

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

In the Matter of )  
 )  
Broadcast Localism ) MB Docket No. 04-233  
 )

To: The Commission

**REPLY COMMENTS OF NBC UNIVERSAL, INC. AND NBC TELEMUNDO LICENSE CO.**

**I. INTRODUCTION**

Approximately 700 broadcasters and 900 local service organizations submitted opening comments in this proceeding confirming what the Commission concluded more than two decades ago: broadcasters do not need mandates from the federal government to motivate them to provide quality local service to their communities. Comments filed by hundreds of broadcasters, including NBC Universal, Inc. and NBC Telemundo License Co. (collectively "NBCU"), underscore that broadcast licensees understand more acutely than any other participant in today's highly competitive media marketplace that their responsiveness to local needs and interests distinguishes and elevates them from the welter of voices vying for consumers' attention. As the hundreds of participating local service organizations have attested in their comments, broadcasters in their markets remain fully attuned to the needs and interests of their communities through a variety of mechanisms that bring them into daily contact with community leaders and audience members. This kind of direct community involvement is far more likely to stimulate quality coverage of local issues and events than any national directive ever could.

Scores of broadcasters also have explained how new government programming minimums, community advisory board mandates, expanded main studio rules and burdensome paperwork requirements are likely to be counterproductive because they will divert scarce resources and newsroom personnel away from local program production. Imposition of new localism requirements could easily push some broadcasters past the tipping point at which the benefits of producing local news and public affairs programming are outweighed by the costs and administrative burdens of the Commission's proposed mandates.

Finally, many commenters have described how consumers have access to more media outlets and diverse viewpoints than at any time in the history of electronic communications. The ongoing explosive growth in Internet video, cable news channels and locally focused digital multicast channels (such as NBCU-owned stations' hyper-local multicast news channels in New York and Los Angeles), as well as the development of entirely new content-delivery technologies (such as AT&T and V Cast Mobile TV), provide consumers with an unprecedented array of choices for video content and local information. In this media-rich environment, the government should be especially reluctant to revive regulations that were deemed unnecessary by the courts and the Commission prior to the rise of Internet video, digital multicasts, hundreds of nonbroadcast channels and new video technologies.

The Commission also should refrain from imposing new top-down regulations governing the relationships between local stations and national programming services. As the NBC Affiliates stated in their comments, national networks and their local affiliates have a very effective and positive working relationship. Indeed, the recent resolution of the NASA

proceeding by the networks and their affiliate organizations demonstrates that affiliates and networks are able to work through and resolve their differences without the imposition of new regulatory requirements. Similarly, the proposal by one group of commenters to exhume previously rejected program quotas during primetime national network programming for the benefit of program producers characterized as “independent” must be dismissed because it is entirely outside the scope of this proceeding, which is focused on whether broadcast stations have provided programming responsive to local issues.

## **II. VIRTUALLY ALL OF THE SUBSTANTIVE COMMENTS SUBMITTED IN RESPONSE TO THE NPRM REJECT THE NEED FOR ADDITIONAL FEDERAL OVERSIGHT OF BROADCASTERS**

According to an analysis by the National Association of Broadcasters, virtually all of the individualized, substantive comments filed in this docket since January 1, 2008, reject new national localism mandates.<sup>1</sup> Of the more than 19,000 non-form submissions filed in the proceeding this year, 99.6 percent oppose the proposed localism regulations.<sup>2</sup>

These submissions are not just from broadcasters, but also from hundreds of community organizations. These organizations uniformly praised the efforts of broadcasters to provide local programming and to serve the needs and interests of their communities through telethons, charity drives, donations of air time for public service announcements, service by station personnel on non-profit boards and other locally focused initiatives. As noted in NBCU’s initial comments, scores of these groups – including the American Red Cross, the American Lung Association, Boys and Girls Clubs, Autism Speaks, Muscular

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<sup>1</sup> See Reply Comments of National Association of Broadcasters (to be filed June 11, 2008).

<sup>2</sup> Although more than 16,000 comments responding to the *Notice* favored adoption of the Commission’s proposed localism rules, all but 47 were form letters submitted as responses to an e-mail solicitation with virtually no modifications from the form provided. *Id.*

Dystrophy Association, Salvation Army and dozens more – have filed individualized letters in support of the local efforts of NBCU's 26 English- and Spanish-language stations. Such support is consistent with the NBCU stations' extensive community outreach: during the first calendar quarter of 2008 alone, the average NBCU-owned station interacted with approximately 40 community organizations. As a result of NBCU stations' intensive local focus, and despite the increasing costs of locally oriented programming, the average NBCU station airs nearly 40 hours of news and public affairs programming on its primary video channel. When digital multicast channels are included, the average NBCU-owned station broadcasts more than 90 hours per week of news, public affairs and other informational programming, much of it locally focused.

The handful of non-form comments urging more regulation largely ignore the many choices that new technologies and marketplace developments have made available to consumers. One group of commenters relies on a court decision issued nearly 40 years ago for the proposition that stations must be regulated to ensure public access to sufficient information without any mention of the many new means by which the public today can obtain such information.<sup>3</sup> Such a myopic focus on broadcast stations ignores the fundamental reality that consumers have more sources of information than ever and that broadcasters face more competition than ever.<sup>4</sup> To regulate broadcasters in a vacuum and

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<sup>3</sup> See Comments of the Public Interest Public Airwaves Coalition at 5 ("PIPA Comments").

<sup>4</sup> Indeed, since NBCU filed its initial comments in April 2008, Nielsen has released new data showing that the average U.S. television household had access to more than 118 channels in 2007, with more than 84% of households receiving at least 60 channels. See <http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.55dc65b4a7d5adff3f65936147a062a0/?vgnnextoid=fa7e220af4e5a110VgnVCM100000ac0a260aRCRD> (last viewed June 10, 2008). This 2007 channel total is up from 104 in 2006 and is more than a six-fold increase over the 18.8 channels typically available in 1985, the year after the Commission

without consideration of the richness and diversity of today's video marketplace threatens the viability of local broadcasters and undermines what has been an important – and free – programming option for consumers.

Twenty-four years ago, the Commission concluded that marketplace forces would ensure that television stations offered locally responsive programming and engaged in community outreach without burdensome, top-down government mandates. During the past two decades, events have proven the Commission correct: the marketplace dynamics on which broadcast regulation traditionally rested have fundamentally and irreversibly changed. Today, many television stations are up for sale, multiples are at historic lows and the United States is nearing the point where 90 percent of the audience pays for its video programming by subscribing to cable, satellite or broadband services. Consumers have more choices than ever, with video programming wherever and whenever they want it via DVDs, DVRs, VOD and the Internet. Now is not the time for the Commission to roll back the clock and re-impose regulatory burdens on broadcasters that were found unnecessary when the media industry was far less competitive and that disadvantage broadcasters vis-à-vis their unregulated competitors.

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struck down specific programming minimums and formal community outreach mandates because of increasing market competition. See <http://www.nielsenmedia.com/nc/portal/site/Public/menuitem.55dc65b4a7d5adff3f65936147a062a0/?vgnextoid=48839bc66a961110VgnVCM100000ac0a260aRCRD>; see also *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 F.C.C.2d 1075 (¶¶ 19-20, 54).

### **III. NETWORKS AND THEIR AFFILIATES AGREE THAT GOVERNMENTAL INTERVENTION IN THE NETWORK-AFFILIATE CONTRACTUAL RELATIONSHIP IS UNNECESSARY TO ENSURE COMPLIANCE WITH THE EXISTING RULES**

NBCU agrees with the NBC Affiliates that an “across-the-board pre-screening regime for all network content would not promote the public interest.”<sup>5</sup> As the NBC Affiliates recognize, the NBC Network is a “responsible and very high-caliber programming” provider, which regularly delivers in excess of 80 program-hours per week to more than 200 affiliates nationwide.<sup>6</sup> Much of this programming is broadcast live or is very time-sensitive, such as NBC’s award-winning news programming, including *The Today Show*, *NBC Nightly News* and *Meet the Press*; NBC Sports and special events programming, such as the upcoming Beijing Olympics; and programming that is recorded just a few hours before it airs, such as NBC’s popular late-night programming.

Given the quantity and time-sensitive nature of much network programming, any pre-screening requirement would impose impracticable new burdens on network affiliates nationwide. The NBC Network agrees with the NBC Affiliates that such additional burdens are unwarranted and would diminish the value of the network-affiliate relationship that has made quality news, sports and entertainment programming freely available to viewers nationwide. As the NBC Affiliates observe, no system involving the production of such massive amounts of content under tight deadlines and other constraints will be perfect in the eyes of any particular viewer. Nor should perfection be the goal. NBCU agrees with the NBC Affiliates that “[a] goal of avoiding any broadcast material that offends some segment

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<sup>5</sup> See Comments of NBC Affiliates on Pre-Screening Proposal at 2.

<sup>6</sup> See, e.g., [www.nbc.com](http://www.nbc.com).

of the public or is controversial or that steps over one government official's line . . . would be profoundly at odds with democratic values.”<sup>7</sup>

Further, imposing a pre-screening requirement on network affiliates to ensure they abide by their obligations as licensees is wholly unnecessary. In their Comments, the NBC Affiliates have accurately described the multi-faceted and highly effective approach employed by the network and its 200-plus affiliates to address potential concerns about network programming.<sup>8</sup> The key element in this approach is communication, including direct interaction between affiliates and NBC's Affiliate Relations Department. The ability of the network and its affiliates to work together cooperatively to resolve their differences is evidenced most recently by the negotiated resolution of concerns raised by the Network Affiliated Stations Alliance.<sup>9</sup>

A pre-screening requirement is thus impracticable and unnecessary. Accordingly, the NBC Network supports the opposition of the NBC Affiliates to the Commission's proposal to require a pre-screening provision in network affiliation agreements.

#### **IV. CALLS TO EXHUME INDEPENDENT PROGRAMMING SET-ASIDES FOR NATIONAL NETWORK PROGRAMMING ARE OUTSIDE THE SCOPE OF THIS PROCEEDING**

Of the thousands of comments filed in this docket, only one group of commenters, PIPA, appears to have concluded that this is an appropriate proceeding in which to exhume other long-dead regulations, even if such obsolete regulations have no connection to issues

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<sup>7</sup> See Comments of NBC Affiliates on Pre-Screening Proposal at 3.

<sup>8</sup> See *id.*

<sup>9</sup> See Joint Request of the Network Affiliated Stations Alliance and the ABC, CBS, NBC and Fox Television Networks to Resolve the NASA Petition, *Petition for Inquiry Into Network Practices*, DA 01-1264 (submitted June 9, 2008).

of local service.<sup>10</sup> PIPA contends that, in this proceeding, the Commission should require the four leading television networks to broadcast a mandated percentage of content licensed from producers that are characterized as “independent” during national primetime network programming. Under this proposal, a failure to include the requisite quantity of “independent” programming would subject the network affiliates’ license renewal applications to heightened regulatory scrutiny. These proponents of quotas fail to mention, however, that the courts and the Commission have rejected such regulation – and other similar regulation – repeatedly over the past two decades.<sup>11</sup>

More fundamentally, the regulation proposed by PIPA bears no relation to the issues raised by the Commission in this proceeding.<sup>12</sup> Nor did the Commission express any views

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<sup>10</sup> See PIPA Comments at 17.

<sup>11</sup> See, e.g., *Schurz Communications, Inc. v. FCC*, 982 F.2d 1043 (7<sup>th</sup> Cir. 1992) (remanding Commission’s decision to retain modified financial interest/syndication rules, including independent programmer set-aside); *Review of the Syndication and Financial Interest Rules*, Report and Order, 10 FCC Rcd 12165 (1995) (eliminating these rules). The Commission correctly refused to take action in 2003 and again in 2008 on these issues, even when the Commission affirmatively requested comment on these matters as part of the latter ownership proceeding. See *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2014 n.17 (2008) (“2008 Ownership Order”); *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13864-69 (¶¶ 640-56) (2003) (the “2003 Ownership Order”). In those two ownership proceedings, commenters provided substantial data underscoring that the reasons supporting elimination of the policy in the 1990s were even more persuasive in light of the current video marketplace. See, e.g., Reply Comments of CBS Corporation, et al., *2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 06-121 (submitted Jan. 16, 2007); Ex Parte Comments of Fox Entertainment Group, Inc., Fox Television Stations, Inc., et al., *2002 Biennial Regulatory Review*, MB Docket No. 02-277 (submitted April 29, 2003).

<sup>12</sup> See 5 U.S.C. § 553 (requiring public notice including “either the terms or substance of the proposed rule or a description of the subjects and issues involved”); *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television*, Report and Order, 19 FCC Rcd 19331 (2004) (“We will not consider the . . . proposal because the issue

or solicit any comments on the issue of set-asides of primetime broadcast hours for what is characterized as “independent” programming. The *Notice* is limited to a “review” of “localism practices among broadcasters,”<sup>13</sup> and any proposed changes “are intended to promote localism by providing viewers and listeners greater access to locally responsive programming including, but not limited to, local news and public affairs matter.”<sup>14</sup> In a contemporaneously released Commission order on broadcast ownership, the Commission reiterated that this *Notice* was intended to “address[] actions the Commission will take to ensure that broadcasters are meeting the needs of their local communities,”<sup>15</sup> not issues relating to national network programming practices. Even pro-quota proponents do not claim that a limitation on the potential sources of national network programming during a station’s primetime schedule has any demonstrable relationship to whether stations are addressing issues of importance to their local communities. Because the issue of primetime programming quotas was not raised in the *Notice*, comments and proposals relating to that issue are entirely outside the scope of this proceeding and, under statutory requirements and settled Commission policy, cannot be entertained here.

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was not addressed in the *Notice* and is therefore beyond the scope of this proceeding.”); *2003 Ownership Order*, 18 FCC Rcd at 13865 (¶ 642) (“Accordingly, we do not believe that [independent programming set-asides, among other matters] are responsive to the *Notice*, or that the adoption of such rules could be thought to be a logical outgrowth of the *Notice*.”)

<sup>13</sup> *Notice*, ¶ 4.

<sup>14</sup> *Notice*, ¶ 3.

<sup>15</sup> See *2008 Ownership Order*, 23 FCC Rcd at 2014 n.17. Indeed, in the *2008 Ownership Order*, the Commission specifically requested comments on the matter of primetime programming set-asides before ultimately concluding that these issues were beyond the scope of the proceeding. See *id.*

## V. CONCLUSION

If broadcast television is to survive, a regulatory environment that is suited to 2008, not 1948, is needed. Competition in the delivery of video programming has never been more intense, particularly with the rapid rise of video programming on the Internet. To justify the proposed dramatic departure from established policies and the imposition of burdens of this magnitude on broadcasters, the Commission must show compelling evidence of a market failure that would warrant such radical re-regulation. Neither the Commission nor the proponents of increased national regulation have made or can make the required showing.

Broadcasters remain highly motivated to deliver locally oriented programming to their audiences because they know this programming distinguishes them in the rapidly evolving digital media landscape. If individual stations nonetheless fail in their obligation to serve the public interest, the Commission has the authority and the tools to address such situations on a case-by-case basis without new government regulation, including rules that are clearly at odds with the First Amendment. The imposition of a burdensome regulatory scheme on all stations merely penalizes the vast majority of stations that take their public interest obligations seriously at a time when they can least afford these additional burdens.

Respectfully submitted,

NBC UNIVERSAL, INC. AND  
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