Before the

Federal Communications Commission

MB Docket No. 04-233

Comments of the

Michigan Association of Public Broadcasters

The Michigan Association of Public Broadcasters (MAPB) appreciates the opportunity to comment on the Federal Communications Commission's Notice of Proposed Rulemaking on "Broadcast Localism," MB Docket No. 04-233.

The MAPB represents 10 public broadcasting organizations with 27 radio station and 12 television stations serving residents throughout the state of Michigan. These stations are located in markets of all sizes – from Metropolitan Detroit to smaller communities that serve remote corners of the state's Upper Peninsula.

Our public broadcasters are proud of their efforts to serve their communities. Vital to these efforts is direct listener and viewer financial support as well as local business underwriting, participation in station events and their advisory boards. As many have already pointed out, if their effectiveness as a local public radio or television station wanes, so does the financial support provided by the communities they serve.

In its Notice of Proposed Rulemaking the FCC is seeking comments on a number of issues and proposals under the subject area of Broadcast Localism with no distinction between the requirements for commercial radio and television stations and public, non-commercial stations.

Michigan Public Broadcasters have a long history of listener and community interaction, soliciting ideas and input from all their listeners and viewers as well as the very people who support the stations financially. These stations could simply not exist without serving the needs of their audience and supporters.

While the Michigan Association of Public Broadcasters supports the idea of localism, we believe that the proposals do not advance the efforts of the local community service that its members have been providing their communities for decades. Furthermore, the proposals may in fact have a reverse effect by forcing public broadcasters to shift limited budgets and personnel resources away from community service and instead use that money and station employees to meet the paperwork and operational demands that the proposals dictate.

In our comments, we will identify our concerns with some of the specific proposals advanced by the Commission, and explain how the realities of public broadcasting support our positions.

The FCC seeks comments on whether the main studios of stations should be located in the station's community of license.

Changing the requirements to mandate a studio in the city of license overlooks the fact that most stations provide important service to multiple communities in addition to their community of license. For example, in Michigan, a single station in the Detroit or Grand Rapids metropolitan area can serve dozens of communities. And in rural areas of the state, stations typically serve multiple communities that are covered by their broadcast signals. In many cases, population shifts have "outgrown" the idea that a broadcast station serves a single community of license. Just as people travel to multiple communities to take care of essential needs of day to day life – food, clothing, medical care and other services are often obtained not based on whether or not those services are within a particular community's boundaries – traveling on those rare occasions that require they visit a station's main studio does not create a significant burden on local residents.

Public broadcasters, who typically depend on listener and viewer support, are concerned about the unnecessary financial burden relocating would impose. The Commission should not change such rules. The cost of relocating main studios from their current location to another location within the borders of the city of license would be high for many licensees, and due to zoning ordinances and other local community land use rules, it may not be possible to set up shop in some cities of license. Mandating such change provides no apparent benefit to listeners or viewers.

Such a requirement would force some broadcasters to move from locations that they currently own or lease, including properties that have been designed and built as broadcast studios or extensively remodeled to serve that purpose. Even if such properties were "grandfathered" with an exemption, their long-term or resale value would be diminished if the Commission required that the grandfathering end at some point in the future. If the Commission finds that the grandfathering can be indefinite, is there any real justification for restricting the ability of future stations to locate their studios in a flexible manner?

In addition, public broadcasters have long been granted waivers of the main studio requirements in order to serve small and rural communities with full-power "satellite" stations. These unstaffed satellite stations, while serving the public, could never be operated as 24/7 fully staffed facilities due to simple economics. A requirement that main studios be located in a station's community of license would have a negative effect as many public broadcasters would simply choose to shut down remote satellite stations instead of draining limited financial resources to establish city-of-license main studios for these operations.

The FCC proposes to prohibit the unattended operation of broadcast stations.

We understand that the Commission is proposing to prohibit the unattended operation of television stations, and is considering the same unattended operation rule for radio stations in their HD Radio proceeding. Our following comments will address the general subject.

We believe that the basis for this proposal is the lingering misunderstanding about an incident in Minot, North Dakota several years ago. A full examination of the record of that incident, however, indicates that unattended operation of broadcast stations was not the source of the failure of communications between local officials and the radio stations and, in fact, the stations in question were attended at the time of the incident. In an unfortunate chain of events, law enforcement personnel were unable to contact the station operator on duty and consequently the law enforcement officials felt that their information was not distributed on the station, even though other information about the local emergency was made available on the stations in question, originating from other sources.

With that clarification in place, we find that the proposal to require round-the-clock staffing at broadcast stations to be not only expensive for small broadcasters, but also counter-productive to the goals of the recommendation, making stations available for the transmission of emergency communications, and unnecessary given modern communication and monitoring.

Here is why:

Public broadcasters simply may not be able to bear the extra cost of additional staffing. For many public stations, the listenership and viewership from overnight hours is extremely limited. With unattended operations, stations can continue to operate to provide a service to their listeners/viewers as the additional costs of operation is small. But if those rules were changed, many public stations might be unable to afford round-the-clock staffing and might be forced to end overnight operations. If a station is off the air, clearly there is no opportunity to inform the public about an emergency. It is preferable that stations remain on the air and available for emergencies, as many stations can be programmed remotely with such information, and most often at least one employee is assigned to be within quick driving distance from the station.

With automated station operation systems in place and the proper technology made available to law enforcement and emergency management agencies, emergency information could be broadcast at any time, day or night, with no requirement that a station have staff on hand.

In Michigan we have demonstrated such technology, which would allow law enforcement and emergency management agencies—using appropriate clearance and access codes—to interrupt programming on local broadcast stations. Not only would this technology allow

the proper authorities nearly instant access to the airwaves, it would remove broadcast station personnel—who might be inexperienced or part-time employees—from the information chain and allow authorities to exercise their professional judgment during an emergency.

We find that the proposal to require staff presence during all hours of operation to be unsupported by the facts and possibly detrimental to its own intent.

The FCC seeks comments on the establishment of minimum programming requirements for processing license renewal applications.

The NPRM contemplates the types and amounts of programming, including news, public affairs and local political coverage that might be required and incorporated into a license renewal process. Additionally, Michigan offers Michigan Public Radio featuring news from around the state and local communities. Many stations also offer programming local to their market including programs in Spanish and other languages. The proposed FCC requirements would displace local interests, standards and controls that have been developed over time by broadcasters and the communities they serve.

Each individual broadcaster is capable of determining the types of programming they need to be responsive to their local communities and audience, and do not need prescriptive, arbitrary requirements established by FCC personnel who do not work or live in their communities. Michigan's public broadcasters regularly solicit listener feedback on their programming and that is further backed by direct listener contributions and financial support of programming on public radio and television stations.

What works for one station in one format may not be appropriate for another station in a different format. A music-formatted station could not program as much informational programming as a talk station and still retain its audience (especially in light of the competition from new forms of media not subject to these regulations). Moreover, the type of information that would be provided, and the way it would be presented, would be different from station to station based on community feedback and the community is keen on giving feedback to their local public broadcast station. There is a relationship between public broadcasters and their audience that may not exist at commercial stations. It may be because the audience financially invests in the station thus making them feel more a part of the decision process of what is aired. How can the Commission rationally justify a mandate of a uniform amount of certain types of programming?

Public Broadcasters already adhere to myriad requirements and restrictions as do all broadcasters on children's programming, indecency and other areas that have been defined by the FCC. Imposing broad requirements of specific types of programming that must be broadcast by stations will not, in our estimation, meet the desired outcome. Government-imposed, cookie-cutter standards applicable to all stations are unenforceable, potentially unconstitutional, and simply will not serve the interests of the

public.

The FCC seeks comments on mandated, permanent Community Advisory Boards.

Most MAPB members already talk to their community through solicited feedback as well as staff and management involvement in their own communities. Many public radio and television stations work on a daily basis with local schools, city government, libraries, chambers of commerce as well as community service and cultural institutions. The audience gives constant feedback to public broadcasters, who encourage their audience to call.

Many public radio stations have chosen to recruit their own versions of citizen advisory boards for either special purposes or ongoing feedback. Regular citizens and public officials are rarely shy about expressing their opinions, and their opinions are always considered carefully.

In addition, if formal advisory boards are required, we have concerns about meeting expenses, potential liability and insurance issues, and handling of proprietary information by advisory board members. No elite group of individuals can speak as loudly as seeking input from the entire listening population. That is what public broadcasters are doing now. These Boards are also likely to be the source of new controversy. If the Commission mandates a large Community Advisory Board for each station, there are bound to be members of the Board who have their own favorite programming that they want to put on a station – regardless of its listener or viewer attraction. With a large board, the opportunities for conflict among the individually held visions for the station is great – and essentially unproductive.

Similarly, if a board is required for every station, from where are all the members of these boards going to come from? In the Notice of Proposed Rulemaking, the Commission suggests that the community groups that formerly were used for the Ascertainment process could form the basis of the advisory board. In many communities, there are only so many community leaders in some of these categories. How would every station find people willing to serve?

We find the proposal for mandated Community Advisory Boards to be unnecessary, unwieldy, and a potential source of legal problems.

The FCC seeks comments on network affiliation contracts.

Our Association is concerned about the proposed rule that would allow, or perhaps require, local stations to review all network programming in advance and decline to air any programming which is deemed inappropriate. We find that such a rule would raise many questions about timing, logistics, staffing and liability. We do not believe that local stations, in a realistic fashion, can review all network programming in advance and make quick decisions about what would reach the local airwaves. All stations, whether they are

running network or syndicated programming, rely at least to some degree on the reputation of the programmer to produce quality programming that the station cannot itself produce. For Public Broadcasting the programming has already gone through a number of stringent sensibility tests before it even gets to the local stations. To have stations review each and every program before it airs imposes significant costs on stations for little benefit, as incidents where such programming is improper are rare.

We are also hesitant, as an association, to recommend interference in the contractual relationships between our members and their networks. It should be noted that under some existing network agreements, stations already have the ability deny airing a certain number of programs if station management feels it is not appropriate for their audience. In this respect public broadcasters have more authority in this area then do commercial stations.

For this reason we do not feel that this part of the proposed FCC Rules should apply to public broadcasters.

The FCC proposes disclosure of "national playlists" for radio stations.

Many public radio stations offer programs that feature local artists, and we express our view that all popular artists are "local" somewhere, so *de facto* requirements to play music from "local" artists would be difficult to implement.

We are deeply concerned about any proposal that would require broadcasters to disclose information about how they compile their playlists, especially within the context of a station's license renewal. This moves the Commission precariously close to the idea of mandating playlists or content on local stations. The potential for personal, subjective judgments by the Commission would be great.

We believe that such a requirement would permit the Commission to displace the public's role in providing feedback to local broadcasters, as well as the public's right to comment on programming issues during a station's license renewal process.

The play list and how we decide what goes on it is the brand of a station. To place that on the internet gives away a stations "secret recipe" so to speak and leaves it wide open for competition to copy.

Conclusions

This Notice of Proposed Rulemaking is an unwarranted attempt to turn back the clock and impose the types of regulatory requirements that were abandoned by Congress and the FCC more than a quarter century ago. It was determined then that competition from other media made the requirements unnecessary.

Clearly, in today's exploding media environment when listeners and viewers are offered new choices every week, when citizens have more access to news and opinion than ever before, and when technology consistently "outruns" attempts to regulate it, there is even less need for the types of requirements outlined in this NPRM.

In a couple of areas—minimum programming requirements and FCC review of music playlists—the NPRM raises significant constitutional questions that could lead to months of legal wrangling over First Amendment issues.

In many areas Public Broadcasters have already done a version of the requirements that the FCC proposes and there can't be anything more local than a public broadcasting station. Owned by a local college, university or community group; public broadcasters are the standard-bearer of localism. Though we disagree for the need of these sweeping proposed regulations for any broadcasters it is particularly unfitting for the public broadcaster because their whole purpose is serving the local community.

Ultimately, this NPRM is an example of overwrought, unnecessary and prescriptive regulation of the broadcast industry. As we have noted previously in other forums, there is no need for such regulation when competitive markets are perfectly capable of judging, rewarding and punishing broadcasters. Those broadcasters who serve the public well are rewarded. Those who fail are punished. And the response from listeners and viewers is always more swift and sure than any regulation by the FCC.

We urge the FCC to determine that the proposals in the Broadcast Localism NPRM need no further consideration and that this proceeding be concluded with a Report and Order that imposes no further requirements on local broadcasters.

Respectfully submitted,

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cc: Members of Michigan's Congressional Delegation