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## New Broadcast Localism Inquiry

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The FCC has issued a wide-ranging notice of inquiry in which it invites public comment on all aspects of localism in broadcasting.

The Commission emphasizes that, along with competition and diversity, localism has been a fundamental basis for broadcast regulation. Although the three factors are often viewed together, the Commission seeks in this inquiry to focus upon behavioral approaches to promote localism, regardless of ownership or competitive considerations.

Until deregulation in 1981, the Commission required broadcasters to achieve localism directly through prescribed annual ascertainment procedures and renewal showings of specific programming responsive to local issues. Since then, the Commission has relied upon indirect structural means to encourage localism, including allotting facilities to communities and areas having the greatest need for transmission and reception service, requiring signal coverage over a community of license, specifying the location, equipment and staffing of main studios, maintaining public inspection files, preparing quarterly issues/programs lists and giving public notices inviting comment upon pending applications. More recently, it has reserved the initial round of low power FM licenses for local entities and has convened local field hearings to encourage public expression of concerns.

The current inquiry generally seeks to ascertain whether broadcasters are serving the needs of their local communities and whether new policies are needed to ensure that they satisfy this goal. Although the Commission is inviting comments on any relevant ideas, it has expressed concern in a number of areas in particular:

**Communication with Communities** - Before deregulation, the Commission required that broadcasters ascertain community needs through interviews both with leaders of specific community elements and with members of the public, and then to air programming in response to those issues. Now, broadcasters have considerable discretion to determine how to become aware of the interests of their specific audiences (rather than the community as a whole) and are obligated only to ensure that all of the stations serving an area together manage to address all of its significant needs. In a proceeding to determine public interest requirements to be imposed upon digital television, the Commission proposed to replace the current issues/programs lists with a standardized form, which would detail efforts to identify programming needs of various segments of the community and would list community-responsive programming by category. The Commission asks whether a similar proposal should apply to all broadcasters or whether market forces and the Commission's current broad requirements have sufficed to ensure the broadcast of adequate types and quantities of responsive programming.

**Community-Responsive Programming** - First Amendment sensitivity has led the Commission to abandon its prior approach of evaluating renewal applications in terms of specific programs or the sheer quantity of issue-responsive material aired during the prior term. Yet, the Commission notes with concern that a significant number of broadcasters provide meager or no news or local public affairs programming and that interest groups

have complained of a general downward trend. The Commission seeks to determine the extent to which broadcasters are serving local needs (including through general programming) and, if not, whether it should look to program origination or orientation as the basis for assessing "local" content. The Commission notes that local news often is quite profitable and seeks to understand the economic models which encourage its production. The Commission acknowledges that public service announcements can be a valuable contributor to addressing local needs, and seeks information concerning their prevalence, scheduling and availability to interested organizations. The Commission further notes that the transition to digital technology will create additional programming streams that can be used for local broadcasting without impairing mainstream audiences for the principal channel.

**Political Programming** - This is one of the few areas in which access is mandated and where programming variables and costs are significantly controlled. While the Commission takes note of significant unpaid time which broadcasters have devoted to political coverage, it remains concerned that many stations have cut back on political coverage and tend to avoid such programming wherever possible. The Commission raises the spectre of requiring minimum amounts of time devoted to civic discourse, or even awarding a "plus" to renewal applicants who devote substantial amounts of time to coverage of local candidates. The Commission suggests that it might facilitate candidate access to broadcast stations by standardizing definitions of classes of time to be made available as well as disclosures of applicable rates and other criteria and policies.

**Service to Specific Audiences** - The Commission fears that by no longer requiring each station to serve each ascertained need, cultural diversity has suffered and minority and foreign-language communities are not being served, particularly with informational programming.

**EAS** - The Commission promises a separate broad-ranging proceeding to evaluate the Emergency Alert System. Even so, it expressed particular concern with the degree to which reliance upon local authorities to implement and coordinate EAS has been effective and whether uniform requirements should be imposed instead.

**Sponsorship Identification** - The Commission is concerned with a number of areas in which broadcasters and others may be circumventing the requirement that audiences be informed whenever a broadcast is made in exchange for payment, whether through formal sponsorship or otherwise. Among the specific areas of inquiry are the use of independent music promoters to circumvent payola, "pay for play," "news" interviews with guests who pay for their appearances, and burying disclosures of consideration in rapid crawls, end credits, small text and other inconspicuous devices. The Commission is considering adopting a rule requiring sponsorship identification in these and other circumstances in a manner as prominent as is now required under the political rules.

**National Programming** - The Commission seeks information on the effect of national playlists and voice-tracking by large corporate radio owners and their impact upon the development of locally-oriented and diverse programming and talent.

**Low Power FM** - By limiting eligibility for the initial round of low power FM authorizations to non-profit local organizations, the Commission sought to ensure that this service became a "safety valve" for localism. The Commission seeks to foster LPFM service by eliminating third-adjacent channel spacing requirements and wishes to explore the extent to which FM

translators that are precluded from local origination compete with LPFM facilities for limited spectrum.

**License Renewals** - The Commission views its license renewal process as the most effective mechanism to monitor licensee performance and to ensure local service. Yet, following elimination of the comparative renewal process, lengthening license terms to eight years, and mandating renewal in the absence of serious rule violations or a pattern of abuse, the Commission fears that little meaningful opportunity remains to consider whether a renewal applicant has met local needs. To strengthen its oversight, the Commission seeks means by which it can better involve a station's community in the renewal process and raises the prospect of mid-term review, similar to the procedure it has already implemented for EEO monitoring.

**Network-Affiliation Rules** - Three years ago, an alliance of TV network affiliates complained that they were being pressured to accept network shows in lieu of local programming and called upon the Commission to enforce the rules intended to prevent such pressure. The Commission affirmed that it will issue a declaratory ruling soon for this matter rather than consider it in the context of the current proceeding.

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As with most wide-ranging Commission inquiries of this type, it is hard to assess the extent to which burdensome re-regulation is likely to emerge. Commissioner Copps, for one, partially dissented on the ground that many of the issues raised in this inquiry are already pending and are ripe for decision without further delay. Chairman Powell, on the other hand, saluted broadcasters for their laudable steps in serving the interests of their local communities, and characterized the purpose of this proceeding in terms of recognizing that there is always room for improvement. Potentially, at least, this proceeding may have a profound impact upon broadcasters' programming obligations.

If you would like the complete text of the Commission's Notice of Inquiry, it can be downloaded from the Commission's website ([fcc.gov](http://fcc.gov)) or we would be glad to provide a copy. You may wish to seriously consider preparing and filing comments, as the best way to fend off re-regulation is to persuade the Commission with both statistical and anecdotal evidence of the high degree of public service which broadcasters already render. If we can assist you in preparing appropriate comments, please be sure to let us know.

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