DOCKET FILE COPY ORIGINAL

GSBL®
GARVEY SCHUBERT BARER
A PARTNERSHIP OF PROFESSIONAL CORPORATIONS

WASHINGTON, D.C. OFFICE
fifth floor
flour mill building
1000 potomac street nw
washington, d.c. 20007-3501
TEL *202 965 7880* FAX *202 965 1729*

OTHER OFFICES
beijing, china
new york, new york
portland, oregon
seattle, washington
GSBLAW.COM

2008 APR 28 P 2:18

04-233

Please reply to JOHN CRIGLER
jcrigler@gsblaw.com
DIRECT DIAL: (202) 298-2521

April 28, 2008

FILED/ACCEPTED
MAY 12 2008
Federal Communications Commission
Office of the Secretary

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: MB Docket No. 04-233

Dear Ms. Dortch:

Transmitted herewith on behalf of Station Resource Group, National Federation of Community Broadcasters and Public Radio Capital are their Comments with respect to the above-referenced rule making proceeding.

If there are any questions concerning this submission, please contact the undersigned directly.

Respectfully submitted,

John Crigler

JC:cll
Enclosure

No. of Copies rec'd 0
List A B C D E

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

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

To: The Commission

COMMENTS OF
STATION RESOURCE GROUP
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS
PUBLIC RADIO CAPITAL

John Crigler
Garvey Schubert Barer
Fifth Floor
1000 Potomac Street, N.W.
Washington, DC 20007
202/965-7880

April 28, 2008

TABLE OF CONTENTS

SUMMARY i

I. THE PUBLIC SERVICE COST 1

II. LOCALISM 3

III. FAIR DISTRIBUTION OF NCE SERVICE 4

IV. ASCERTAINMENT OF THE PUBLIC INTEREST BY NCE STATIONS 6

V. MAIN STUDIO REQUIREMENTS FOR NCE STATIONS 9

VI. NCE STATIONS HAVE A HEALTHY RELATIONSHIP WITH THEIR AUDIENCES 11

VII. THE PROPOSED REGULATIONS WOULD DECREASE THE ABILITY OF NCE STATIONS TO RESPOND TO LOCAL NEEDS 12

A. Enhanced Disclosure and Renewal Processing Guidelines. 14

B. Revised Main Studio Requirements. 17

C. Community Advisory Boards. 19

VIII. THE COMMISSION SHOULD ENCOURAGE A DIALOGUE BETWEEN BROADCAST STATIONS AND THE PUBLIC 21

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

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

To: The Commission

COMMENTS OF
STATION RESOURCE GROUP
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS
PUBLIC RADIO CAPITAL

SUMMARY

Station Resource Group, National Federation of Community Broadcasters, and Public Radio Capital recognize the intent to create more responsive and valued broadcast radio services to the public. We are, however, concerned that the Commission's proposals will:

- *Divert over $8 million in valuable and scarce resources of public radio organizations from their primary public radio services with no concomitant service advantage to their communities of service. This is the equivalent of "taking back" one out of every eight dollars that the Federal government invests annually in local public radio operations.*

- *Signal abandonment of the notion that the very definition of noncommercial radio – its services, the status of its operating stations, and its essentially non-profit, noncommercial programming – make public broadcasting stations very different from their commercial counterparts.*
- *Set aside the Commission's long-standing practice of taking into account the limited resources of public radio stations and their commitment to services that would not otherwise exist, and granting waivers to the main studio requirements while continuing to require a showing that the local community would be served.*
- *Layer additional burdens on top of existing statutory and administrative requirements for non-profit organizations and recipients of funding from the Corporation for Public Broadcasting that already help assure responsive and accountable service by public radio broadcasters.*

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

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

To: The Commission

COMMENTS OF STATION RESOURCE GROUP NATIONAL FEDERATION OF COMMUNITY BROADCASTERS PUBLIC RADIO CAPITAL

Station Resource Group ("SRG"), National Federation of Community Broadcasters (NFCB), and Public Radio Capital (PRC) hereby submit comments in response to the above-captioned Notice of Proposed Rule Making ("NPRM") on broadcast localism. SRG is an alliance of 40 leading public radio organizations focused on strategy, policy, and national initiatives. SRG members operate 220 NCE stations. NFCB advocates for public policy, recognition and resources on behalf of 250 community-based public radio stations. PRC works with nonprofit media organizations to enlarge their audiences and increase program choices for people in their communities.

I. The Public Service Cost

The proposals set out in the NPRM would result in significant new costs to NCE stations. Because of the non-profit structure of NCE stations, these new costs would not

be offset by a reduction in profit margins, but rather only through reductions in the NCE stations' investments in public service.

While each licensee would develop its own approach and procedures to comply with the Commission's proposed rules, it is possible to construct a conservative, "bare bones" compliance model. For example, log information associated with the "enhanced disclosure form" will take at least three days per month by administrative staff and four days of supervisory time per year by the program director. If the proposed "community advisory board" is treated as a separate body due to its unique purpose and composition, related work for a group that met only once a year would include two days of time by administrative staff to recruit participants or provide support and organizational materials, one day dedicated to an annual meeting, one day dedicated to the follow-up associated with the meeting, one-half day devoted to the various public notices associated with such meetings, and one day for the station manager to participate in the process. In addition, we anticipate that licensees will incur some additional legal costs associated with establishing these procedures and assuring compliance on an ongoing basis, perhaps an hour a year.

Using median salary figures reported by the Corporation for Public Broadcasting for public radio station personnel, a standard allocation for benefits, and a discounted communications counsel fee, the personnel costs for the "enhanced disclosure form" and the "community advisory board" total some $9,150 per station. Any costs for facilities or refreshments for the community advisory board meeting would be additional.

Across the 870 stations supported by the Corporation for Public Broadcasting, these costs would total at least $7.96 million. This is the equivalent of taking back more

than one of every eight dollars the federal government invests annually in supporting local public radio station operations.

We anticipate that many stations will experience costs significantly above this limited model: stations with strong commitments to news and public affairs programming, to local programming, and who would opt to meet with a community advisory board more than once per year.

II. Localism

The NPRM proposes a range of new regulations designed to promote "localism," a term that encompasses a range of issues from the location of the station's studio to the source and nature of its programs. NPRM, p. 3. Although the NPRM does not define "localism," it derives its authority to foster localism not only from the FCC's general power to make reasonable regulations "consistent with the public interest convenience and necessity,"[1] but more specifically from Section 307(b) of the Act, which instructs the FCC to "make such distribution of licenses, frequencies, hours or operation, and of power among the several States and *communities* as to provide a fair, efficient, and equitable distribution of radio service to each of the same."[2] The broad concept of the public interest and the more specific concept of a fair distribution of radio services have been applied to NCE broadcasting much differently than to commercial broadcasting.[3] The differences are essential to the rules proposed by the NPRM.

---

[1] 47 U.S.C. § 301 of the Communications Act of 1934, as amended (the "Act").

[2] 47 U.S.C. § 307(b), emphasis added.

[3] For an analysis of the Commission's authority to promote "localism" pursuant to Section 307(b), See Cole and Murck, *The Myth of the Localism Mandate,* Comm Law Conspectus, vol. 15 (2008).

III. Fair Distribution of NCE Service

In developing a "point system" to evaluate mutually exclusive applications for new NCE stations, the Commission considered at length how Section 307(b) of the Act should apply to NCE broadcasting. In its initial *Report and Order* on the point system,[4] the Commission recognized that while Section 307(b) was an "important concept" for NCE broadcasting, Section 307(b) applied quite differently than with respect to commercial broadcasting. Channels in the reserved FM band are not "allotted" to a particular "community" through a rule making proceeding that first considers the needs of a community for a new broadcast service,[5] but are selected by the applicant based upon its own nonprofit purposes and upon avoidance of interference to other stations and authorizations. A 307(b) analysis of an NCE FM application is undertaken only when "there were competing NCE radio applications proposing to serve different areas."[6] Although triggered by the designation of different communities of license by competing applicants, the analysis is based *not* upon the relative needs of the "communities," but upon the delivery of new noncommercial service.[7] An applicant receives a 307(b) preference if it provides "the first or second reserved channel noncommercial educational (NCE) aural signal received by at least 10% of the population within the station's 60 dBu

---

[4] *Reexamination of the Comparative Standards for Noncommercial Educational Applicants Report and Order*, 15 FCC Rcd 7386 (2000). ("NCE Order")

[5] NCE Order at 7389.

[6] NCE Order at 7397.

[7] The aggregated areas and population that qualify for credit under the Section 307(b) analysis for NCE stations may bear no relationship to any particular "community."

(mV/m) service contours" and if competing applicants do not provide a similar "level of service."[8]

In reconsidering its initial *Report and Order*, the Commission further distinguished its approach to 307(b) principles for NCE radio by noting that, while Section 307(b) was applicable to NCE broadcasting, Section 307(b) did not "mandate a particular procedure,"[9] and the Commission could apply Section 307(b) to the distribution of NCE service to underserved areas, rather than to the needs of particular communities.[10]

With respect to the NCE FM service, no Section 307(b) preference is awarded based upon the number of stations already licensed to any particular community.

> The fair distribution standard that we adopted was based only on provisions of the first or second NCE reception service for a significant population.... First aural service licensed to a community is considered in commercial broadcasting, which has longstanding community coverage requirements, but has not played any significant role in NCE broadcasting which until recently had no community coverage requirements and now has requirements that are significantly less stringent than those applicable to commercial broadcasters.[11]

In short, the bedrock principle of localism cited by the NPRM – namely, that "every community of appreciable size has a presumptive need for its own transmission service"[12] – does not apply to NCE radio. The FCC has based its regulation of NCE

---

[8] *See* 47 C.F.R. § 73.7002(b). Service to fewer than 2,000 people is considered "insignificant."

[9] *Memorandum Opinion and Order,* 16 FCC Rcd 5074, 5087 (2001) *("Reconsideration Order")*, p. 14.

[10] *See Reconsideration Order* at 5087. ""[T]he outcome of a successful 307(b) analysis in commercial TV and FM proceedings is the allocation of a channel to a community, but not to any particular licensee, whereas in an NCE analysis the outcome is the award of a license." *Id.* at Note 26.

[11] *Reconsideration Order* at 5088.

[12] NPRM at 4.

stations not on the narrow notion of service to a "community of license" but on the broader goal of serving unmet or underserved needs. As discussed in the following section, the Commission has, with good reason, concluded that it is unnecessary to impose many "localism" requirements on nonprofit organizations that are formed to advance an educational purpose, are subject to regulations from a variety of state and federal authorities and that are dependent on direct support from the audiences they serve.

IV. Ascertainment of the Public Interest by NCE Stations

Just as, under Section 307(b), the Commission has balanced the need of the public for reception of NCE service rather with the needs of particular "communities," it has emphasized the provision of noncommercial programs to local "audiences," rather than to particular "communities of license" whose interests are "ascertained" by prescribed methods. The history of the Commission's regulation of the means by which NCE stations determine and address local programming needs is summarized in its 1984 *Report and Order* on ascertainment requirements.[13] As that *Report and Order* notes, even during the 1970's and early 1980's, when formal ascertainment procedures were imposed on all broadcast stations, "Public radio licensees were allowed more flexibility. They were permitted to ascertain by any reasonable method that was designed to provide them with an understanding of the problems, needs and interests of their service areas."[14]

In 1984, the Commission concluded that even these more relaxed requirements were unnecessary. That conclusion was based upon the fact that NCE stations were subject both to different external economic pressures and to internal missions than

[13] *Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees* ("*Deregulation Order*"), 56 RR 2d 1157, 98 FCC 2d 746 (1984).

[14] *Deregulation Order* at 1159.

commercial stations. Contributions from individual viewers were typically an important source of financial support.[15] This "essential economic relationship between the public licensee and its audience will ensure that public stations discover and serve local needs."[16] The profound economic difference between commercial and NCE stations meant that "as a practical matter, the programming of these [NCE] stations will reflect their special status and that they will provide their communities with significant alternative programming designed to satisfy the interests of the public not served by commercial broadcast stations." [17]

To the extent that NCE stations depended on sources of income other than direct public support, these sources of funding also increased the diversity of programming available to the public. For example, the Corporation for Public Broadcasting ("CPB") and state and local governments often provided funds for children's programs, documentaries, or other programs of general rather than purely local interest. This multiplicity of funding sources helped produce a multiplicity of programming that was unavailable on commercial media.

NCE broadcasting was distinguishable from commercial broadcasting not only in economic terms, but in terms of its programming. "Thus, the very definition of the service, the status of its operating stations, and its essentially non-profit, noncommercial programming nature make public broadcasting stations very different in programming

---

[15] In 1984, the Commission estimated that one-sixth (16.7%) of the revenue of public broadcasting came from individual subscribers. *Id.* at Note 17. Today, public radio listeners have doubled their role, providing 33.7% of public radio stations' total revenue in FY 2006.

[16] Id. at 1163.

[17] Id. at 1161.

terms, from their commercial counterparts."[18] The inherent differences between commercial and NCE broadcasting could be relied upon to provide "an important alternative and competitive spur to the other local media. Such responsive programming would be entirely consistent with the nature and historical performance of these stations."[19]

NCE stations were also subject to a range of legal and public interest requirements other than those of the FCC. These requirements served as a "reliable substitute"[20] for FCC "localism" requirements. For example, many NCE stations were required by CPB to have program advisory boards and to hold meetings open to the public when deciding operating matters.[21] Stations licensed to state or local jurisdictions, although not required by CPB to have advisory boards, were "often under even more direct public control since state and local officials are accountable for their actions or inaction through the electoral process."[22] IRS requirements assured that the programming would advance an exempt educational, literacy, scientific or religious purpose and that revenues would inure to the benefit of public rather than private interests.

Formal ascertainment requirements not only imposed time consuming and expensive record keeping requirements on stations with limited resources,[23] such requirements impinged on First Amendment rights and potentially stifled "the creativity

---

[18] Id.

[19] Id. at 1162.

[20] Id. at 1163.

[21] Id. See 47 U.S.C. § 396(k)(B)(4) and 396(k)(8).

[22] Id.

[23] Id. at 1162.

and innovative potential" of NCE stations.[24] Even from a purely regulatory perspective, the regulations were an inefficient – and inaccurate – measure of the way in which NCE stations served the public interest. Ascertainment and program log requirements produced programming statistics, but these statistics were virtually meaningless for NCE broadcasting since "the program percentage figures for public broadcast stations were never used for 'promise v. performance' purposes as they were for commercial stations."[25]

In light of the multiplicity of factors that assured NCE stations would serve the "public interest," ascertainment obligations were unnecessary and potentially counterproductive.[26]

V. Main Studio Requirements for NCE Stations

The regulations that have embodied the FCC's "main studio" requirements since 1988 permit a broadcast station to locate its main studio outside the community of license, provided the location is within either 25 miles of the reference coordinates of the community of license or within the principal community contour of any station licensed to the community of license.[27] In addition, a main studio must have a "meaningful managerial and staff presence," transmission equipment capable of continuous program origination,[28] and a local or toll-free telephone number. The main studio rule is primarily

---

[24] Id.

[25] Id. at 1164.

[26] Id. at 1163.

[27] 47 C.F.R. § 73.1125(a).

[28] In a previous revision of its main studio rules, the Commission eliminated the requirement that programming be originated from the main studio. See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules*, 2 FCC Rcd 3215, 62 RR 2d 1582 (1987).

designed to serve "the needs and interests of the residents of the station's community of license."[29]

Although the Commission declined to grant NCE stations a blanket exemption from the main studio requirements, it acknowledged that there were "policy considerations" that warranted waiver of main studio location requirements for NCE stations:

> In the past, we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate "satellite" stations that do not necessarily meet the requirements of a main studio. These stations, however, have not been permitted to ignore local service obligations and waivers generally have been granted only upon a showing that the local community would be served.[30]

Under the current rules, NCE stations could seek waivers pursuant to the same "good cause" waiver standard that had applied under the previous rules.[31]

In enforcing the staffing component of the main studio rule, the Commission has recognized that NCE stations should be "afforded an appropriate degree of flexibility in their operational character, including their broadcast schedule and main studio staffing."[32] After a protracted investigation, the Enforcement Bureau denied a complaint that a high school station had violated main studio staffing requirements by failing to have a faculty station manager present at all times.

> Assuming as accurate the complainant's allegations that the station's day-to-day management is conducted by managers, whose primary functions

---

[29] *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules*, 65 RR 2d 119 (1988).

[30] 65 RR 2d at 125.

[31] 65 RR 2d at 126.

[32] *Carmel/Clay School Corporation*, 99060393KMS (Enforcement Bureau).

> are those of teachers, we find no issue raised merely because they are able to devote only part of their working day to station affairs.... Moreover, because such stations often operate on a school-year basis only, the likelihood that their main studios may be shuttered during the summer months raises no main studio compliance questions regarding staffing.[33]

If a single word summarizes the FCC's approach to the regulation of NCE stations, it is "flexibility." The FCC has not ignored the applicability of Section 307(b) of the Communications Act to NCE broadcasting, but it has applied Section 307(b) flexibly, with a focus on the development of noncommercial radio generally, as well as the narrower concern of service to a particular "community of license." Similarly, while the FCC has applied general concepts of public interest obligations, such as ascertainment and responsive program requirements, to NCE broadcasting, it has done so in a fashion that takes note of the "special status" of NCE broadcasting. This special status derives in part from the fact that NCE stations are accountable to other state and federal requirements that assure they will serve the public interest. Accordingly, the FCC has applied its main studio rule to NCE stations, but has granted waivers of the main studio location requirement where "good cause" is shown. The FCC has enforced the staffing requirements of the rule "with an appropriate degree of flexibility," to assure that NCE stations are not injured by an overly literal application of FCC rules. The same spirit of flexibility, and an appreciation of the special status of the NCE service, should guide the Commission in this proceeding.

VI. NCE Stations Have a Healthy Relationship with their Audiences

Since 1984, when the FCC eliminated its ascertainment requirements, public radio has significantly increased the public's use of its services to individual listeners,

[33] Ibid.

communities, and the nation. In the spring of 1985, the weekly cumulative audience to CPB-supported public radio stations was 9.8 million listeners. By the spring of 2007, the weekly audience had almost tripled to 28 million listeners.

This growth reflects a broad strategy of public service and a focused, disciplined, and results-oriented implementation effort. Public radio has grown by addressing both local and national interests and needs, by presenting a range of formats and services and reflecting many different kinds of communities.

Public radio's audience growth and the concurrent dramatic increases in voluntary individual giving demonstrate the value listeners and communities find in public radio's unique public service.

VII. The Proposed Regulations Would Decrease the Ability of NCE Stations to Respond to Local Needs

The NPRM proposes adoption of a number of regulations that would "address the deficiencies of many broadcasters in meeting their obligations to serve their local communities."[34] As noted in the preceding section, there is scant record evidence of such deficiencies with respect to NCE broadcasting. The NPRM is an offshoot of the Commission's changes to the "structural broadcast ownership rules"[35] that apply to commercial broadcast stations. Assuming, however, that such deficiencies may exist with respect to NCE broadcasting as well, the remedy should be to temper new broadcast regulations with the more flexible approach the FCC has traditionally taken with respect to NCE broadcasting.

---

[34] NPRM at 3.

[35] NPRM at 4.

Although the NPRM invites comment on a number of proposals, the areas that have the greatest potential effect on NCE broadcasting are proposed:

1. Enhanced Disclosure and renewal processing requirements;
2. Revised main studio requirements; and
3. The creation of Community Advisory Boards.

For the reasons explained below, it is unnecessary to impose these requirements on NCE public radio stations to assure that they will serve local interests. At this time, recipients of CPB station grants must certify their continued compliance with respect to provisions for open meetings, open financial records, community advisory boards, equal employment opportunity, and use of mailing lists and political activities. CPB's standards are continually evaluated in terms of the statutory requirements of the Public Telecommunications Act, the public interest, and the financial capacity of the station to comply. Each year, to assemble the data necessary to enforce these standards, CPB collects an Annual Financial Report and the Station Activities Survey from each funded station. In addition, as non-profit organizations, public radio stations licensed to colleges and universities as well as stations licensed to stand-alone non-profit organizations, are influenced by state regulations, industry standards, "best-practices", and financial standards applied to non-profit organizations by the IRS.

The FCC's proposed rules are cast in different enough terms that we believe public radio will be forced to address both CPB and FCC requirements with separate filings and documentation.

A. Enhanced Disclosure and Renewal Processing Guidelines.

As part of its 2002 review of its broadcast ownership rules, the Commission received public comment which suggested that many members of the public were unaware of the obligations of broadcast stations to address issues of concern to their community of license, "or of the critical role that the public can play in the Commission's regulation of licensees."[36] Based upon these concerns, the Commission has invited comment on whether to adopt a standardized disclosure form for radio stations similar to the form adopted for television stations.[37] The form would require each station to track all non-music programs, and to break down such programming into the following categories:

> National news; local news produced by the station; local news produced elsewhere, identifying the producing entity; local civic affairs, local electoral affairs, independently produced, other local, public service announcements, paid public service announcements, directed to underserved communities, religious, and closed captioned.[38]

An Enhanced Disclosure Form would be prepared, filed with the Commission, placed in the public inspection file, and posted on the Internet, each quarter.

Although the Commission has not estimated the amount of time the preparation of such enhanced disclosure form would require, it is clear that the administrative burden would be considerably greater than the burden currently imposed by the preparation of

---

[36] NPRM at 10.

[37] NPRM at 4. Comments were invited in the *Second Report and Order on Reconsideration and Second Further Notice of Proposed Rulemaking,* 22 FCC Rcd 10344 (2007), but are relevant to the issues raised by this NPRM as well. See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest, Report and Order* (adopted November 27, 2007).

[38] NPRM at 12.

"issues/programs" lists.[39] In seeking reconsideration of the *Report and Order* that requires television stations to complete a standardized programming report form (FCC Form 355), the Association of Public Television Stations ("APTS") and the Public Broadcasting Service ("PBS") estimate that Form 355 would require *four to eight times* the resources that the current issues/programs list demands. Based on a survey of APTS members, APTS and PBS conclude that licensees would need to have at least one additional full-time employee to handle the additional workload.[40]

The burden on NCE radio stations would be even greater, both because they typically produce and originate a great deal of local programming and because the programming is often in short increments, such as PSAs of ten or twenty seconds. The issues/programs lists require that the station identify its "most significant treatment of community issues during the preceding three month period" by including a brief narrative describing what issues were treated and the time, date and title of programs that treated the issue.[41] By contrast, the proposed enhanced disclosure form would require a station to provide a detailed breakdown of virtually every non-entertainment program aired, down to the level of individual public service announcements ("PSAs"). Because the record-keeping requirement would apply to "each" program that falls into one of the prescribed categories, the burden would increase in direct proportion to the amount of programming aired. The heaviest burden would fall on the stations providing the most non-entertainment programming. Because NCE stations characteristically provide a great

---

[39] See 47 C.F.R. § 73.3527(e)(8).

[40] See Joint Petition for Partial Reconsideration and Clarification, MM Docket No. 00-168 and 00-44, pp. 14-15 (April 14, 2008).

[41] The issues/programs list requirements apply only to "nonexempt" NCE stations. 47 C.F.R. § 73.3527(e)(8). Class D and LPFM stations are, and should remain, exempt.

deal of news, information and public affairs programs, and air a large number of PSAs and announcements of local events, their record keeping responsibilities would be onerous.[42]

Their resources, by contrast, are limited. Many community, college and high school stations operate with a small professional staff and a large number of volunteer programmers. By requiring stations to account for virtually every program matter not devoted to music, the Commission would place an enormous, and potentially unsustainable, burden on small NCE stations, who would be forced to hire additional paid administrative staff – or reduce the amount of time devoted to programs that had to be reported.

Before precipitously requiring NCE stations to report on virtually every non-music program broadcast, the Commission should first determine the need for exhaustively detailed reporting. One simple means of doing so is to have NCE stations submit their issues/programs lists to the FCC as well as the place them in the public file. If the Commission finds that the issues/programs lists raise a question concerning the station's service to its service area, the Commission can, on a case-by-case basis, impose "enhanced disclosure" requirements as a condition of a grant of the station's application for a renewal of its license.

As the Commission noted in eliminating ascertainment requirements for NCE stations, statistics alone do not necessarily serve any public interest or provide an accurate measure of a station's public service. Indeed, unnecessary record-keeping

[42] Those responsibilities would, of course, be multiplied if the record keeping duties were extended to HD channels.

requirements can stifle "creativity and innovative potential."[43] If that were the result of the Commission's localism initiative, it would be a sad one.

B. Revised Main Studio Requirements.

The NPRM proposes to prohibit "unattended technical operation of broadcast stations"[44] and to revert to its pre-1987 main studio rule to encourage broadcasters to produce locally originated programming.[45] The NPRM takes no note of the fact that NCE stations have a special relationship with their "community of license," and that, both before and after the adoption of the 1987 main studio rule, the FCC has granted waivers of the main studio requirements imposed on commercial radio stations.

SRG, NFCB, and PRC cannot give a definitive count with respect to how many stations would be shut down under the proposed prohibition of unattended operation of broadcast stations. There is no question, however, that this change will threaten the operations of CPB-supported station services in dozens of communities. CPB-supported public radio strives to meet its mandate of universal service, but the proposed change would tip the economic balance at already marginally sustainable operations across the country.

Wholesale adoption of the proposals set forth in the NPRM would have a devastating, and irrational, effect on NCE stations. As noted above, the FCC has traditionally granted main studio waivers to NCE stations in order to encourage the delivery of the diversified programming that NCE stations provide. That policy has been embraced by other federal agencies, such as the Commerce Department's Public

---

[43] *Deregulation Order* at 7.

[44] NPRM at 15.

[45] NPRM at 23.

Telecommunications Facilities Program ("PTFP") which provides federal funding for the construction of "satellite" stations to extend NCE service to rural and underserved audiences.[46] If adopted as proposed, without allowance for the special status of NCE broadcasting, the NPRM would undermine a federally subsidized infrastructure of NCE radio, constructed over decades of Commission policy.

If it revises its main studio rule as proposed in the NPRM, the FCC should grandfather existing main studio waivers issued to NCE stations and continue to grant waivers to NCE stations on a case-by-case basis. If the Commission concludes that its waiver policy does not sufficiently advance localism objectives, it can revise that waiver policy without disrupting the entire NCE radio system. It is not necessary to clear cut an old growth forest of NCE stations to save the environment for "localism."

Similarly, if the Commission's concern is that unstaffed stations are less likely to provide sufficient information about local emergencies, there are less drastic solutions than requiring that all stations be staffed whenever they are on the air. The cure to a problem with the Emergency Alert System ("EAS") is a revision of the particular defect in EAS, not a sweeping revision of the definition of a main studio. For example, the Commission could require that when stations operate in unattended mode, they automate their EAS system to broadcast all local emergency information originated by a primary station or that they provide an emergency means of contacting a station representative. Adoption of the rule proposed by the NPRM could have the unintended effect of encouraging stations to go off the air rather than continuing to broadcast unattended. That option would be particularly tempting to NCE stations, which are required to

[46] One of the primary purposes of PTFP is "to increase public telecommunications services available to, operated by, and owned by minorities and women." 15 C.F.R. §2301.1(b).

maintain a minimum operating schedule of only 36 hours per week.[47] Less programming is surely not the way to produce more "localism."

C. Community Advisory Boards.

The NPRM proposes that all broadcast licensees should "convene permanent advisory boards comprised of local officials and other community leaders, to periodically advise them of local needs and issues."[48] Comment is invited on how the members of the advisory board should be selected or elected so as to ensure that all segments of the community, including minority or underserved members of the community, would have an opportunity to voice their concerns about local issues facing the area."[49]

The proposal appears, however obliquely, to allow for the fact that many NCE stations supported by CPB are already required to have community advisory boards. That is at least one reading of the statement, "We believe that, generally speaking, if a licensee already has formal groups in place with which it consults to determine the needs of its community, it should be deemed to have satisfied this requirement."[50] If the Commission decides to require broadcast stations to create advisory boards, it should, however, make clear that community advisory boards created to satisfy CPB requirements[51] would also satisfy the Commission's requirements. CPB criteria for advisory boards are a reliable proxy for FCC localism goals. CPB may distribute funds to a station only if: "the composition of its advisory board are reasonably representative

---

[47] See 47 C.F.R. § 73.561.

[48] NPRM at 23.

[49] NPRM at 14.

[50] NPRM at 14.

[51] See 47 U.S.C. 396(k)(8).

of the diverse needs and interests of the communities served by such station."[52] Duplicative advisory boards, created by different methods, would create nothing but confusion.

Deeming CPB-required community advisory boards to satisfy FCC community advisory board requirements would avoid subjecting many NCE stations to duplicative requirements, but would still subject a number of NCE stations to requirements that could clash with their noncommercial, governmental or religious purpose. Unless the licensee is granted discretion to select advisory boards compatible with its noncommercial purpose, advisory boards will create discord rather than diversity. If, for example, the FCC created "permanent" advisory boards to take on an autonomous existence through some process of "election," and if it required advisory boards to be drawn from "all segments of the community," as proposed in the NPRM, the relationship between the advisory board and station could be antithetical to the achievement of the organization's nonprofit purposes. A requirement that did not permit a nonprofit organization to choose an advisory board compatible with its objectives could force a station licensed to an archdiocese to consult with pro-life advocates, a tribal station to solicit advice from non-tribal members on issues of importance to the tribe, or a community station devoted to environment issues to consult with real estate developers. In a worst case scenario, the community advisory board could be used not for supporting, but for undermining, the NCE licensee and its mission.

In light of the fact that NCE stations are typically dependent on charitable contributions from their listeners, and have public service missions as their nonprofit

[52] 47 C.F.R. § 396(k)(8).

purpose, a requirement that each NCE station have a community advisory board is unnecessary, and potentially harmful, in its effects. NCE stations should be exempted from the requirement of establishing an advisory board. If, however, community advisory boards are required for NCE stations, the NCE licensee must be given leeway to select members of a board who will support the purposes of the organization and help it advance its educational purpose.

VIII. The Commission Should Encourage a Dialogue between Broadcast Stations and the Public

The most promising aspects of the NPRM are those which would educate the public about broadcast matters, improve the information available to the public, and encourage public comment.

Specifically, SRG, NFCB, and PRC whole heartedly applaud

- The creation of an updated edition of *The Public and Broadcasting.*
- The establishment of an FCC contact dedicated to providing information and assistance to the public.
- Rules or policies that encourage broadcast stations to post on their web sites program schedules, playlists, and the contents of their public files.[53]

The goals of the NPRM should not be to regulate in the name of regulating, but to produce a more informed and engaged audience and to nurture the local public services that NCE stations have always provided.

[53] Any regulation adopted should recognize that stations in rural areas may have poor broadband service and may not be able to post all public file documents.

Respectfully submitted,

STATION RESOURCE GROUP
NATIONAL FEDERATION OF
COMMUNITY BROADCASTERS
PUBLIC RADIO CAPITAL

John Crigler
Attorney

GARVEY SCHUBERT BARER
Fifth Floor
1000 Potomac Street, N.W.
Washington, DC 20007
202/965-7880

April 28, 2008

CERTIFICATE OF SERVICE

I, Cindy Lloyd, a secretary with the law firm of Garvey Schubert Barer, hereby certify that copies of the foregoing "COMMENTS OF STATION RESOURCE GROUP, NATIONAL FEDERATION OF COMMUNITY BROADCASTERS, AND PUBLIC RADIO CAPITAL" were served via first-class United States mail on this 28th day of April 2008 to the following:

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W., Room 8-B201
Washington, D.C. 20554

Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street, S.W., Room 8-B115
Washington, D.C. 20554

Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W., Room 8-A302
Washington, D.C. 20554

Commissioner Deborah Taylor Tate
Federal Communications Commission
445 12th Street, S.W., Room 8-A204
Washington, D.C. 20554

Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, S.W., Room 8-C302
Washington, D.C. 20554

Monica Desai
Chief
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Cindy Lloyd

Cindy Lloyd