM) would be burdened by such a requirement despite extensive localism efforts. In addition to co-owning and operating the station, he and his brothers are involved with multiple community organizations, and he runs the neighborhood pizza shop. On one occasion, a station listener called the pizza shop with a song request for her husband's birthday. Donn Deane left his duties at the shop and walked to the radio station to fulfill the listener's request. Despite such obviously personal and local service to his community, the Commission has proposed that he and his brothers be tasked with the additional duty of compiling data for FCC Form 355.
- It would be unjust and counterproductive to burden compliant broadcasters with additional requirements that would be particularly harmful to those small station owners who are already extensively involved with their local communities. The parties suggested that stations continue to prepare and make publicly available their quarterly programs/issues lists. It was brought up that, rather than burden the entire broadcast industry with the collection of massive amounts of data that the FCC does not apparently intend to review absent a petition to deny, the Commission could give consideration to conducting periodic audits of station performance using suitable criteria, in the same way that the Commission audits EEO compliance.