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Special Advisory to Broadcasters
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Communications Broadcast Advisory

New Comment Deadline of April 28th and Reply Comment Deadline of June 11th Announced in the FCC's "Broadcast Localism" Notice of Proposed Rulemaking Proceeding

Why should you, as a broadcaster, file comments in the FCC's "Report on Broadcast Localism and Notice of Proposed Rulemaking" in MB Docket No. 04-233 ("NPRM")?

By adopting its NPRM, the FCC has signaled to the broadcast industry that a number of regulations that were discredited long ago are still worth recycling today. Broadcasters must act now to halt this backward, re-regulatory slide toward a level of governmental micromanagement that was thoroughly repudiated and discarded some 25 years ago. Given the wide and burdensome impact of the FCC's proposals on all broadcasters, every broadcaster should come forth and let the FCC know how wrong-headed the proposals are.

The Commission concedes, as it must, that broadcaster competition for listeners and viewers has never been as intense, given the explosion in the number and types of sources for information and entertainment since the 1980s when the FCC eliminated many of the requirements that this rulemaking is looking to resurrect. However, implicit in each of the proposals advanced in the NPRM is a faulty premise, namely that even though broadcasters are keenly aware of the critical need to be relevant and responsive to their listeners and viewers, that marketplace mechanism is not sufficient to insure that broadcasters are being sufficiently responsive to their communities of license and surrounding service areas. As a broadcaster, you are the best person to demonstrate to the FCC how marketplace where you compete insures that you air sufficient, responsive programming. You are also the best person to demonstrate to the FCC how a particular proposals would be unnecessary, unduly burdensome and counterproductive for both your stations and your communities.

There is no substitute for an FCC administrative record built upon your day-to-day station experiences. If the broadcast industry is to prevail in this proceeding, we will need an extremely broad outpouring of real life experiences from commercial and noncommercial radio and television broadcasters, from broadcasters in large markets and small rural areas, from broadcasters who own

only one or two stations to those who are group owners, from broadcasters who air general format programming to those who broadcast niche programming and programming in foreign languages. We will also need input from a wide cross-section of viewers, listeners, organizations and leaders in communities across the country who will confirm to the FCC the robust, ongoing, two-way dialogues between themselves and your stations about community needs, problems and issues, and how your stations are making their communities better places to live and work.

Like all FCC rulemaking proceedings, the outcome of this NPRM will be influenced by a strong record evidencing the good works engaged in by the broadcast industry day-to-day and an equally strong showing explaining how your ability to operate in the public interest will be impaired by if one or more of the proposals is adopted.

What Is The Deadline For Filing Comments And Reply Comments In Response To The Notice Of Proposed Rulemaking?

At the urging of the State Broadcasters Associations, with support from the National Association of Broadcasters, the Association of Public Television Stations, and others, on March 5, the Commission extended the deadline for filing comments from March 14 to April 28, and the reply comment deadline from April 14 to June 11. It is not necessary for you to wait to make your views known. By building an early and strong record, you provide your representative associations and others with valuable information upon which to fortify their comments before the Commission.

Participating State Broadcasters Associations intend to file joint comments in this proceeding. If you wish to have your comments reflected in that filing, you may also send your comments to your State Broadcasters Association.

How Can You File Your Comments Online With the FCC?

If you wish to file comments online with the FCC, you must go to this website: http://fjallfoss.fcc.gov/prod/ecfs/upload_v2.cgi. You will first be directed to fill out a “cover sheet” which will help people search for your filing. You will need to enter the proceeding/docket number, your contact information, and the type of filing you are submitting (i.e. comments, petition for reconsideration, etc.).

You can only enter one docket number per submission. The docket number for the NPRM is MB Docket No. 04-233. That proceeding covers a wide variety of proposals affecting commercial and noncommercial radio and television stations. Many of the proposals are discussed below

The NPRM proceeding should be distinguished from the FCC’s proceeding adopting two new television regulations: an online public inspection file requirement and a standardized disclosure report form requirement. The docket number for that proceeding is: MM Docket No. 00-168. If you wish to file for reconsideration of those actions, you should submit your filing in that docket only.

You have the option of either (i) uploading your comments, petition for reconsideration, etc. as an attachment or (ii) typing your comment into a text box. To submit your filing as an attachment, simply click on the button "Send Attached File to FCC." You will then be directed to a confirmation page which you will be able to download for your records.

To Whom Do You Mail Your Comments for FCC Consideration?

You may also choose to file your comments via the US Postal Service. To be considered, your comments must be received by the Secretary's office at the FCC by the then current deadline, so send in your comments early.

You should prominently reference the MB docket number 04-233 at the top of your submission, or within the subject line of your filing. Indicate also at the top that you are filing "Comments in Response to Report on Broadcast Localism and Notice of Proposed Rulemaking."

Send your comments to: The Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, DC, 20554.

What Is the FCC Proposing In Its NPRM And What Issues Are Raised By Each Proposal?

While the FCC's NPRM touches on many topics, listed below are a number of proposals on which the FCC is seeking comment:

1. Require that main studios be physically located in a station's community of license.

For many years the FCC's rules required that a station's main studio be physically located within the city limits of its community of license. This requirement was strictly enforced, and the FCC once turned down a request for waiver by a station seeking to locate its studio 1200 feet from the border of its city of license. The rule was later liberalized so that main studios may now be located 25 miles or more from the city of license. This allows stations to take advantage of lower commercial real estate costs outside of cities, as well as to collocate the main studios of multiple stations which are licensed to different communities, thus reducing real estate, personnel, and equipment costs.

The FCC is now proposing to return to the old rule requiring stations to locate their main studios within their communities of license. Is such a change even necessary? How accessible is your station's main studio by car or by public transportation? Can a person simply drop in on the station during normal business hours and talk to station personnel or examine the station's public inspection file as currently required by the FCC's rules? How easy is it for a person to call or email the station? Many main studios are owned or under long-term leases. Does the FCC contemplate grandfathering for existing main studios? Would maintaining individual main studios for each station be cost-prohibitive? If so, would you have to cutback in other areas of station operations in order to comply? If so, in what areas? Staffing? Hours of operation? Would you be relocating from a location in your service area that is particularly accessible to underserved groups? Would you lose staffers because of new commuting requirements? If the FCC eliminated collocated studios, would it require you to add Studio-Transmitter link paths and equipment and at what cost? If so, are frequencies readily available?

2. Eliminate unattended operation of broadcast stations

While the request for comments is aimed at the FCC's proposal to prohibit unattended operation of television stations, the FCC is contemplating a similar prohibition on radio stations in a separate proceeding, so any comments filed in this proceeding are likely to

resonate in the radio proceeding as well. Under this proposal, the FCC would revert to its old rule requiring that broadcast stations be staffed during all hours of operation rather than be monitored by remote control during evening and overnight hours. What impact would this have on your staffing costs where the main studios of a cluster of stations are collocated? How much greater would the impact be where your main studios are located in different communities of license? Would the added cost force you to cut back in any other areas of operation? Would you have reduce staff or shorten your broadcast day?

Is any of this 24/7 attendance necessary from an emergency communications standpoint? What procedures/protocols do you have in place to insure that emergency management authorities, including fire and police, can quickly have pertinent emergency information broadcast over your station?

3. Establish minimum programming requirements for processing license renewal applications.

In another reversion to an earlier time, the FCC is proposing to require that stations air certain amounts of government “preferred” programming in order to be ensured a smooth license renewal. The FCC is therefore inviting comment on the types and amounts of programming which should be incorporated into such renewal processing guidelines (e.g., news, public affairs, political coverage, local programming). Those programming requirements are inherently subjective and, given the limited hours in the broadcast day, will surely have the effect of forcing broadcasters to eliminate programming that they believe is just as or more worthwhile.

How would such requirements affect your ability to program your stations in the public interest? What effect would such requirements have on your editorial discretion?

The NPRM also raises the specter of requiring radio stations to complete and file a version of FCC Form 355 which will soon be required of television stations. A copy of the form is attached to the FCC’s Report and Order adopted on November 27, 2007 and released on January 24, 2008 *In the Matter of Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, MM Docket No. 00-168 (FCC 07-205) which is available on the FCC’s website at www.fcc.gov. How difficult and time consuming will it be for you to complete the form each calendar quarter? Will you have to hire more staff for this purpose? How will this process affect your choice of programs and program material to air?

4. Mandate Permanent Community Advisory Boards.

The FCC is proposing that stations convene “permanent” community advisory boards “comprised of local officials and other community leaders, to periodically advise [stations] of local needs and issues.” The Commission appears open to the concept that a station would not have to maintain a permanent community advisory board if other types of community ascertainment were routine and adequate. What do you do to ascertain community needs, problems and issues on a routine basis? Why is your ascertainment process equal to or superior to maintaining a permanent advisory board? What issues do you see being raised by a permanent advisory board? What qualifications must a member have? How free will you be to select the members as well as to remove them? How often

will you be required to meet? Will the station have to pay a stipend or reimburse the members for their costs in attending meetings? What if the members would like to be covered by liability insurance? May the station require members to enter into agreements relating to trade secrets and the like? What should be the minimum performance requirements for leader ascertainment that would earn a station an exemption from having to maintain a permanent advisory board?

5. Provide Class A status to additional LPTV stations.

While the FCC previously ruled that the opportunity to qualify for Class A status was a one-time event and that no further Class A licenses could be granted, the NPRM proposes that the FCC begin granting additional stations Class A licenses. What are the pros and cons? What is your view?

6. Network Affiliation Contracts.

As part of the FCC's long-simmering proceeding to determine which affiliation contract provisions undermine the ability of local stations to reject local programming, the FCC requests comment in this proceeding on whether a rule should be adopted guaranteeing network affiliates the right to view all network programming in advance of airing and whether stations should be prohibited from contractually waiving that right. In view of the size of potential fines for expletives aired during network produced programming, would this help a network affiliate in guarding against the airing of such material? Is this feasible from a network standpoint? What staffing obligations would a station need to take on to undertake such prior review? How far in advance would your station need to receive the programming in order to review it? Should certain types of programming be exempt, such as news, sports, and award programs?

7. Disclosure of National Playlists.

The NPRM seeks comments on whether the FCC should require stations to provide data regarding their airing of local artists and how their playlists are compiled. This information would then be considered in the context of that station's license renewal application in evaluating the station's performance with regard to localism. Is this any of the FCC's business? Should it play any role in determining whether a station's license should be renewed? Is the information proprietary? Would such disclosure exert pressure on your station to air more local artists? How does this square with the First Amendment?

This Advisory is not intended to be a substitute for a thorough review of the NPRM. No broadcaster should feel that he or she must address all proposals. Meaningful comments that address only one or two proposals are still very worthwhile in this effort.

If you have any further questions regarding the Broadcast Localism Proceeding or filing comments with the FCC online, please contact any of the members of our Communications Practice Section.

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