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FCC Issues Report on Broadcast Localism

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From: Peter Gutmann

The Federal Communications Commission has issued the full text of its *Report on Broadcast Localism*, combined with a *Notice of Proposed Rulemaking* in which it contemplates significant re-regulation in a number of areas.

The *Report* reflects Commission reaction to comments filed and field hearings held over the past four years. It is intended to summarize Commission concerns and to catalog proposed initiatives. If fully implemented, the proposals would require all broadcasters to air local news and other public affairs programming, to subject their license renewals to performance benchmarks, and to promote localism by affording viewers and listeners greater access to their facilities and information concerning past performance.

The *Report* is premised upon two bedrock concepts – that localism remains a cornerstone of broadcast regulation, and that, as temporary trustees of the public airwaves, broadcasters are obligated to air programming responsive to the needs and interests of the people in their communities of license. In 1981 (for radio) and 1984 (for television), the Commission eliminated its prior requirement that license renewal would be based upon a demonstration that a broadcaster had fulfilled this obligation by addressing ascertained concerns of specified elements of its community. Instead, it left to marketplace forces a determination of how, in conjunction with all other area stations, a broadcaster would meet an abstract public service obligation. The *Report* raises serious questions as to whether that approach has been sufficient.

It should be emphasized that all the observations and recommendations in the *Report* are merely proposals at this time. Yet, they do reflect the current thinking of the commissioners. The ultimate resolution of these matters may depend upon future changes in the membership and leadership of the Commission as a result of this year's elections.

The Commission's *Report* addressed matters under a wide variety of topics and proposes specific initiatives in four major areas:

- **Advisory Boards** – In lieu of reinstating the prior formal ascertainment process (which mandated public surveys, and consultation with a wide range of community leaders and airing of specific responsive programming) the Commission proposes requiring broadcasters to convene a permanent advisory board made up of officials and other leaders from their service area and to consult with the board at least on a quarterly basis. It seeks to ensure that the composition of any such group will

comprise all significant segments of the community, so that minority or underserved members would have an opportunity to be heard. The Commission suggests that licensees could satisfy this requirement if they already have formal advisory groups in place. It also seems willing to consider whether other types of outreach efforts should be credited, such as listener/viewer surveys, focus sessions, community meetings, management membership on local boards and other efforts at community dialogue.

- **Standardized Disclosure Forms** – The Commission’s second major initiative in this area is to enhance disclosure by requiring a standardized form for radio stations that would replace the current quarterly issues-programs lists. The Commission has already adopted such a form for television. We describe the form in more detail in a separate memorandum. In brief, it requires calculation and a specific listing of all programming categorized as national news, local news produced by the station, local news produced by others (who must be identified), local civic affairs, local electoral affairs, independently produced programming, other local programming, public service announcements, paid public service announcements, programs aimed at serving the needs of underserved demographic segments, and religious programs aired at no charge. The form also requires a description of licensee efforts to determine program needs of its community, information concerning close captioning and video description services, and a list of all broadcasts conveying current emergency information. Television stations soon will be required to post this information in their public files as well as on their websites and to notify the public twice daily of the availability of this information. The Commission proposes strengthening the required pre- and post-filing renewal announcements to encourage public review of this material.
- **Main Studios** – The Commission may reconsider its 1987 decision to eliminate the former requirement that a majority of non-network programming be originated from a local main studio (currently, the main studio need only be staffed and broadcast-capable) as well as its 1995 decision to authorize unattended station operation and monitoring. It also seeks to require that main studios be located within the community, rather than within 25 miles or the contour of any other station licensed to the community, as is presently allowed. In conjunction with its digital audio proceedings, the Commission is considering requiring that licensees maintain a physical presence at each radio broadcasting facility during all hours of operation, so as to increase their ability to provide local information to their communities. The Commission wishes to explore reinstating its requirement that a certain amount of programming be produced at a station’s main studio so as to increase interaction between the station and its community.
- **Renewal Programming Guidelines** – The Commission tentatively concludes that it should reintroduce renewal application processing guidelines for locally-oriented programming. Whether expressed as an hourly or percentage requirement, the guidelines might cover locally-oriented programming in general or specific types of programming, such as local news, political programming and public affairs. Stations not meeting the guidelines would have their license renewal applications reviewed by the full Commission rather than routinely by the processing staff. The Commission

also wishes to explore a redefinition of television markets, so as to encourage cable and satellite systems to provide access to television stations licensed within viewers' home states. The Commission also plans to revise its outdated "The Public and Broadcasting" publication, which broadcasters are required to maintain in their public files, and to establish a point of contact within the Commission to handle public inquiries concerning its procedures.

In the remaining areas it addressed, the Commission either seemed content to rely on the impact of the initiatives outlined above, as well as other independent proceedings already under way, or rejected the need for any action at this time:

- **Political Programming** – The Commission is concerned that studies suggest that many broadcasters provide little or no political programming, beyond Congressionally-mandated access for federal candidates and equal opportunities for legally qualified opponents. The Commission suggests that its enhanced disclosure requirements will enable the public and the Commission to determine the amount of political programming stations actually air, and proposes no remedial steps.
- **Underserved Audiences** – The Commission considers a key component of localism to be the development of balanced, community-responsive programming that includes all significant groups with specialized needs and interests. Following deregulation, though, the only requirement is that these needs somehow be covered among all stations serving a market, although not necessarily by each individual broadcaster. The Commission suggests that its community advisory boards and enhanced disclosure requirements, its recent revision of cable leased access rules to facilitate carriage of independent programmers, and its ongoing initiatives to encourage diversity of ownership by new entrants and small businesses all should suffice to address these concerns indirectly.
- **Disaster Warnings** – While the Commission believes that the provision of emergency information is a fundamental aspect of community service, it suggests that its concerns over remote operation, coupled with its pending rulemaking to reassess its Emergency Alert System, should ensure adequate responsiveness in this area.
- **Network Affiliation Rules** – In response to public concern that contractual disincentives discourage affiliates from preempting network programming in favor of local material, the Commission suggests that licenses should be able to review network programming sufficiently in advance of air time to determine whether it is suitable to the public interest. The Commission notes, though, that the mechanics and resources for such review could pose practical problems, and does not suggest any specific means to address this concern.
- **Sponsorship Identification** – Here, the Commission pledges to continue its vigilance of payola and other practices which deny the public a right to know that programming has been sponsored, and by whom. In that regard, it cites its recent settlements with four major radio groups for possible pay-for-play violations and its ongoing inquiry into improper sponsorship identification of video news releases. It notes that public

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concern over voice tracking will be part of its consideration of reimposing main studio rule requirements. With respect to public concern over national play lists, though, the Commission rejected suggestions that it should affirmatively require stations to give air play to local artists. Even so, it agrees with local musicians' frustration over lack of access to the airwaves and may require data within a renewal context as to how stations compile their play lists and the degree to which they air music and other performances by local artists.

- **License Renewal Term** – The Commission rejected suggestions that the current eight-year license term be shortened, and feels that its enhanced disclosure requirements, together with the possibility of renewal processing guidelines, will address concern over inadequate supervision of licensee performance and perfunctory staff grant of renewal applications.
- **Spectrum Allocation Issues** – While the Commission seeks to expand opportunities for LPFM stations to serve local communities, it is prepared to rely upon its recent changes to the LPFM ownership and technical rules to achieve this. It has directed its Media Bureau to develop a new computer program to assist potential applicants in identifying suitable available commercial FM spectrum for which rulemaking proposals could be filed to add channels to qualified communities. It also tentatively concludes that it should allow additional qualified LPTV stations to be granted Class A status (which requires the production of local programming).

Even aside from the impact of possible future changes in the Commission, the tentative conclusions and suggestions of the *Report and Order* were far from unanimous.

Commissioners Copps and Adelstein partially dissented, although they are prepared to move forward in exploring these suggestions. Commissioner Copps expressed extreme frustration over delays encountered so far, that consolidation has pushed many of these concerns to the sideline, and that a huge outpouring of public concern has been largely ignored. Commissioner Adelstein views the *Report* as representing “a shift from the Commission’s earlier miscalculation that market forces alone will ensure broadcasters promote quality local news, local artists and informative local political and civic affairs programming” and “a small step toward correcting the Commission’s past failings that produced a regulatory environment that limited citizen involvement and participation, provided broadcasters with virtually no guidance, and expected little, if any, accountability.” He is skeptical that the Commission is truly prepared to implement its proposals.

On the other hand, Commissioner McDowell reaffirmed his belief that “vigorous competition motivates broadcasters to serve their local communities” and cautioned that the Commission was heading back in time and in the wrong direction. He cautioned that unnecessary regulation treads on the First Amendment rights of broadcasters and that any order reflecting the current proposals will be overturned in court.

How or when these matters will be resolved remains to be seen. Some may view the *Report* as empty lip-service to placate concerns of vocal public interest groups, while others may be concerned that the Commission really does intend to engage in wholesale reregulation. As

Commissioner McDowell suggests, programming “guidelines,” when coupled with renewal processing mandates, effectively become compulsory and thus raise serious First Amendment implications. In any event, there appears to be a tangible prospect of new rules beyond the standardized TV disclosure form already in place.

Comment dates will be set soon. If you would like a copy of the Commission’s Report and Order, it can be downloaded from the FCC’s website, or we would be glad to provide a copy.

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