



programming that their stations have aired.”<sup>2</sup> This situation is disconcerting considering that, as the Commission points out, the “concept of localism has been a cornerstone of broadcast regulation for decades.”<sup>3</sup> Indeed, “as temporary trustees of the public’s airwaves, broadcasters are obligated to operate stations to serve the public interest” and that “respond to the unique concerns and interests of the audiences within the stations’ respective service areas.”<sup>4</sup> It is against this backdrop of public interest and local concerns that the “Commission proposes certain changes to its rules and policies that will promote both localism and diversity.”<sup>5</sup>

Considering the Commission’s recent actions taken in the video franchising proceeding and its lack of appreciation of the role that local governments play in assuring that cable systems are responsive to local needs and concerns, one cannot help but question the Commission’s commitment to its stated goals of promoting broadcast localism and diversity. It is imperative that any steps the Commission takes in this proceeding are: (1) based on the record; (2) do not harm local efforts that seek to ensure that local broadcasting reflects community needs and interests; and (3) are within the Commission’s authority to adopt. It is with these principles in mind that we submit the following comments.

## **II. THE NOTICE OF PROPOSED RULEMAKING**

### **A. Communication Between Licensees and Their Communities**

While the record shows that some licensees actively take steps to ascertain the needs and interests of the communities they serve, the Commission correctly recognizes

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<sup>2</sup> *Id.* at ¶ 1.

<sup>3</sup> *Id.* at ¶ 5.

<sup>4</sup> *Id.* at ¶ 6.

<sup>5</sup> *Id.* at ¶ 1.

that there is a “need to improve the communication between broadcast licensees and their local communities”<sup>6</sup> and seeks comment on a number of proposals to improve those lines of communication.

1. Community Advisory Boards

The Commission has tentatively concluded that “each licensee should convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station. We believe these boards will promote both localism and diversity and, as such, should be an integral component of the Commission’s localism efforts.”

NATOA encourages any initiative that seeks to improve communication between licensees and the communities they serve. While we are supportive of the concept of community advisory boards, we are somewhat hesitant to argue for the application of uniform, nationwide standards to govern the constitution of such boards. To do so, we believe, may result in promoting form over substance, with the end result being that such boards fail to truly reflect the unique needs and interests of their specific communities. As we have seen in the cable franchising arena, when the vital participation of the local franchise authority is disregarded and statewide franchising schemes or FCC industry-driven rules are imposed, the public’s interests are quickly forgotten. Therefore, perhaps “suggested guidelines” for community advisory boards may be a more appropriate approach. Indeed, guidelines, or an overarching framework, would provide localities and broadcasters with the ability to tailor the composition of such boards to better reflect the unique makeup of their communities and to better address the unique needs and interests of the residents.

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<sup>6</sup> *Id.* at ¶ 16.

Further, while it would be difficult to set forth in any detail the ideal makeup of such boards on a national level, it is imperative that efforts be taken at the local level to ensure that these boards truly represent the community. It is also important that such boards meet on a regular basis, in a publicly-noticed forum, with ample opportunity for public input.

Like NATOA, the National Association of Broadcasters (“NAB”) raised many of these same concerns regarding the imposition of national standards on local boards. However, NATOA disagrees with NAB to the extent that such boards “will be impractical and unwieldy for many broadcasters, and in some situations, counter-productive to the Commission’s goal of fostering localism.”<sup>7</sup> Since when has public discourse and community involvement become counter-productive? Indeed, the use of such boards mirrors the widespread use of cable advisory boards established in local communities across the nation that offer their insight and recommendations for strengthening local cable services.

Furthermore, NAB’s support for the assertion that “marketplace incentives would spur broadcasters to remain locally relevant and responsive”<sup>8</sup> is misplaced. If that were the case, we would not be having this conversation about broadcast localism today. As we have seen in the video franchising arena, reliance on the marketplace dilutes community involvement, leads to higher consumer prices and lower customer service standards, and wrecks havoc on Public, Educational, and Government (“PEG”) access programming.

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<sup>7</sup> Comments of the National Association of Broadcasters, MB Docket No. 04-233, filed April 28, 2008, p. 23.

<sup>8</sup> *Id.* at 24.

## 2. Remote Station Operation

With the vitality of PEG stations in question, NATOA and others are concerned that there is an increased risk to public safety during emergencies because of automated broadcast operations. It is unquestionable that requiring all broadcast stations to be staffed can only increase the likelihood that vital public safety information can be provided, and relied upon, by all community residents. It is without doubt that, in times of emergencies, the vast majority of Americans turn to television to provide them with the most up-to-date information. As a result, public safety demands that all broadcast stations be staffed. Such a requirement is a small price to pay in return for the free use of the public airwaves.

In the alternative, an appropriate local public safety official, designated by the broadcaster, should be given the authority to manually override operations of non-staffed stations in times of emergencies.

The National Association of Broadcasters (“NAB”) argues that there is no cause to revisit the Commission’s unattended station rules because violations of such rules “are virtually nonexistent, having generated only a single notice of apparent liability since 1995.”<sup>9</sup> It would appear the NAB is of the opinion that there is no violation without Commission action. But just because someone doesn’t get a ticket doesn’t mean he wasn’t speeding.

Further, NAB ignores the fact that state and local officials may override programming during times of emergencies, “but only if they have the prior consent of broadcasters, which are not legally obligated to cede control of their content, and only if they have installed E.A.S.-compatible equipment, which is voluntary, too. Predictably,

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<sup>9</sup> *Id.* at 47.

the loose local standards leave some officials confused about how to issue an alert and some broadcasters ill equipped to help.”<sup>10</sup>

B. Nature and Amount of Community-Responsive Programming

1. Local Programming Renewal Application Processing Guidelines

Finding that the “record reveals that notable disparities exist among licensees with respect to the nature and amount of community-responsive programming that they air,”<sup>11</sup> the Commission tentatively concludes that “we should reintroduce renewal application processing guidelines that will ensure that all broadcasters . . . provide some locally-oriented programming.”<sup>12</sup> NATOA is in favor of this proposal. Not only will such guidelines help to ensure that broadcasters provide locally-oriented programming, they will also act to ensure that all broadcasters are held to the same standards. However, as discussed below, we believe that any guidelines imposed should include a “quality” component to help ensure that such local programming is indeed responsive to the unique needs and interests of the community.

2. Main Studio Rule

Considering the fact that nearly ten years after the Commission further “liberalized” its main studio rule we find ourselves once again discussing this matter, it would appear the Commission’s relaxing of the main studio rule was ill-advised. NATOA believes the Commission should reinstitute its main studio rule, which required all broadcasters to maintain their main studios in their communities of license.<sup>13</sup> NATOA

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<sup>10</sup> Eric Klinenberg, Air Support, nytimes.com, January 28, 2007, available at: [http://www.nytimes.com/2007/01/28/magazine/28WWLN\\_IdeaLab.t.html? r=1&ref=magazine&oref=slo gin](http://www.nytimes.com/2007/01/28/magazine/28WWLN_IdeaLab.t.html? r=1&ref=magazine&oref=slo gin)

<sup>11</sup> NPRM at ¶ 31.

<sup>12</sup> *Id.* at ¶ 40.

<sup>13</sup> *Id.* at ¶ 41.

believes such a rule would encourage the production of locally-oriented programming and further the lines of communication between broadcasters and their communities of service.

Indeed, such a requirement is even more important today when one considers the growing financial constraints that threaten local PEG access operations. As a direct result of the Commission's video franchising orders and statewide franchising initiatives, PEG stations nationwide, the quintessence of local interest programming, have seen monetary and in-kind support decrease, and, in some cases, cease. With such vital, locally-oriented programming threatened, any initiative that may result in broadcasters being more responsive to local needs and concerns must be encouraged.

C. Political Programming

The Commission appears to take the position that the debate over political programming can be resolved through the use of the Commission's new disclosure requirements. And to some extent, that may be true. Indeed, whenever the Commission takes it upon itself to institute better and more useful data collection procedures, it must be commended. However, as the Campaign Commenters point out, strengthening disclosure requirements is merely the "first step."<sup>14</sup> The Commission must do more. Practices such as masquerading partisan political programming as "news reports" or "documentaries" need to be addressed.

Yet, as a government agency run by political appointees, it is unlikely that the Commission will take any action beyond that contemplated herein. Indeed, the Commission's recent actions in ruling that TMZ and The 700 Club both qualify as bona

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<sup>14</sup> *Id.* at ¶ 67.

vide newscasts, and thus not subject to political equal-time requirements, underscores the flippant treatment political programming receives from the Commission.

Unfortunately, the Commission failed to take positive steps to improve the quality and quantity of local political programming when it adopted its two video franchising orders. Rather than seeing PEG operations as beneficial to local communities, reflecting the unique needs and interests of the residents they serve, the Commission's policies acted to stifle political discourse and public debate.

#### D. Underserved Audiences

Even the Commission acknowledges that “some programming – particularly network programming – often is not sufficiently culturally diverse.”<sup>15</sup> While the Commission believes that digital television technology may provide more programming for “niche” audiences, it also believes that “more needs to be done.”<sup>16</sup> As a result, the Commission set forth a number of ways by which it believes more and better programming for underserved audiences may be achieved, including the use of community advisory boards, ownership diversity, enhanced disclosure requirements, and commercial leased access.<sup>17</sup> NATOA is supportive of any initiative that could result in increased diverse and local programming.

But once again, the Commission fails to acknowledge the fundamental role that PEG programming could play in providing “niche” programming in local communities across the nation. It has been estimated that PEG stations, on a nationwide basis, produce 20,000 hours of new, local programming every week, which is more than that produced

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<sup>15</sup> *Id.* at ¶ 69.

<sup>16</sup> *Id.* at ¶ 72.

<sup>17</sup> The role that leased access may play in providing better programming for underserved communities is in doubt. On May 22, 2008, the United States Court of Appeals for the Sixth Circuit stayed the implementation of the Commission's recently enacted lease access rules.

by network broadcasters combined.<sup>18</sup> Perhaps it is time for the Commission to recognize the invaluable role that PEG channels play in providing local programming and take steps to preserve, rather than destroy, such invaluable sources of “niche” programming.

E. Disaster Warnings

NATOA is concerned about the issue of remote station operation. While the Commission is looking at the matter as it relates radio, we believe it incumbent for the Commission to address the matter as it relates to television. The simple fact that a majority of Americans get their information from television cannot be overlooked. And the fact that television is so ubiquitous necessarily requires that local stations be staffed at the local level to ensure that all residents receive vital public safety information at critical times.<sup>19</sup> At a minimum, an appropriate local public safety official, such as a fire or police chief, should be given the authority to manually override operations of non-staffed stations in times of emergencies.

F. License Renewal Procedures

NATOA agrees that the license renewal process “involve more than a returned postcard.”<sup>20</sup> And while the Commission’s steps to require increased disclosure of local programming efforts by broadcasters are commendable, such efforts alone are not enough. We support those who suggest that “public hearings on service and community needs assessment [should] be conducted and published for comment, criticism and resolution.”<sup>21</sup>

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<sup>18</sup> See *Testimony of Sharon King before the Federal Communications Commission*, Annual Assessment of the Status of Competition for the Delivery of Video Programming, MB Docket No. 05-255, Keller, Texas (February 10, 2006), available at: <http://www.fcc.gov/realaudio/presentations/2006/021006/king.pdf>.

<sup>19</sup> See, Randy Dotinga, *Crisis Alert in Critical State*, *Wired* (August 24, 2004), available at: <http://www.wired.com/politics/law/news/2004/08/64656>.

<sup>20</sup> NPRM at ¶ 115.

<sup>21</sup> *Id.*

Furthermore, we believe that the Commission “should reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their localism programming performance.”<sup>22</sup> However, while procedural guidelines such as examining the number of hours of local programming aired may provide some objective evidence of the broadcaster’s commitment to serving the needs and interests of the community, there needs to be a subjective portion of the review process as well. The quantity of local programming provided should not necessary trump the quality of the programming provided. And while measuring the quality of the local programming will be a more difficult task, this is where the use of public hearings and community advisory boards will prove invaluable.

### **III. CONCLUSION**

The Commission’s suggested proposals are reasonable and would impose no substantial burden on broadcasters. Rather, these modest proposals would merely serve to further already-imposed public interest obligations and improve broadcasters’ accountability to the communities they serve. Without the Commission’s suggested rules, these media giants will continue to muffle, and perhaps silence, the voice of local communities.

Respectfully submitted,

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<sup>22</sup> *Id.* at ¶ 124.