

EXECUTIVE SUMMARY

The opening comments in this proceeding are remarkably one-sided and overwhelmingly confirm the Broadcaster Coalition’s position that the FCC should reject its proposals to impose a far-reaching “localism” regulatory regime on stations. A large cross-section of the broadcast industry—ranging from some of the nation’s largest group owners to single station operators—oppose the FCC’s proposed approach in this proceeding. This unusually high level of participation, as well as the uniformity of positions taken, reflects broadcasters’ real-world concerns that compliance with the Commission’s proposals would be incredibly costly and unduly burdensome. These worries are particularly acute because of the intense competition that broadcasters are facing in today’s challenging media environment.

On the other hand, only a very small minority of commenters advocate the FCC’s proposals in this proceeding. Tellingly, even those parties that typically take a pro-regulatory stance before the FCC recognize that wholesale adoption of the proposals would be unnecessarily onerous, especially for small or independently operated stations. Like the weight of opinion, the evidentiary record in this proceeding is heavily lopsided. The opening comments are replete with concrete examples demonstrating that there is no “localism crisis” in American broadcasting. Conversely, those few parties that support additional regulation buttress their positions only with broad and unsubstantiated assertions.

The vast majority of commenters that address the issue strongly object to renewal processing “guidelines” that essentially would compel all stations to air minimum quantities of specified genres of local programming. The record is replete with examples

of broadcasters' dedication to airing local news, local public affairs, and numerous other varieties of local content, all of which counsel against the need for such quantitative regulation. Importantly, although the Commission's proposal is being billed as a mere processing "guideline," the consensus among interested parties is that it effectively would amount to a local programming quota. Not surprisingly, the opening comments make clear that few stations willingly would risk substantial delay or even possible denial of their renewal applications by flouting any such guidelines. Our First Amendment tradition requires that broadcasters be free to present whatever programming they believe will best suit the needs of their local audience. The Commission cannot constitutionally interfere with broadcasters' editorial discretion by compelling them to offer programming not of their own choosing. Broadcasters also fear that such quantitative requirements simultaneously would deplete scarce resources and obstruct the flexibility that stations need to best serve their individual audiences.

Only a very small minority of commenters support this proposal. Among these proponents, the Public Interest Public Airwaves ("PIPA") Coalition proposes an exacting and remarkably lengthy list of local programming requirements that is unabashedly designed to micromanage television stations' local programming decisions. The Broadcaster Coalition urges the Commission to reject these proposals out-of-hand. The PIPA Coalition's suggested regulatory regime disregards both the economic realities of station operation and the actual interests of the audience members they purport to protect—elevating its own judgments as to the relative value of various types of programming above those of listeners and viewers. Not only is the PIPA Coalition proposal riddled with practical and legal infirmities, but its adoption also would

significantly (and unnecessarily) alter the operations of television broadcasters across the country.

Similarly, the opening comments resoundingly confirm that government-mandated community advisory boards are not needed and would be unworkable. The record makes it abundantly clear that there is no need to revisit regulations akin to those the Commission correctly discarded more than a quarter-century ago. A wide variety of broadcasters demonstrate that the industry already habitually solicits and responds to community input through a wide range of formal and informal ascertainment practices. This is no surprise, given that awareness of local needs and interests is a fundamental component of broadcasters' ability to succeed in the marketplace. Commenters also voice their strong beliefs that their current, individually tailored efforts are far more effective than the "one-size-fits-all" CAB obligation envisioned by the agency. Further, the opening comments plainly show that government-mandated CABs would be exceedingly cumbersome, if not impossible, to implement and maintain.

For these reasons, several public interest organizations caution that the current CAB proposal is overly rigid, would present significant challenges to broadcasters, and should be rejected or scaled back substantially. Indeed, only a small handful of parties advocate the FCC's CAB proposal, and none provides any concrete evidence or sound reasoning in support of its position.

In addition, commenters almost universally reject the idea that a stricter main studio rule might benefit localism. The justifications for the FCC's decision to relax this rule more than two decades ago are even more valid today. As numerous commenters attest, members of the audience now more easily can access station information than ever

before. In fact, stations widely report that most individuals forego station visits in favor of more convenient modes of communication via telephone and the Internet. The record reflects that requiring main studios to be located within the confines of licensed communities will not appreciably ease access to station information, facilitate communication between stations and audiences, or increase local programming. At the same time, it is indisputable that rolling back this requirement would be costly. In some cases, re-regulation could force stations to redirect resources from local programming to the construction and maintenance of new facilities.

Finally, interested parties provide virtually no support for the FCC's proposal to mandate 24/7 staffing at TV stations. The record leaves little question that this requirement would result in unmanageable costs. Although the FCC has suggested that adopting this requirement would enhance emergency responsiveness and local programming, the record shows that neither proposition withstands scrutiny. In fact, both of these laudable goals would suffer under an around-the-clock requirement, as stations would be forced either to cease overnight operations or cut programming budgets in order to meet increased staffing needs. In any case, this requirement would be superfluous. Broadcasters today have the ability to issue emergency alerts and relay other important messages to viewers and listeners immediately, regardless of whether employees are physically present at the station or it is operated remotely.

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NPRM's proposals would impose unnecessary administrative burdens on broadcasters and divert their attention and resources away from delivering programming and community services that are important to their local audiences. In fact, the Commission's "back to the future" proposals would result in less diversity and more consolidation, as smaller broadcasters are forced out of business. Moreover, as the record unequivocally demonstrates, the proposals are fraught with practical and legal problems.

I. THE RECORD IN THIS PROCEEDING OVERWHELMINGLY DEMONSTRATES THAT ADDITIONAL BURDENSOME REGULATION WOULD NOT ADVANCE THE COMMISSION'S LOCALISM OBJECTIVES.

The opening comments are overwhelmingly unified in their opposition to the salient regulatory proposals advanced in this proceeding.² A remarkably large and diverse sector of the broadcast industry—ranging from some of the nation's largest group owners,³ to mid-sized station groups,⁴ to small and single station operators⁵—voice

² A review of all filings that were submitted in this proceeding on or after April 28, 2008 that were at least five pages in length reveals that at least 200 formal comments opposed the regulations proposed in this proceeding. *See generally In re Broadcast Localism*, Report on Broadcast Localism and Notice of Proposed Rulemaking, 23 FCC Rcd 1324, ¶¶ 29, 87 (2008) ("*Localism NPRM*").

³ *See, e.g.*, Comments of CBS Corporation at 24-26 ("CBS Comments"); Comments of ION Media Network at 3-7 ("ION Media Comments"); Comments of NBC Universal at 15 ("NBC Universal Comments"); Comments of The Walt Disney Company/ABC at 20-22 ("Walt Disney Comments"); Comments of Trinity Broadcasting Network at 24-25 ("Trinity Comments"); Comments of Sinclair Broadcast Group at 2-3 ("Sinclair Comments"); Comments of Cox Broadcasting, Inc. and Cox Radio at 29-31 ("Cox Comments"); Comments of Clear Channel Communications, Inc. at 1-2 ("Clear Channel Comments"); Comments of Entercom Communications Corp. at 1-2; Comments of Eastern Region Public Media at 3.

⁴ *See, e.g.*, Comments of Hubbard Broadcasting at 4-6 ("Hubbard Broadcasting Comments"); Comments of Saga Communications at 5-6 ("Saga Communications Comments"); Comments of Morgan Murphy Media at 1 ("Morgan Murphy Media Comments"); Comments of Fisher Communications at 16-17 ("Fisher Communications Comments"); Comments of ZGS Communications at 7-8 ("ZGS Comments"); Comments of NRC Broadcasting Mountain Group at 4-5 ("NRC Comments"); Comments of Bahakel Communications at 2-3 ("Bahakel Comments").

⁵ *See, e.g.*, Comments of Alpha & Omega Broadcasting at 6-8 ("Alpha & Omega Broadcasting Comments"); Comments of East Kentucky Broadcasting at 2-3 ("East Kentucky Broadcasting

strong and consistent concerns about the agency’s tentative conclusion that there exists a localism “problem” in today’s marketplace that would be solved by resurrecting a regulatory regime that the FCC discarded decades ago after thoughtful, comprehensive analysis. Firm opponents to the agency’s suggested approach in this proceeding include a wide variety of both commercial⁶ and noncommercial broadcasters,⁷ numerous religious broadcasters,⁸ foreign language stations,⁹ college stations,¹⁰ low power broadcasters,¹¹

Comments”); Comments of Maranatha Broadcasting at 1-2 (“Maranatha Comments”); Comments of Sunflower Broadcasting at 2-3; Comments of KSAT-TV at 1-2; Comments of Four Seasons Media at 8-9 (“Four Seasons Comments”); Comments of Findlay Publishing Company at 1-3 (“Findlay Publishing Comments”); Comments of United Communications Comments at 8-9 (“United Communications Comments”); Comments of NewsChannel 5 Network at 2 (“NewsChannel 5 Comments”).

⁶ *See, e.g.*, Comments of Belo Corp. at 1-4 (“Belo Comments”), Clear Channel Comments at 47-48; Cohn and Marks Comments at 1-3; Findlay Publishing Comments at 3-4; Fisher Communications Comments at 16-17; Morgan Murphy Media Comments at 1; Comments of Red River Broadcast at 15-16 (“Red River Comments”); Saga Communications Comments at 1-4.

⁷ *See, e.g.*, Comments of Cornerstone Community Radio at 2-4; Comments of Educational Media Foundation at 12-14 (“Educational Media Foundation Comments”); Comments of Life on the Way Communications at 10-11; Comments of Minnesota Public Radio at 6-7 (“Minnesota Public Radio Comments”); Comments of Association of Public TV and Public Broadcast Service at 2-4 (“APTS Comments”); Comments of Augusta Radio Fellowship at 4-5; Comments of Cheyenne Mountain Public Broadcast House at 3-4 (“Cheyenne Mountain Comments”).

⁸ *See, e.g.*, Comments of National Religious Broadcasters at 2-3; Alpha & Omega Broadcasting Comments at 2-5; Comments of Calvary Chapel of Twin Falls at 3-5; Comments of Christian Broadcasting System at 1-5 (“Christian Broadcasting System Comments”); Comments of Defenders of Faith at 5-10 (“Defenders of Faith Comments”); Comments of Holy Family Communications at 4-10 (“Holy Family Communications Comments”); Comments of Radio Apostolates at 4-10; Comments of Inter Mirifica at 4-5; Comments of RedeemerRadio at 4-10; Comments of Joint Terrestrial Licensees at 2-6.

⁹ *See, e.g.*, Comments of KASA Radio Hogar at 7-12; La Cristiana Network Comments at 4-10; Comments of Paulino Bernal Evangelism at 4-9.

¹⁰ *See, e.g.*, Comments of Intercollegiate Broadcasting System at 1-2; Comments of College Broadcasters at 8-10 (“College Broadcasters Comments”); Comments of Educational Station KRUI at 1-4; Comments of Nicholas L. Schlossman at 1-4; Comments of Richard Gainey at 1-4; Comments of University of California at 5.

¹¹ *See, e.g.*, Comments of Community Broadcasters Association at 3-4 (“Community Broadcasters Association Comments”); Defenders of Faith Comments at 5-10; United Communications Comments at 7-9.

trade associations,¹² and others.¹³ Commenters representing each of these interests explained in detail why additional regulation is wholly unnecessary and why adoption of the Commission's proposals would be destructively burdensome to broadcasters as well as counterproductive to the agency's public interest objectives. These formal comments are supplemented by thousands of brief comments and letters likewise objecting to the proposals that would saddle broadcasters with significant regulatory costs without any offsetting benefits.¹⁴

On the other hand, only a small handful of parties support the new requirements proposed by the Commission or other regulatory alternatives.¹⁵ Notably, even parties that favor some additional regulation recognize that wholesale adoption of the FCC's proposals would be impractical and unduly onerous to broadcasters.¹⁶ For example,

¹² *See, e.g.*, Comments of National Association of Broadcasters at 1-7 ("NAB Comments"); Comments of Catholic Radio Association at 3-5 ("Catholic Radio Association Comments"); Community Broadcasters Association Comments at 3-4; Comments of National Association of Media Brokers at 1-6 ("National Association of Media Brokers Comments"); Comments of Alaska Broadcasters at 1 ("Alaska Broadcasters Comments"); Comments of Florida Association of Broadcasters at 14-17 ("Florida Association Comments"); Comments of Named State Broadcasters Association at 4-5 ("Named State Broadcasters Comments"); Comments of North Carolina Association of Broadcasters at 30-32 ("North Carolina Association Comments"); Comments of Ohio Association at 3-4 ("Ohio Association Comments").

¹³ *See, e.g.*, Comments of Cord Blomquist for the Competitive Enterprise at 5-6.

¹⁴ More than 2000 commenters have submitted informal comments in this proceeding opposing the Commission's proposals. These parties include private citizens, employees of broadcasters, and a broad range of organizations demonstrating support for their local broadcasters. *See, e.g.*, Comments of Kim Donaldson at 1; Comments of Genie Chadwick at 1; Comments of Steven Cheshko at 1-2; Comments of Sherwood Conservatory of Music at 1; East Oakland Youth Development Center at 1.

¹⁵ *See, e.g., generally* Comments of Common Frequency, Inc. ("Common Frequency Comments"); Comments of Cumberland Broadcasting LLC ("Cumberland Broadcasting Comments"); Comments of National Association of Black Owned Broadcasters ("NABOB Comments"); Comments of Prometheus Radio Project ("Prometheus Comments"); Comments of the Public Interest Public Airwaves Coalition ("PIPA Coalition Comments").

¹⁶ *See, e.g.*, Common Frequency Comments (supporting renewal processing requirements and a variation of the CAB proposal, but opposing the main studio rule and the 24-hour staffing proposal); NABOB Comments at 3-9 (supporting CAB proposal and license renewal processing, but opposing main studio rule

although the Minority Media Telecommunications Council and the Independent Spanish Broadcasters Association (“MMTC/ISBA”) state that mandatory CABs potentially “could promote diversity and localism,” these groups caution that a station-by-station CAB obligation would not be affordable for many broadcasters.¹⁷ These same parties also strongly oppose reinstatement of the former main studio rule.¹⁸ Similarly, while Common Frequency, Inc. (“Common Frequency”) supports, with some modifications, the Commission’s CAB and renewal processing proposals,¹⁹ it believes that reinstating the previous main studio rule and requiring 24/7 staffing would be unnecessary and would achieve “no added benefit.”²⁰ The Public Interest Public Airwaves Coalition (“PIPA Coalition”) backs the FCC’s proposal to subject stations to renewal processing guidelines and believes that the agency’s CAB proposal “merits further consideration;” however, it recognizes that “it may not be feasible or desirable for the Commission to mandate a ‘one-size-fits-all’ CAB requirement for all broadcasters.”²¹

Like the weight of opinion in this proceeding, the evidentiary record is heavily lopsided. As shown in detail below, the opening comments are replete with concrete

and 24/7 staffing requirements); Prometheus Comments at 2-6 (supporting alternatives to the FCC proposals that would impose less regulatory burdens on small broadcasters); PIPA Coalition Comments at 1-4, 18-20, 26 (supporting license renewal processing requirements and shorter license terms, but only more “flexible” CAB requirements).

¹⁷ Comments of the Minority Media and Telecommunications Council and the Independent Spanish Broadcasters Association at 4-5 (“MMTC/ISBA Comments”); Supplemental Comments of Minority Media and Telecommunications Council and the Independent Spanish Broadcasters Association at 4-6 (“MMTC/ISBA Supplemental Comments”).

¹⁸ MMTC/ISBA Supplemental Comments at 1.

¹⁹ Common Frequency Comments at 54, 58.

²⁰ *Id.* at 46-47.

²¹ PIPA Coalition Comments at 22-23.

examples of broadcasters' outstanding dedication to producing and airing local programming,²² maintaining close ties to their individual communities,²³ and carrying out a wide range of formal and informal ascertainment programs.²⁴ The record makes apparent that both television and radio broadcasters with widely divergent resources are significantly engaged in these efforts in markets throughout the country.

On the flip side, the few proponents of additional regulation provide almost no evidence to support their positions. While these parties suggest that the FCC must substantially increase its oversight of stations' localism efforts, they provide little, if any, data suggesting that there is a lack of locally oriented broadcast programming or that the marketplace is failing to satisfy the demands for locally oriented content.

For instance, in support of its proposal to obligate broadcasters to meet extensive local programming quotas in order to avoid heightened scrutiny of their renewal applications, Capitol Broadcasting Company, Inc. ("Capitol Broadcasting") simply asserts that it "can be readily *assumed* from comments made at the Localism hearings that many [broadcasters] do not" provide significant amounts of locally oriented programming.²⁵ Common Frequency similarly proclaims that "[m]any stations lack . . . community-specific programming," without quantifying this statement or offering any

²² See Section II.A., *infra*.

²³ See Section IV, *infra*.

²⁴ See Section III, *infra*.

²⁵ Comments of Capitol Broadcasting, Inc. at 2-3 ("Capitol Broadcasting Comments")(emphasis added).

examples of the programming line-up of any specific station.²⁶ Likewise, the National Association of Black Owned Broadcasters (“NABOB”), which supports several of the Commission’s regulatory proposals in this proceeding, offers no facts to buttress its claim that “[b]roadcast industry consolidation has resulted in many stations being operated as ‘broadcast jukeboxes’” that provide “no local service to their communities.”²⁷ This party makes the equally unsubstantiated claim that a return to previous programming guidelines in fact would be “welcomed by broadcasters committed to serving their local communities.”²⁸

As demonstrated in the sections that follow, the opening comments resoundingly confirm the Broadcaster Coalition’s position that the net effect of the Commission’s re-regulatory proposals in this proceeding would be to undermine broadcasters’ ability to serve local audiences. The few parties that champion a return to the FCC’s prior regulatory regime suggest regulations that are detached from marketplace realities, riddled with practical and legal problems, and would pose a significant threat to the

²⁶ Common Frequency Comments at 45. Although Common Frequency does provide an eight-market survey of NCE radio stations in its Comments, this survey concerns the stations’ physical location and ownership and does not analyze the program offerings of any specific station. *See id.* at 8-19.

²⁷ NABOB Comments at iii.

²⁸ The PIPA Coalition cites two studies conducted by the Norman Lear Center at the USC Annenberg School for the proposition that broadcasters provide a dearth of local programming. *See* PIPA Coalition Comments at 7-9. These studies address only the quantities of “candidate-centered coverage” in periods leading up to elections and thus hardly reflect the total breadth of informational content provided in the average broadcast market. Moreover, the most recent of these studies, which was conducted in 2004, found that 64 percent of the broadcasts surveyed did include campaign stories. The Broadcaster Coalition submits that this is a substantial percentage and that it is not necessary for every station in a market to cover local politics in order for the average citizen to have access to an adequate amount of this type of information. The 2004 study further found that the average newscast contained more than three minutes of election coverage—representing a significant increase over the prior study, which was conducted in 2000.

ability of broadcasters to remain viable and relevant in today's intensely competitive media marketplace.

II. THE RECORD MAKES PLAIN THAT PROPOSALS TO REGULATE LOCAL CONTENT VIA "RENEWAL PROCESSING GUIDELINES" SHOULD BE REJECTED.

A. The Opening Comments Confirm That Renewal Processing Guidelines Needlessly Would Burden Broadcasters While Failing to Serve the Public Interest.

The vast majority of commenters that address the issue are strongly opposed to the imposition of quantitative local programming requirements.²⁹ Although the Commission's proposal is being billed as a mere processing "guideline," the consensus among interested parties is that it effectively would amount to a local programming quota.³⁰ Not surprisingly, the opening comments make clear that few stations would risk substantial delay or even possible denial of their renewal applications by flouting any such guidelines.³¹

Broadcasters also express concern that quantitative local programming requirements, which the Commission sensibly eliminated decades ago, would compel

²⁹ At least 76 commenters in this proceeding oppose renewal processing guidelines. These commenters include a broad range of radio and television broadcasters that offer a variety of formats in many different markets, as well as private citizens, industry associations, and other groups. *See, e.g.*, APTS Comments at 26-30; Broadcast Company of the Americas Comments at 7-10; College Broadcasters Comments at 10-13; Holy Family Communications Comments at 5-8, 13-14; Minnesota Public Radio Comments at 9; Named State Broadcasters Comments at 18-24; Comments of National Public Radio at 22-24 ("NPR Comments"); North Carolina Association Comments at 12-21; Red River Comments at 12-14; Small Broadcasters Comments at 23-26; Walt Disney Comments at 13-22, 25-28.

³⁰ *See, e.g.*, Broadcaster Coalition Comments at 38; Belo Comments at 39-40; Gray Comments at 37; NewsChannel 5 Comments at 6; Comments of LIN Television Corp. at 13 ("LIN Comments").

³¹ *See, e.g.*, Belo Comments at 4; Gray Comments at 37; NAB Comments at 43-44.

every station to try to be all things to all people.³² Such “one-size-fits-all” mandates, commenters emphasize, would thwart the flexibility that stations need to collectively meet a community’s ever-changing and unique needs by offering content that targets specific audience segments.³³ The inevitable consequence would be largely duplicative content, an outcome that would undermine the FCC’s diversity objectives.

What is more, a return to quantitative programming regulation would effectuate an unnecessary and substantial depletion of broadcasters’ already strained resources.³⁴ Stations, particularly those that are small or independently operated, describe in real terms the practical burdens and substantial expense that would result from implementation of the FCC’s proposal.³⁵ Indeed, some stations fear that adoption of this requirement could cause them to cut back on existing program production in order to redirect resources toward content required under the guidelines, or even to cease operations entirely.³⁶

At the same time, the record in this proceeding makes clear that quantitative obligations ultimately would produce minimal public interest benefits. As the opening

³² Cox Comments at 57-58; Ohio Association Comments at 20; NAB Comments at 40-41; Broadcast Company of the Americas Comments at 8.

³³ Cox Comments at 57-58; College Broadcasters Comments at 12-13; Belo Comments at 36-37; Ohio Association Comments at 20; Comments of Small Broadcasters at 25 (“Small Broadcasters Comments”); Comments of Joint Television Broadcasters at 16 (“Joint Television Broadcasters Comments”).

³⁴ *See, e.g.*, College Broadcasters Comments at 10; Educational Media Foundation Comments at 14; Comments of Broadcast Company of the Americas at 9-10. Commenters also cite the immense collective burden that all of the Commission’s proposed rules would impose on them. *See, e.g.*, Findlay Publishing Comments at 3-4; Christian Broadcasting System Comments at 1-2.

³⁵ *See, e.g.*, Educational Media Foundation Comments at 12-13; Fisher Communications Comments at 17; Minnesota Public Radio Comments at 9.

³⁶ *See, e.g.*, Educational Media Foundation Comments at 14-16.

comments make plain, most markets are already served by a full spectrum of local news,³⁷ local public affairs,³⁸ local political coverage,³⁹ and many other genres of local programming.⁴⁰ By way of example:

- Backyard Broadcasting LLC’s (“Backyard Broadcasting”) KELO(AM) in Sioux Falls, South Dakota broadcasts a live four-hour local talk show on weekdays focusing on current local and national events. In addition, KELO airs a local newscast every half-hour from its local 24-hour news center. The station also airs a weekly car show hosted by a local mechanic, a weekly tax show hosted by a local accountant, a medical show hosted by a retired local physician, and a pet show hosted by a local veterinarian.⁴¹
- Granite Broadcasting Corporation stations KBJR-TV and KDLH-TV, which serve the Duluth, Minnesota-Superior, Wisconsin area, collectively produce and air more than 37 hours of original local news weather and sports programming per week. This programming originates from a news department that is staffed 21 hours per day by a team of nearly 40 local journalists and support personnel. The stations also have a Public Affairs Department, which produces two weekly 30-minute programs. One of these is *Northland Voices*, which invites local residents and experts to discuss and debate public policy.⁴²

³⁷ Sinclair Comments at Exhibits A and B; NAB Comments at 29-31; Belo Comments at 26; CBS Comments at 9-10; Clear Channel Comments at 24-27.

³⁸ NAB Comments at 32; Clear Channel Comments at 27-31; APTS Comments at 6-11; North Carolina Association Comments at 15-18.

³⁹ NewsChannel 5 Comments at 4-5, NAB Comments at 31-32; Belo Comments at 29-31; CBS Comments at 11-12.

⁴⁰ APTS Comments at 4-11, Ohio Association Comments at 16-17, NewsChannel 5 Comments at 5, NAB Comments at 33-34; Comments of Gray Television, Inc. at 31-32 (“Gray Comments”). Many commenters also point out that citizens in all markets have access to additional local programming through other media outlets, such as newspapers, cable and satellite television stations and on-demand programs, satellite radio stations, and the Internet. Cox Comments at 51-52; College Broadcasters Comments at 18-19; NAB Comments 39-40.

⁴¹ In addition, Backyard Broadcasting’s WHBU in Anderson, Indiana airs a Sunday morning program discussing local news and current events. The news department covers all elections, both national and local, focusing on the local angle and data rather than national data. WHBU also airs a three-hour morning show that discusses health, senior, and minority issues relating to Anderson’s demographic make-up.

⁴² See Comments of David Jensch at 1.

- Four Seasons Media, Inc. (“Four Seasons”), licensee of WTSA(AM) and WTSA-FM in Brattleboro, Vermont, has a full-time local news department.⁴³ Four Seasons employs two news staff members, who attend all local town select board, school board, emergency management, and town meetings. The stations provide everything from interviews with local community leaders to up-to-the-minute news reporting.⁴⁴
- The Walt Disney Company’s WTVG(TV) in Toledo, Ohio broadcasts “*Conklin and Company*,” which focuses on issues of interest to viewers in the local community;⁴⁵ “*Roundtable*,” in which local guests of varying viewpoints are brought together to discuss issues of particular interest locally; and “*Coffee with the Fords*,” hosted by a former, and the first African American, mayor of Toledo and his wife, which features local guests who otherwise would not have a forum to showcase their talents to the community.⁴⁶
- Belo Corp.’s WWL-TV in New Orleans broadcast for 15 days straight before, during, and after Hurricane Katrina from various makeshift locations around the area.⁴⁷ WWL was a critical source of information regarding what was happening with the storm, where those in need could go to receive help, and what others could do to assist with these efforts. Through its “*Road to Recovery Series*,” the station continues to air local programming that highlights New Orleans’ needs in the aftermath of the storm. Further, like other Belo stations, WWL participates in Belo’s “*It’s Your Time*” series, which has provided state and federal candidates with free airtime during election seasons for more than a decade.⁴⁸
- Clear Channel Communication Inc.’s WHAS(AM) in Louisville, Kentucky airs a news program every weekday morning that features local news and traffic reports.⁴⁹ The program includes two interview segments per hour that focus on events of particular interest to the local community. WHAS(AM) also offers weekend programming dedicated to local issues.

⁴³ Four Seasons Comments at 2.

⁴⁴ *Id.*

⁴⁵ Walt Disney Comments at 14.

⁴⁶ *Id.*

⁴⁷ Belo Comments at 27-28.

⁴⁸ *Id.* at 28-30.

⁴⁹ Clear Channel Comments at 25.

For example, “*Sunday Morning Talkshow*” is a locally-produced local news call-in show that focuses on local and national issues and provides a forum for Louisville listeners to discuss them. “*Saturday Morning Crew*” offers up-to-date local news and weather, along with an update of local events and activities for the week.

Finally, as the Broadcaster Coalition and a number of other parties explain in detail, local programming requirements would raise serious First Amendment and administrative law questions.⁵⁰ Particularly when combined with the separate Enhanced Disclosure requirements the agency is in the process of implementing, there is little question that the proposed renewal processing guidelines would be content-based. The regulations thus would be subject to a heightened level of constitutional scrutiny, a hurdle that they inevitably would be unable to meet.⁵¹ As the Commission itself has recognized, “policies cautioning broadcasters to engage or not to engage in certain programming practices or establishing rigid guidelines in relation to such programming raise fundamental questions concerning the constitutional rights of broadcast licenses, and therefore cannot be retained in the absence of a clear and compelling showing that the public interest demands their retention.”⁵² Further, the record simply does not support a

⁵⁰ Commenters explain that local programming requirements potentially conflict with the Administrative Procedure Act (*see, e.g.*, Clear Channel Comments at 58; Educational Media Foundation Comments at 18-24; Buckley Broadcasting at 24-31), the Regulatory Flexibility Act (*see, e.g.*, Named State Broadcasters Comments at 21; NAB Comments at 25), and the Paperwork Reduction Act (*see, e.g.*, Hubbard Broadcasting Comments at 17; College Broadcasters Comments at 23-24; NAB Comments at 25). In particular, commenters demonstrate that the FCC has failed to meet its burden to provide a reasoned analysis for reversing course from its previously established regulatory scheme. *See, e.g.*, Joint Comments of Broadcast Licensees at 3-5 (“Joint Licensee Comments”); CBS Comments at 20-26; Cox Comments at 31-33; ION Media Comments at 3-7; LIN Comments at 3-4; NBC Universal Comments at 27-30. Moreover, at least one commenter points out that Section 307(b) of the Communications Act does not provide authority for the FCC to adopt localism regulations. *See* ION Media Comments at 8-16.

⁵¹ Cox Comments at 53-56, CBS Comments at 29-33, Belo Comments at 38-41; LIN Comments at 13-14; ION Media Comments at 16-17.

⁵² *Elimination of Unnecessary Regulations*, 54 Rad. Reg. 2d (P&F) 1043 (1983).

departure from the Commission’s reasoned decision to repeal renewal processing guidelines almost 25 years ago.⁵³ The FCC thus should avoid local programming requirements that almost certainly would lead to protracted legal battles and eventual overruling by the courts.

B. PIPA Coalition’s Proposed Local Programming Requirements Are Onerous and Impractical.

Of the few parties that support the agency’s renewal processing proposal, the most zealous is the PIPA Coalition.⁵⁴ This party recommends a litany of exacting and remarkably onerous processing guidelines that would micromanage television stations’ local programming decisions. The PIPA Coalition’s proposals completely ignore both the economic realities of station operation and the actual interests of the audience members they purport to protect, and elevate its own judgments as to the relative value of various types of programming above those of listeners and viewers.⁵⁵ In particular, the PIPA Coalition suggests that the FCC require every television licensee in the United States—regardless of its financial resources, market size, current programming line-up, or business model—to air a minimum of three hours per week of “qualifying local civic or electoral affairs” programming on its most-watched channel in order to have its

⁵³ CBS Comments at 21-22, College Broadcasters Comments at 16-19.

⁵⁴ PIPA Coalition Comments at 7-10. *See also* Comments of the Benton Foundation at 13-14; Common Frequency Comments at 44-46, 53, 58-59; NABOB Comments at 6; Prometheus Comments at 1-2.

⁵⁵ Capitol Broadcasting Company proposes similar local programming processing guidelines that apparently would apply to both TV and radio broadcasters. *See* Capitol Broadcasting Comments at 2-4. The Capitol Broadcasting proposal raises many of the same concerns as PIPA Coalition’s proposal, and the Coalition’s criticisms here should be understood to apply to both..

renewal application processed in the ordinary course at the Commission.⁵⁶ The suggested limitations on “qualifying” programming are highly detailed and stringent, especially as they pertain to programming that must be aired during election seasons.⁵⁷ What is more, the PIPA Coalition suggests that all affiliates of the major broadcast networks should be required to air “independently-produced” programming during 25 percent of their prime-

⁵⁶ PIPA Coalition Comments at 10. Similarly, Capitol Broadcasting suggests broadcasters should be required to air at least two hours of local public affairs programming per week, to be phased in over an established timeframe. Capitol Broadcasting Comments at 3.

⁵⁷ Specifically, the limitations on “qualifying” programming would include:

- Enhanced election season requirements: Thirty days prior to a primary election and 60 days prior to a general election for federal, state and/or local public office, at least two of the three hours of qualifying programming must consist of “local electoral affairs programming.” PIPA Coalition Comments at 13. Capitol Broadcasting proposes that within the same timeframes, at least one hour of its proposed two hour weekly local programming requirement would be required to focus on election issues. Capitol Broadcasting Comments at 3.
- Limitations on the time periods when the programming could be aired: At least 50 percent of the required three hours of local programming would have to be aired between 5:00 p.m. and 11:35 p.m. or between 6:00 a.m. and 9:00 a.m. However, broadcasters would have to air the entire two hours of local electoral programming described above during these timeframes, thus requiring two-thirds of qualifying programming to be broadcast within stations’ most popular viewing hours during campaign seasons. PIPA Coalition Comments at 11, 13. Capitol Broadcasting proposes that at least one hour of the two hours of weekly local programming would be aired between 6:00 p.m. and 11:00 p.m. Capitol Broadcasting Comments at 3.
- Local production obligations: All three hours of qualifying local and electoral affairs programming would have to be produced within the service area of the station. PIPA Coalition Comments at 12. Under Capitol Broadcasters’ recommendations, at least one hour of the two hours of weekly local programming would be locally produced. Capitol Broadcasting Comments at 3.
- Increased requirements for stations that multicast: Broadcasters also would have to air qualifying programming proportionate to the amount of programming they offer for *each* multicast channel. Specifically, stations would have to air the lesser of “three hours per week per [multicast] channel or [three] percent of the aggregate number of hours broadcast between the hours of 6:00 a.m. and 11:35 p.m.” PIPA Coalition Comments at 11.
- Limited ability to count local newscasts toward qualifying programming: Only 30 minutes per week of otherwise qualifying local news programming would count towards the three hours per week of local or electoral affairs programming. *Id.* at 14.

time schedules⁵⁸ and that all television stations should be obligated to devote one percent of their airtime to unpaid Public Service Announcements.⁵⁹

The PIPA Coalition’s filing is devoid of discussion of the myriad practical implications of its remarkably onerous suggestions. Indeed, this commenter does not even broach the topic of how much the implementation of its proposals would cost the average broadcaster. Yet, the independent production of locally originated programming is undeniably a very costly proposition. As the Association for Public Television Stations (“APTS”) explains in its comments, “it costs a Public Television Station at least *20 times* as much to produce its own programming” as it does to acquire content from PBS or other suppliers.⁶⁰ In 2005, APTS stations spent \$1,785 per hour on local programming, versus \$24 to \$119 per hour for all other programming.⁶¹

On top of the significant out-of-pocket expenses that would be incurred, stations inevitably would be forced to forego substantial amounts of advertising revenue in order to comply with the PIPA Coalition proposals.⁶² Because programming aired in order to fit within the strictures of such guidelines almost certainly would capture low viewership,

⁵⁸ *Id.* at 17.

⁵⁹ *Id.* at 15.

⁶⁰ APTS Comments at 6 (citing the Corporation for Public Broadcasting’s Station Performance Report for FY2005, available at http://www.cpb.org/stations/sabs/05peers/SPR1AllPTVStations_All.pdf).

⁶¹ *Id.* at n.10.

⁶² Further, these costs would be particularly wasteful because, as the FCC has recognized, where programming is produced is not dispositive as to whether it addresses a community’s needs. *See Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, ¶ 14 (2004) (“[P]rogramming that is not specifically targeted to the local community may still serve the needs and interests of the community.”). *See also Office of Comm’ns of the United Church of Christ v. FCC*, 707 F.2d 1413, 1430 n. 54 (D.C. Cir. 1983) (noting that “[a]s long as the Commission requires licensees to provide programming—whatever its source—that is responsive to their communities, §307(b) [of the Act] is satisfied”).

broadcasters would be unable to charge standard advertising rates during the time slots when it would be aired.

In addition, the PIPA Coalition's definition of qualifying local and electoral programming is so detailed and specific that it inevitably would result in the airing of highly duplicative programming. This unintended effect of the proposal is particularly evident with respect to the suggestion that TV stations should be required to air two hours per week of local electoral affairs programming during election seasons between the limited, and popular viewing, hours of 6:00 a.m. to 9:00 a.m. or 5:00 p.m. to 11:35 p.m. The example of the Houston DMA, which has 17 full-power TV stations, provides a sense of the impact that this proposal would have on the typical market.⁶³ Under the PIPA Coalition's proposal, these stations collectively would be obligated to air 34 hours per week of programming devoted to the limited subject of local elections during the same limited hours for a one-month period before primary elections and a two-month period before general elections. All told, these stations would be required to air almost 450 hours of coverage of local elections per campaign season.⁶⁴ The end result would be that Houston residents would be inundated with overlapping content.⁶⁵ Moreover, such

⁶³ 2008 Broadcasting and Cable Yearbook at B-179.

⁶⁴ All 17 Houston TV stations would be required to air two hours per week of electoral programming during an election season, resulting in 34 hours per week for the entire market. Stations would have to air this programming for 30 days prior to the primary and 60 days prior to the general election, covering a total of approximately 13 weeks. Thirty-four hours per week would equal 442 hours of programming over a 13 week period.

⁶⁵ The suggestion that similar programming obligations should apply to multicast channels would have the potential to exponentially increase this duplicative programming. Further, the problems associated with duplicative programming would be even more acute if, as Capitol Broadcasting suggests, the Commission extended local programming requirements to both television *and* radio stations. 2008 BIA Financial Investing in Radio Market Report. Under Capitol Broadcasting's proposal, the 56 radio stations in the Houston-Galveston Arbitron market apparently would be subject to the same local programming

an attempt to inject the federal government and its regulatory system into the editorial process in this manner would not be not narrowly tailored, but a mischievous and misguided undertaking. There should not be governmental policies to govern how any form of local news is communicated through the electronic media.

Further, the PIPA Coalition’s proposal that only 30 minutes per week of regularly scheduled newscasts should count toward the processing guidelines would have a disproportionate impact on the many television stations that already invest substantial resources in local news programming. Indeed, this aspect of the proposal would have the perverse effect of *discouraging* stations from investing in local newscasts, an outcome that would be directly contrary to the public interest generally as well as the stated objectives in this proceeding. Notably, the PIPA Coalition offers no explanation of why this genre of programming, which is quintessentially local, should be given short shrift in any quantitative guidelines ultimately adopted by the Commission.

Similarly, piling even more local programming requirements on television multicast channels, as PIPA Coalition suggests, would discourage many broadcasters from developing this nascent service in ways that would benefit local audiences. While many broadcasters already are using multicast streams to provide programming that meets community needs and interests,⁶⁶ much of this programming would not “qualify”

requirements as the television stations. The result would be an overwhelming amount of narrowly-focused local and electoral programming provided by 73 media outlets in the market during the same prescribed timeframes, with a finite audience. *See* Capitol Broadcasting Comments at 2-4.

⁶⁶ For instance, a number of public television stations use their multicast streams to offer Spanish-language educational and informational services. *See* APTS Comments at 5. Belo uses its multicast channels to provide additional news and weather coverage. During Hurricane Katrina, several Belo stations, along with 20 other stations in the area, used their digital channels to provide expanded coverage of the disaster. Belo Comments at 41-43. Finally, NBC points out that while, on average, an NBC Universal-owned station airs 40 hours per week of local and national news and informational programming, that average figure jumps to

under the PIPA Coalition’s proposal. Moreover, the Commission’s children’s television programming requirements already limit television broadcasters’ use of multicast channel capacity by requiring them to air a specified amount of educational and informational programming on those channels.⁶⁷ Placing additional restrictions on how broadcasters can program their multicast streams would further reduce their flexibility and ultimately could dissuade them from multicasting altogether.

Finally, with respect to its proposal that 25 percent of programming aired by network affiliates should be “independently produced,” the PIPA Coalition apparently neglects to consider that this obligation would disrupt the longstanding network/affiliate business model and even could force stations to contravene their network affiliation contracts. Many existing network/affiliate arrangements require stations to air specified programming during the entire prime-time schedule.⁶⁸ In any case, this proposal represents a thinly veiled attempt to reinstate the FCC’s long-defunct financial interest and syndication (“fin/syn”) regime and has little, if anything, to do with localism. The Commission eliminated its fin/syn rules more than a decade ago because it correctly concluded that they were not necessary to meet diversity objectives or combat anticompetitive practices.⁶⁹ Since that time, the agency repeatedly has refused to

90 hours per week when programming on those stations’ multicast channels is taken into account. NBC Universal Comments at 19-20.

⁶⁷ 47 C.F.R. § 73.671.

⁶⁸ Notably, forcing broadcasters to air 50 percent of “qualified” local programming between the limited hours of 6:00 a.m. to 9:00 a.m. or 5:00 p.m. to 11:35 p.m., as PIPA Coalition suggests, would pose a similar problem for network affiliates. See PIPA Coalition Comments at 11.

⁶⁹ *Evaluation of the Syndication and Financial Interest Rules*, Second Report and Order, 8 FCC Rcd 3282, ¶115 (1993) (“*Second Report and Order*”). In the Second Report and Order, the FCC repealed significant portions of the fin/syn rules and scheduled the remaining rules to expire several years later. The

reinstate these restrictions for similar reasons.⁷⁰ Nothing in the record suggests that these conclusions no longer hold true or that a return to policies promoting independently produced programming would now serve the public interest.⁷¹

In sum, because the PIPA Coalition proposal is riddled with insurmountable practical and legal problems and would be unimaginably onerous to abide by, it should be summarily rejected by the FCC. Even more fundamentally, the Broadcaster Coalition submits that the type of micromanagement of the broadcast industry advocated by the PIPA Coalition is entirely unnecessary and, in fact, would be counterproductive to the Commission's localism objectives. In today's intensely competitive media market,

rulemaking was in response to a Seventh Circuit ruling remanding a 1991 agency decision to relax the rules, but not repeal them in their entirety. *Schurz Commc'ns v. FCC*, 982 F.2d 1043 (7th Cir. 1992), reviewing *Evaluation of Syndication and Financial Interest Rules*, Report and Order, 6 FCC Rcd 3094, as modified, *Evaluation of Syndication and Financial Interest Rules*, Memorandum Opinion and Order, 7 FCC Rcd 345 (1991) ("1991 Report and Order"). The Seventh Circuit found that the 1991 Report and Order did not adequately explain how its rules satisfied the Commission's diversity goals. *Schurz*, 982 F.2d at 1049-55. Specifically, it found that the Commission's new 40 percent restriction on network in-house productions appeared to impede greater diversity of program sources. *Id.* at 1051.

⁷⁰ See *Review of the Syndication and Financial Interest Rules, Sections 73.659-73.663 of the Commission's Rules*, Report and Order, 10 FCC Rcd 12165, ¶¶ 28-29 (1995) (concluding that the remaining fin/syn rules should expire as scheduled in the Second Report and Order). The Commission later rejected proposals requiring the largest networks to purchase a portion of their prime-time programming from unaffiliated program producers, noting that it had repealed similar fin/syn rules in the past when it could not justify them in light of changes to the media marketplace. *2002 Biennial 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 Notice of Proposed Rulemaking, 18 FCC Rcd 13620, ¶ 42 (2003), *aff'd in Part sub nom. Prometheus Radio Project v FCC*, 373 F.2d 372 (3d Cir. 2004). The Commission also stated in that proceeding that "[i]n light of dramatic changes in the television market, including the significant increase in the number of channels available to most households today, we find no basis in the record to conclude that government regulation is necessary to promote source diversity." *Id.* ¶ 44.

⁷¹ In addition to these specific concerns, the PIPA Coalition's proposals would almost certainly impinge on broadcasters' free speech and violate administrative laws. As described above in Section A., many commenters explained that *any* local programming renewal processing guidelines would raise serious First Amendment and administrative law concerns, without taking into account how stringent those specific programming requirements would be. Thus, the PIPA Coalition's exceedingly onerous local and electoral programming proposals likely would fail to survive legal review since they would require an even greater public interest justification than more flexible requirements in order to pass such scrutiny.

broadcasters already are highly focused on maintaining their relative advantage in the marketplace by connecting to local audiences and airing programming that is most relevant to their specific communities. As many stations made clear in their filings, local programming and community oriented service is critical to broadcasters' survival in the marketplace and is fundamental to their missions.⁷² In order to continue this trend in the challenging environment in which they operate today, broadcasters need maximum flexibility to continue serving their local audiences most effectively.⁷³

III. THE OPENING COMMENTS RESOUNDINGLY CONFIRM THAT MANDATORY COMMUNITY ADVISORY BOARDS ARE NOT NEEDED AND WOULD BE UNWORKABLE.

A large variety of small commercial broadcasters,⁷⁴ large commercial broadcasters,⁷⁵ non-commercial educational broadcasters,⁷⁶ religious broadcasters⁷⁷ and

⁷² Cheyenne Mountain Comments at 5; Findlay Publishing Comments at 3; Clear Channel Comments at 22.

⁷³ In addition, Common Frequency advances a proposal that would amount to reintroduction of comparative license proceedings. This proposal would contravene the Communications Act and is thus invalid. Under Common Frequency's convoluted plan, stations would be assigned "grades" by the FCC based on information provided by broadcasters in a new "Public Service Report" every two years. Common Frequency Comments at 58-59. Stations with "failing grades" would be subject to Commission-held local hearings, and potentially, challenges to their licenses from other entities. *Id.* This proposal, and, indeed, any process that would allow challenges to an existing licensee, would conflict with the express language of Section 309 of the Act, which states in no uncertain terms that in considering whether or not to renew a license, "the Commission shall not consider whether the public interest, convenience, and necessity might be served by the grant of a license to a person other than the renewal applicant." 47 U.S.C. § 309(k)(4). This proposal also contradicts the Act's standards for renewal, which allow the FCC to deny a renewal application only in specified circumstances. *See* 47 U.S.C. § 309(k)(1).

⁷⁴ *See, e.g.*, Comments of Miller Communications at 1-2; East Kentucky Broadcasting Comments at 2-3; Findlay Publishing Comments at 6; Four Seasons Comments at 6-9; Comments of Neuhoff Family Limited Partnership at 2 ("Neuhoff Family Comments"); Comments of Richard Gleason at 2; Comments of Sunbelt-South Telecommunications at 3-4 ("Sunbelt-South Comments"); Comments of Wagonwheel Communications at 3-4.

⁷⁵ *See, e.g.*, Clear Channel Communications Comments, at 60-77; Cromwell Group Comments, at 3-4; NBC Universal Comments at 36-38; Sinclair Comments at 3-5; Walt Disney Comments at 9-13.

⁷⁶ *See, e.g.*, Minnesota Public Radio Comments at 8-9 (noting that because public broadcasters must establish advisory boards in order to receive funding from the Corporation for Public Broadcasting, "[i]t

trade associations⁷⁸ oppose the adoption of a rule that would compel stations to convene and consult with community advisory boards (“CABs”). As the record clearly demonstrates, there is no need to revisit regulations similar to those that the Commission correctly discarded more than a quarter-century ago. A large number of broadcasters have explained in detail that they already are routinely soliciting input from their communities through ascertainment practices that are as varied as the communities they serve.⁷⁹ Just a few representative examples of these extensive efforts include:

- Gray Television Inc.’s stations in several markets regularly meet with local leaders to produce “*Our Town*,” a week-long event in which a station’s local newscasts include segments that feature a selected sub-community within the its service area.⁸⁰
- Bahakel Communications, Ltd, the licensee of five television stations and eight radio stations in communities in various parts of the country, regularly solicits community input through live call-in programming and sponsor widely attended breakfast and lunch meetings with leaders of a

would not serve the public interest for the FCC to create a redundant scheme of community advisory board requirements); *see also, e.g.*, NPR Comments at 24-26.

⁷⁷ *See, e.g.*, Catholic Radio Association Comments at 11-15 (noting that requiring that “licensees submit to the verdict of Advisory Boards will foster greater homogeneity of content, as the Advisory Boards devolve into censorship boards”); *see also, e.g.*, Holy Family Communications Comments at 10-14; Joint Comments of IHR Educational Broadcasting at 9-11.

⁷⁸ *See, e.g.*, NAB Comments, at 13-24; Named State Broadcasters Comments at 14-18.

⁷⁹ *See, e.g.*, Bahakel Comments at Exhibit A; Belo Comments at 7-8; CBS Comments at 35-36; Cox Comments at 37-38; Walt Disney Comments at 11-12; Comments of Family Life Communications, Inc. at 2; Findlay Publishing Comments at 6-7; Four Seasons Comments at 7; Gray Comments at 7-16; Wagonwheel Comments at 3-4; Comments of Hofferber at 1; Joint Television Broadcasters Comments at 7-13; Comments of LeSEA Broadcasting Corporation at 4 (“LeSea Broadcasting Comments”); LIN Comments at 5-6; Maranatha Comments at 9-10; Comments of Moody Bible Institute at 10-11; Morgan Murphy Media Comments at 6; NewsChannel 5 Comments at 8-11; NPR Comments at 7-10; NRC Comments at 2, 7-8; Comments of Prettyman Broadcasting at 2-3 (“Prettyman Comments”); Red River Comments at 10; Comments of Red Rock Radio Corp. at 10 (“Red Rock Comments”); Sinclair Comments at 11-12, Exhibit A; Comments of Summit Media Broadcasting at 3 (“Summit Media Comments”); Sunbelt-South Comments at 1; ZGS Comments at 12-14, 17.

⁸⁰ Gray Comments at 9-16.

wide range of community organizations.⁸¹

- Backyard Broadcasting's KTWB(FM) employs a Public Affairs Director, whose sole task is to communicate with local leaders to determine what programming will meet perceived needs in the Sioux Falls, South Dakota community.
- The ascertainment efforts of NewsChannel 5 Network, LLC, licensee of WTVF(TV) in Nashville, range from (1) regularly inviting community leaders to meet with station management and news personnel; to (2) hosting brown bag lunches with individual representatives from special interest groups; to (3) daily monitoring of and responding to the station's news tip hotline and email address.⁸²
- Personnel from the 26 stations owned and operated by NBC Universal, Inc. interacted with more than 1,000 organizations in their home markets in the first calendar quarter of 2008 alone. Many of these groups have submitted comments in this proceeding attesting to these stations' commitment to their home communities.⁸³
- Several of Cox Broadcasting Inc.'s stations hold regular "Community Leader Lunches" so that station management and local leaders have an opportunity to discuss important local issues in an informal setting.⁸⁴

Commenters voice their strong beliefs that their current, individually tailored ascertainment efforts are far more fruitful than the wholesale CAB obligation envisioned by the agency. In particular, stations' existing efforts allow them to reach out to a much broader segment of local audiences than would a mandatory CAB, which necessarily would represent only a tiny fraction of any individual community.⁸⁵ As one party

⁸¹ Bahakel Comments at Exhibits B and C.

⁸² See NewsChannel5 Comments at 7-11.

⁸³ See NBC Universal Comments at 37.

⁸⁴ Cox Comments at 37-38.

⁸⁵ See, e.g., Belo Comments at 17-21; Comments of Edward De La Hunt at 4-5 ("De La Hunt Comments"); Gray Comments at 5-8; NewsChannel 5 Comments at 12-14; NRC Comments at 7-8; Sinclair Comments at 11-14.

observes, “[n]o matter how many organizations a station receives input from, no matter how many public meetings are held, any effort of such nature will inevitably result in input from a relatively tiny but vocal segment of the population.”⁸⁶

In addition, a wide range of commenters express significant concern that government-mandated CABs would be exceedingly cumbersome to implement and would place a significant burden on already scarce station resources.⁸⁷ As KGY(TV), Olympia, Washington, observes, a formal advisory committee would consume considerable resources from its limited staff of approximately 15 full-time employees.⁸⁸ These busy professionals would have to expend significant amounts of time locating and recruiting board members, organizing and attending meetings, and maintaining records of these efforts. As a result, the station, which is already in active contact with community leaders at all levels, fears that a CAB obligation would in fact hamper its ability to serve the local community.⁸⁹

Several parties also emphasize the potential First Amendment problems that would arise in the likely event that a compulsory CAB attempted to interfere with the station’s programming or editorial decisions.⁹⁰ Notably, even several public interest organizations, which typically espouse pro-regulatory positions in FCC rulemaking

⁸⁶ Comments of Don Davis, Vanguard Media at 2.

⁸⁷ *See, e.g.*, Joint Licensee Comments at 27; Community Broadcast Association Comments at 4; LIN Comments at 4-5; NBC Universal Comments at 37-38; Summit Media at 3.

⁸⁸ *See* Small Broadcasters Comments at 20-21.

⁸⁹ *Id.*

⁹⁰ *See, e.g.*, Christian Broadcasting System Comments at 7; Clear Channel Comments at 70-74; Maranatha Comments at 8-11; NewsChannel 5 Comments at 12.

proceedings, have noted that the current CAB proposal is overly rigid and would present significant challenges to broadcasters.⁹¹

On the flip side, only a small handful of parties advocate the FCC's CAB proposal.⁹² These parties provide only vague assertions, rather than concrete evidence, in support of their positions.⁹³ These commenters offer no examples or data to suggest that today's broadcasters are failing to reach out and identify issues of importance to their communities. These pro-regulatory parties also fail to address the myriad practical and legal difficulties inherent in the type of advisory boards envisioned by the agency.⁹⁴

Similar problems are apparent in the alternative ascertainment proposals posited by several commenters. Capitol Broadcasting recommends that broadcasters be required to appoint rotating advisory boards with terms no longer than six months.⁹⁵ Recognizing the ineffectiveness and redundancies of having multiple CABs within every community of license, MMTC/ISBA similarly suggests that broadcasters be obligated to convene

⁹¹ PIPA Coalition Comments at 23 (proposing a "flexible" CAB requirement instead of burdening broadcasters with the Commission's "one-size-fits-all" approach); *see also, e.g.*, Common Frequency Comments at 54 (suggesting that stations meeting certain criteria should be allowed to choose between convening a CAB and maintaining an "issues of importance file").

⁹² Cumberland Broadcasting Comments at 2; Comments of Larry Langford at 2; NABOB Comments at 5.

⁹³ For instance, Cumberland Broadcasting states without elaboration that a government-mandated CAB is an "excellent idea" because it "will ensure that no organization is left out and that all of the community needs are met!" Cumberland Broadcasting Comments at 2. Similarly, NABOB simply asserts that CABs have "the potential to restore the connection between minority communities and non-minority owned stations." NABOB Comments at 5.

⁹⁴ *See, e.g.*, Broadcaster Coalition Comments at 20-24; Belo Comments at 12-24; CBS Comments at 33-36; Clear Channel Comments at 64-70; Joint Television Broadcasters Comments at 13-15; Named State Broadcasters Comments at 14-18; NAB Comments at 13-24; NBC Universal Comments at 34-38; Saga Communications Comments at 10-13; Comments of Virginia Association of Broadcasters at 13-17 ("Virginia Association Comments").

⁹⁵ Capitol Broadcasting Comments at 4.

“quarterly market-wide community advisory meetings.”⁹⁶ Although these proposals generally offer more flexibility to broadcasters than the CAB requirement that has been outlined by the Commission, they nonetheless would involve the expenditure of substantial station resources and suffer from practical infirmities of their own. For example, Capitol Broadcasting offers no methodology for selecting its proposed board of advisors, and the constant rotation of the board’s composition could be even more difficult for broadcasters to administer than the *Localism NPRM*’s CAB proposal.⁹⁷

Prometheus Radio Project suggests that low-power stations and CPB qualified stations should be exempt from a CAB requirement because they “already have a variety of mechanisms for extensive community input into programming decisions.”⁹⁸ Of course, as discussed above and demonstrated throughout the record of this proceeding, the same is true for full-power and commercial broadcasters. Accordingly, this party provides no basis for its suggestion that part of the broadcast industry should be regulated in the manner proposed by the Commission while other segments should not. Finally, because not all stations have the resources to maintain a full-fledged CAB, the PIPA Coalition states that the FCC should adopt more “flexible CAB requirements.”⁹⁹ It fails to offer, however, any concrete suggestion as to how this more flexible requirement

⁹⁶ MMTC/ISBA Comments at 5.

⁹⁷ Similarly, MMTC/ISBA’s proposal would decrease a broadcaster’s administrative costs, but relies on the long-abandoned Ascertainment Primer as the means for selecting the board. *Id.* Thus at bottom, MMTC/ISBA’s well-intentioned alternative proposal would revert to the formalized ascertainment the Commission justifiably abandoned in the 1980s, which the Commission recognizes still is too costly to justify. *Localism NPRM*, ¶ 25.

⁹⁸ Prometheus Comments at 6.

⁹⁹ PIPA Coalition Comments at 22-23.

should be structured and implemented by broadcasters. Thus, because they have flaws analogous to the current CAB proposal, these alternative ascertainment suggestions also should be rejected by the agency.

IV. THE RECORD OFFERS NO SUPPORT FOR REVERTING TO FORMER RESTRICTIONS ON THE LOCATION OF MAIN STUDIOS.

As the Coalition and many other parties explained in the opening round of comments, the Commission's decision to relax the 1950s-era main studio rule more than two decades ago was based on sound policy and practical considerations. The latest round of comments almost universally rejects the idea that a stricter main studio rule might benefit localism.¹⁰⁰ Beyond simply stating their view of the proposed policy, commenters have developed an extensive record on this issue replete with examples of how re-regulation would harm broadcasters and explanations of why such a policy cannot fulfill the Commission's stated policy objectives.¹⁰¹ Tellingly, even commenters who

¹⁰⁰ Overall, more than 100 formal sets of comments opposed the FCC's proposal to reinstate the former main studio rule. *See, e.g.*, Comments of ADX Communications at 14-22; Comments of Arso Radio Corporation at 3; Comments of Big Thicket Broadcasting of Wyoming, Inc. at 13-20; Comments of Bonneville International Corporation at 2-4 ("Bonneville Comments"); Capitol Broadcasting Comments at 5-6; Cheyenne Mountain Comments at 1-3; Comments of CrossTexas Media, Inc. at 13-20; De La Hunt Comments at 14-21; Comments of Eastern Shore Radio, Inc. at 1-2; Comments of Fannin County Broadcasting Co., Inc. at 13-20; Comments of Georgia Eagle Broadcasting, Inc. at 13-21; Comments of Hispanic Christian Community Network, Inc. at 13-20; Comments of Jabar Communications, Inc. at 14-21; Comments of Joint Public Broadcasters at 15-19; Comments of La Favorita Broadcasting, Inc. at 13-20; Comments of Lost Coast Communications & KWPT, Inc. at 13-21; Comments of Marshfield Broadcasting Company at 3-4 ("Marshfield Broadcasting Comments"); Comments of Michael Butler Broadcasting, LLC at 14-21; Comments of Michigan Association of Broadcasters at 2-3; NAB Comments at 56-70; Comments of Native Public Media at 10; NBC Universal Comments at 30-36; Comments of Pacific Radio Group, Inc. at 13-21; Comments of Station Resource Group, National Federation of Community Broadcasters, and Public Radio Capital at 17-19.

¹⁰¹ *See, e.g.*, Red River Comments at 14 ("The current main studio rule thus serves the public interest because it leads to a greater number of media voices in small markets, whose size often cannot support all of the necessary costs of an independent broadcast facility."); Summit Media Comments at 2 (noting that if the Commission were to change the rule, it would not be able to continue supporting several of their co-located stations); NRC Comments at 10 (indicating that such a policy actually would make communication with its community more difficult, as the main studio is located in the population center while the various adjacent communities of licenses are so small that no office buildings are located in those areas);

generally advocate increased regulation of the broadcast industry are opposed to tightening the main studio rule because they recognize such a policy change will not benefit, and in fact likely would undermine, the public interest.¹⁰²

The record in this proceeding conclusively demonstrates that the sagacity of the Commission's prior findings only has become more apparent as technology and transportation options have continued to advance in the decades since the main studio rule was first relaxed.¹⁰³ Thus, it is even more true today than it was in the 1980s that mandating that main studios be located within the confines of licensed communities will not appreciably ease access to station information for listeners, facilitate communication between stations and their audiences, or increase local programming.¹⁰⁴ As numerous

Comments of Forever Broadcasting LLC at 8-11 (detailing numerous likely outcomes of a rule change and concluding that it would "cripple the operating budgets of numerous licensees and eliminate the existence of stations for which relocation is either uneconomical or impossible, thereby decreasing the actual amount of radio...").

¹⁰² See Common Frequency Comments at 47 ("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."); Supplemental MMTC/ISBA Comments at 8 ("Even apart from the MSR's deeply disproportionate impact on minorities, the MSR would impose enormous costs on radio broadcasters generally, thus discouraging investment in the industry as a whole. In that sense, the MSR would be 'a receding tide that sinks all boats.'" (citation omitted)); NABOB Comments at 9 ("Requiring stations to relocate their main studios would impose severe costs on stations...with no clear public interest programming benefit. NABOB submits that the Commission should not place form over function in this instance.").

¹⁰³ As the NAB highlights, the "main studio rule [was] adopted at a time when the U.S. telephone penetration rate was only 61.8%, before the Interstate Highway and National Highway Systems were instituted, before it was typical for American households to own multiple cars, and before the advent of federal funding programs for the construction and expansion of mass transit." NAB Comments at 62 (citations omitted). Obviously this sharply contrasts with the state of society today. See also, e.g., Small Broadcasters Comments at 6.

¹⁰⁴ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215, ¶ 4 (1987) ("1987 Report"); *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report and Order, 13 FCC Rcd 15691, ¶ 1 (1998) ("1998 Order").

commenters attest, viewers and listeners now more easily can access station information than ever before.¹⁰⁵ Stations widely report that most individuals forego traditional methods of interaction such as visiting main studios in favor of more convenient interaction via phone calls, email, and station websites.¹⁰⁶ Among other reasons, this is because a significant amount of station information, including most of that included in a station's public inspection file, is already available to anyone with access to the Internet at home, at the workplace, or through a public library.¹⁰⁷ This continuous interaction regularly assists stations in selecting and producing programming responsive to community needs and desires.¹⁰⁸ Further, the record in this proceeding conclusively shows that rolling back the clock on the main studio rule is wholly unnecessary, as

¹⁰⁵ See, e.g., Clear Channel Comments at 99-100; Gray Comments at 22; NBC Universal Comments at 35-36; NAB Comments at 56.

¹⁰⁶ For example, Gray Television noted in its comments that Gray receives "approximately 55 viewer comments on local stories, per website, per day." Gray Comments at 22. See also, e.g., Clear Channel Comments at 100; Starboard Media Foundation at 5; Comments of Priority Communications at 6 ("Priority Communications Comments"); Bonneville Comments at 3 ("Bonneville Comments"); Marshfield Broadcasting Comments at 4; Comments of International Media Group at 5; ZGS Comments at 15; Joint Comments of Broadcast Communications, Inc. and McMurray Broadcasting, Inc. at 4; Findlay Publishing Comments at 8-9; Virginia Association Comments at 39; ION Media Comments at 21-22; NBC Universal at 32; NAB Comments at 63.

¹⁰⁷ See e.g., NBC Universal Comments at 33 (noting the much of a station's public file information is available through the FCC website); NAB Comments at 63 (same). As of November 30, 2007, 70.9% percent of North Americans and more than 215 million people in the United States are estimated to be regular Internet users. This represents a 125.6% increase of use in the United States since 2000. See Internet Usage and Population Statistics for North America, available at <http://www.internetworldstats.com/stats14.htm> (last viewed June 2, 2008). A simple search on any commercial search engine for a station call sign provides multiple results involving FCC information. Further, the public is well aware of the Commission's role in the regulation of broadcasting as well as how to navigate its website, as demonstrated by the myriad comments filed with the Commission by members of the general public on a daily basis.

¹⁰⁸ As the Commission noted in 1987, "the coverage of local issues does not necessarily have to come from locally produced programming." 1987 Report, 2 FCC Rcd 3215, ¶ 31. See also Gray Comments at 20; NAB Comments at 64-65.

maintaining a strong relationship between broadcaster and community is a competitive necessity.¹⁰⁹

In addition, the Commission must consider the extensive evidence that reviving the stricter version of the main studio rule would place a heavy strain on precious broadcaster resources.¹¹⁰ As the opening comments clearly reflect, broadcasters across the country have constructed costly main studios in reliance on the existing rules.¹¹¹ Should the FCC reinstate its previous rule, many of these facilities would become useless or dramatically decrease in value.¹¹² At the same time, many broadcasters would incur substantial expenses in order to construct new facilities that would comply with the resurrected rule. More generally, reverting to the old rule would cause stations to

¹⁰⁹ *See, e.g.*, Belo Comments at 2, 6 (“Belo and other television broadcasters are acutely aware that good business practices as well as universally accepted standards of journalism demand that they stay in touch with and respond to the concerns of their communities.”); Four Season Media Comments at 7 (“[Local service] is not merely a matter of civic responsibility—it is also a competitive advantage that Four Season Media and others offer over competing media services.”); LIN Comments at 3 (“LIN knows that service to our communities is the key to our success, and we serve our communities well.”); Newschannel 5 Comments at 7 (“NewsChannel 5 . . . already works hard to ensure that it is covering the local news topics that are most important and relevant to its viewing audience. Doing so is a fundamental part of the station’s business model.”); ION Media Comments at 24.

¹¹⁰ *See, e.g.*, Capitol Broadcasting Comments at 5-6, Comments of Peter F. Tanz at 1-2; Bonneville Comments at 3; Comments of Cherry Creek Broadcasting at 1 (“Cherry Creek Comments”); Community Broadcasters Association Comments at 6; Comments of National Association of Market Brokers at 6; Walt Disney Comments at 23; Sinclair Comments at 10; Gray Comments at 23-25; ION Media Comments at 23; NBC Universal Comments at 34-35; CBS Comments at 43-48; NPR Comments at 28-30; NAB Comments at 66; Small Broadcasters Comments at 8-11; Clear Channel Comments at 102.

¹¹¹ *See, e.g.*, Gray Comments at 23; NBC Universal Comments at 34; NAB Comments at 68-69; Clear Channel Comments at 102.

¹¹² In addition, broadcasters would be forced to break long-term leases with owners of their current facilities if the main studio proposal is adopted. *See, e.g.*, ION Media Comments at 23; Clear Channel Comments at 102.

sacrifice the benefits they realized as a result of the Commission's more flexible policy, which was crafted in part to provide efficiencies to broadcasters.¹¹³

These results would translate into negative results for the public interest as well. As one commenter stated, “[i]mplementation of the proposed main studio rule would divert literally millions of dollars, if not tens of millions of dollars, from activities that currently benefit the local viewing public.”¹¹⁴ In response to the change in policy, a large number of broadcasters could be forced to shift significant funds from production of programming to the establishment and maintenance of additional main studios.¹¹⁵ Thus, many commenters agree that reinstating the inflexible main studio rule would not only fail to enhance local programming, but it also affirmatively would undermine both localism and diversity.¹¹⁶

Notably, the opening comments claim that such a policy would severely impact certain types of broadcasters, including small broadcasters, those serving rural areas, and

¹¹³ See *1998 Order*, 13 FCC Rcd 15691, ¶ 9 (“We believe that these changes will reduce substantially the burdens the previous rule imposed on the licensee, and can generate savings that can be put to more productive use for the benefit of the community served by the station.”); see also NAB Comments at 67; Small Broadcasters Comments at 7.

¹¹⁴ ION Media Comments at 22. See also, e.g., NAB Comments at 67-68; Broadcast Company for the Americas Comments at 2; LeSEA Broadcasting Comments at 2-3; Walt Disney Comments at 24.

¹¹⁵ Cox Comments at 43-44. See also, e.g., Marshfield Broadcasting Comments at 4; Cherry Creek Comments at 1-2; Eastern Shore Radio Comments at 1-2; Christian Broadcasting System Comments at 4; Educational Media Foundation Comments at 16; Florida Association Comments at 15-16; Comments of Holston Valley Broadcasting Corporation at 3 (“Holston Valley Comments”); Minnesota Public Radio Comments at 7; Sinclair Comments at 11; Comments of AGM California, *et al.* at 10; NPR Comments at 31-32; Clear Channel Comments at 105.

¹¹⁶ See e.g., Priority Communications Comments at 7; Red Rock Comments at 14; Wagonwheel Comments at 8; Hubbard Broadcasting Comments at 14; NRC Comments at 11; Summit Media Comments at 2; Comments of Ted Austin at 8; Comments of Western States Public Radio at 6-7; Small Broadcasters Comments at 11-12; Red River Comments at 14.

minority-owned stations.¹¹⁷ For example, many stations use collocation to spread operating costs across multiple stations that would otherwise not financially be able to broadcast individually.¹¹⁸ Also, as the MMTC/ISBA comments state, a change “would impose a far greater disadvantage on broadcasters who entered the industry later and were thus unable to assemble clusters of stations which each shared the same community of license.”¹¹⁹ MMTC/ISBA note that many of these late entrants are minority and ethnic broadcasters and present an econometric study to substantiate the claim that a policy change would levy greater burdens on these entities.¹²⁰

On the other hand, a remarkably small number of commenters support changing the main studio rule in the manner proposed by the Commission. These few parties rely on broad assertions and fail to provide any sufficient rationale for pursuing re-regulation.¹²¹ These generalized statements cannot reasonably serve as the basis for such

¹¹⁷ See e.g., Small Broadcasters Comments at 8; NRC Comments at 11 (“...this proposal alone will absolutely cripple small and medium-sized radio operators with one swift blow.”); Priority Communications Comments at 7 (“Breaking up facilities built under the current main studio rule will place undue financial burden on Licensees, especially independent and small market Broadcasters.”); NAB Comments at 67 (“...further restrictions on main studio location will have a greater impact on new broadcast entrants, stations with lower operating power, and stations that serve niche or rural audiences.”). See also, generally, MMTC/ISBA Supplemental Comments (presenting an econometric study demonstrating the disproportionate impact of a change in the main studio rule on minority-owned broadcasters).

¹¹⁸ See, e.g., Summit Media Comments at 1-2; Prettyman Comments at 6; Red River Comments at 14.

¹¹⁹ MMTC/ISBA Supplemental Comments at 1.

¹²⁰ See generally MMTC/ISBA Supplemental Comments.

¹²¹ Cumberland Broadcasting Comments at 1; Comments of Arthur C. Morris at 1; Comments of Christian Family Network Television, Inc. at 11. The one commenter who discusses the ostensible benefits of tightening the main studio rule in any depth suggests that, when a studio is located outside of the boundaries of its licensed community, it is exceedingly difficult for local emergency personnel to broadcast information concerning emergency situations and for local citizens to provide public service announcements. See Cumberland Broadcasting Comments at 3. As shown herein and throughout the record in this proceeding, these concerns are out of sync with current technology. The EAS is expressly designed to enable emergency personnel to convey emergency information to broadcasters remotely, and

a radical about-face in policy.¹²² Thus, the one-sided record on this issue overwhelmingly counsels in favor of maintaining the status quo with respect to this important issue.

V. **INTERESTED PARTIES CLEARLY AND CONVINCINGLY HAVE SHOWN THAT ADOPTION OF A 24/7 STAFFING REQUIREMENT IS UNNECESSARY AND WOULD BE HIGHLY BURDENSOME TO BROADCASTERS.**

The record in this proceeding overwhelmingly demonstrates that the FCC should reject its proposal to obligate TV licensees to maintain a physical presence at their stations at all times. A broad range of commenters express great concern that this policy would impose unmanageable costs on broadcasters.¹²³ Notably, many single station operators and other small broadcasters explain that a 24/7 staffing requirement would place an enormous strain on resources,¹²⁴ would drive stations to reduce operating hours,¹²⁵ and even could force some stations to cease operating altogether.¹²⁶ For

there are many ways to provide PSAs to stations without physically dropping them off at broadcaster studios, including via email and telephone.

¹²² See *HBO v. FCC*, 587 F.2d 19, 36, 48 (D.C. Cir. 1977).

¹²³ At least 90 parties that submitted formal comments in this proceeding, ranging from broadcasters to public interest organizations, oppose a 24/7 staffing requirement. See, e.g., MMTC/ISBA Comments at 7; NABOB Comments at 7; CBS Comments at 48-54; Great Eastern Radio Comments at 5; Holston Valley Comments at 4-5; Morgan Murphy Media Comments at 7; NAB Comments at 45-56; National Association of Media Brokers Comments at 5; NRC Comments at 8-10; Comments of Pollack/Belz Broadcasting, LLC at 5-6; Comments of Robinson Corporation at 5-6; and Trinity Comments at 37-39.

Such a rule would impose the same requirement on TV stations that the Commission is considering for radio stations in a separate proceeding. See *Localism NPRM*, 23 FCC Rcd 1324, ¶¶ 29, 87 (citing *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Second Report and Order First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, ¶¶ 5-7 (2007)).

¹²⁴ See, e.g., Defenders of Faith Comments at 7; Neuhoff Family Comments at 3; Red River Comments at 14; Sunbelt-South Comments at 2.

¹²⁵ See, e.g., Joint Licensee Comments at 18; International Media Group Comments at 3; APTS Comments at 20-22; Florida Association Comments at 17; North Carolina Association Comments at 25-26.

instance, some small stations explain that they would have to *double* their existing staffs to ensure an employee is always present at their facilities during operating hours.¹²⁷ One broadcaster estimates that it would cost \$100,000 a year to comply with an around-the-clock staffing rule.¹²⁸ Because it cannot afford this cost, this station likely would sign-off during overnight hours instead.¹²⁹

Thus, while the FCC avers in the *Localism NPRM* that a 24/7 staffing requirement could “increase the likelihood that each broadcaster will be capable of relaying critical life-saving information to the public,”¹³⁰ the record shows that that this obligation actually would have the opposite effect. As several commenters explain, this requirement would undermine the ability of local broadcasters to relay emergency information to viewers by forcing those that cannot afford 24/7 staffing to reduce their hours of operation.¹³¹ This adverse effect would be particularly problematic in smaller markets where stations are most likely to be affected by a staffing rule, and other signals carrying emergency messages are least likely to be available.¹³²

The FCC further posits in the *Localism NPRM* that “[r]equiring that all [] stations be attended can only increase the ability of the station to provide information of a local

¹²⁶ See, e.g., Joint Licensee Comments at 20-22; Red River Comments at 14; Educational Media Foundation Comments at 17.

¹²⁷ Neuhoff Family Comments at 3; APTS Comments at 20.

¹²⁸ Joint Licensee Comments at 20.

¹²⁹ *Id.*

¹³⁰ *Localism NPRM*, ¶ 29.

¹³¹ See, e.g., Virginia Association Comments at 35-36; Joint Television Broadcasters Comments at 36; Ohio Association Comments at 14.

¹³² See, e.g., Fisher Communications Comments at 4; Virginia Association Comments at 35-36.

nature to the community of license.”¹³³ The record shows that this assumption too is erroneous. Many commenters point out that the costs associated with a 24/7 staffing rule needlessly would force stations to divert limited resources from local news and other local programming.¹³⁴

In any case, broadcasters today have the ability to issue emergency alerts and relay other important messages to viewers and listeners immediately, regardless of whether employees are physically present at the station or it is operated remotely.¹³⁵ In fact, the Emergency Alert System (“EAS”) is designed so that broadcasters can operate it remotely during unattended periods.¹³⁶ Broadcasters cite measures they take to ensure that remote operations do not affect their ability to disseminate information to the public.¹³⁷ One broadcaster explains that it makes remote emergency programming possible by providing remote access software and studios in the homes of its employees.¹³⁸ Other stations make emergency contact information available to state and local communications officials so that key station personnel are reachable at any place or time via email or cell phone.¹³⁹

¹³³ *Localism NPRM*, ¶ 29.

¹³⁴ *See, e.g.*, Alaska Broadcasters Comments at 1, APTS Comments at 16-17; Four Seasons Comments at 6; International Media Group Comments at 3-4; Sunbelt-South Comments at 2; APTS Comments at 17-18; North Carolina Association Comments at 25-26.

¹³⁵ *See, e.g.*, Alaska Broadcasters Comments at 2; Four Seasons Comments at 6; Trinity Comments at 38-39; ZGS Comments at 14; North Carolina Association Comments at 23-25.

¹³⁶ *See, e.g.*, APTS Comments at 18; Bonneville Comments at 9; Fisher Communications Comments at 3.

¹³⁷ *See, e.g.*, Gray Comments at 26-29; North Carolina Association Comments at 23-25; Broadcaster Coalition Comments at 31-32.

¹³⁸ Neuhoff Family Comments at 3.

¹³⁹ APTS Comments at 18-19; Neuhoff Family Comments at 3.

Given these considerations, it is not surprising that hardly any commenters support mandated 24/7 staffing. Those that do have a false sense of the benefits that such a requirement would deliver and have failed to address the substantial unnecessary costs that adopting this proposal would impose on broadcasters.¹⁴⁰ Accordingly, the record in this proceeding provides no basis for the Commission to implement this proposal.

¹⁴⁰ *E.g.*, Cumberland Broadcasting Comments at 2. *See also* Comments of James Suminski at 1; Comments of Gary Brummitt at 1; Comments of Bruce Fife at 1.

VI. CONCLUSION

The record in this proceeding overwhelmingly confirms that the FCC should reject its proposals to institute: (1) local programming renewal processing guidelines; (2) mandatory community advisory boards; (3) stricter main studio location requirements; and (4) 24/7 staffing obligations for TV stations. Each of these proposals would impose substantial, and in some cases prohibitive, costs on broadcasters, and none would appreciably improve the caliber of local programming services available in individual communities. To the contrary, as shown herein, these proposals have the potential to seriously undermine the agency's localism objectives.

Respectfully submitted,

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