

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

In the Matter of

Broadcast Localism

)
)
)
)
)

MB Docket No. 04-233

COMMENTS OF
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Jacqueline M. Vitak
Law Student Intern
UCLA School of Law

Andrew Jay Schwartzman
Harold J. Feld
MEDIA ACCESS PROJECT
1625 K St., NW
Suite 1000
Washington, D.C. 20006
(202) 232-4300

January 3, 2005

TABLE OF CONTENTS

Summary.....	ii
Introduction.....	1
I. Local Programming.....	2
A. Underserved Audiences.....	2
B. Nature and Amount of Political Programming.....	7
C. Communication with Communities.....	9
D. Nature and Amount of Community Responsive Programming.....	12
E. Disaster Warnings.....	15
II. License Renewals.....	16
III. Payola, Sponsorship Identification, Voice-Tracking, and National Playlists.....	18
A. Payola, Sponsorship Identification, and Voice-Tracking.....	18
B. National Playlists.....	20
IV. Additional Spectrum Allocations.....	21
Conclusion.....	22

Summary

The National Federation of Community Broadcasters (“NFCB”) commends the Commission on its decision to examine and improve its policies, practices, and rules in order to ensure broadcasters serve the needs of their communities. The Communications Act ordered the Commission to grant licenses in the public interest, and the FCC has long held that there is a strong public interest in localism. Local radio broadcasting has the ability to link communities, strengthen cultures, and provide lifesaving information. Today, many commercial broadcasters are ignoring their commitments to serve the communities in which they are located, and are looking only to maximize their profits. Consequently, many local programs and community discussions are abandoned in favor of programming designed to attract advertising target audiences. Communities suffer when broadcasters do not meet their need for local news, political discussion, and diverse programming choices.

NFCB supports the Commission in its quest to serve the public interest by promoting locally responsive programming through its existing rules and the creation of new standards. NFCB’s members are leaders in community responsiveness and programming, and commercial stations should look to NFCB member stations as a model of what can be done for the community, even with limited budgets. Particularly, stations should look at the multitude of public affairs programming, political programming, and diverse cultural programming community radio stations are broadcasting to serve the needs of all their listeners.

The Commission should address the needs of underserved audiences by adopting standards which will encourage stations to program to a variety of listeners, as opposed to

solely the advertising target demographic. Community radio stations are often the only stations serving certain audiences in a community. Stations owned and operated by minorities are also more likely to be in tune with the needs of minority audiences, and therefore the Commission should take steps to further encourage and allow minority ownership of radio stations.

NFCB also urges the Commission to regulate and to consider at license renewal the amount of political programming and community responsive programming a broadcaster airs. Local programming is instrumental in delivering local news, bulletins, and emergency information and has the ability to bring communities together. NFCB encourages the Commission to require interaction between the radio station staff and members of the community, particularly with regards to programming choices. Community Advisory Boards composed of a representative section of the listening public work with station management to directly impact programming choices, but only a limited number of stations use these types of boards.

Radio is also an important tool in times of emergency to disseminate life-saving information to the public. In emergencies, radio services must be local in order to provide and have access to local information, and the Commission needs to ensure that local emergency officials are able to get this information passed on to the public.

When renewing licenses, the Commission should take into account the amount of locally-originated and community responsive programming a station broadcasts. The Commission should require a significant enough amount reporting to actually affect the amount of community programming stations air. NFCB urges the Commission to

consider adopting a point system, similar to that it uses when allocating non-commercial licenses, to determine whether broadcasters are meeting the community's local needs.

Commercial stations often engage in practices which impede responsiveness to the local community. Payola frustrates local voices and artists because only those who can afford to pay to be on air will be broadcast. The Commission should enforce stricter penalties against stations which engage in payola and should prevent stations from circumventing the payola rules by using independent record promoters as middlemen. Additionally, the Commission should consider the effects of voice-tracking on localism. Radio should be a local and live medium, and through voice-tracking, stations deceive listeners into believing they are hearing locally produced live programming. National playlists inhibit localism because if commercial stations across the country all use the same playlist, stations have no avenue to respond to local music preferences, and diversity among stations is virtually nonexistent.

Finally, the NFCB supports the allocation of additional spectrum to community radio stations. Many times before, the NFCB has expressed to the Commission its desire to have additional spectrum allocated to stations providing community programming and to give LPFM stations greater flexibility and preferences in licensing, and the NFCB reaffirms those comments here. The Commission should consider allocating television Channel 6 exclusively to noncommercial use. Many voices would like to be heard on radio but lack the spectrum to do so, and the Commission should consider this when determining licenses and giving away spectrum.

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

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

**COMMENTS OF
NATIONAL FEDERATION OF COMMUNITY BROADCASTERS**

The National Federation of Community Broadcasters (“NFCB”)¹ respectfully submits these comments in the above-captioned proceeding.²

Introduction

The NFCB supports the Commission’s goal of improving and examining the rules by which it seeks to guarantee that broadcasters are meeting the needs of their communities. Radio is a powerful local medium which can connect listeners through music, discourse, and culture, and it therefore needs to be responsive to the needs of the community it serves. Citizens, businesses, organizations, and emergency services providers can use radio to communicate vital information to the community. Many broadcasters, however, are moving away from their public service obligations and seeking only to maximize their profits. While NFCB supports the initiatives described in this proceeding, limiting ownership of multiple stations and stopping profit-driven practices which hamper diversity and localism is the best way to ensure broadcast owners are responsive to local needs.

¹ As the sole national membership and service organization for community radio, the NFCB is a national alliance of stations, producers, and others committed to community radio. NFCB provides advocacy on the national level and empowers stations on a community level.

² *Notice of Inquiry in the Matter of Broadcast Localism*, MB Docket No. 04-233 (rel. July 1, 2004) (hereinafter, *NOI*).

Community radio stations are actively involved in the coverage of local issues, as will be discussed in greater detail herein, and oftentimes, community radio is the only medium providing these local services. Significantly, these stations are providing local news and programming not being produced on other stations, while at the same time operating using budgets dwarfed by commercial stations. The approximately 200 member stations of NFCB have budgets that average around \$300,000 per year, but some stations' budgets are under \$100,000, and many stations operate with one or two staff people and a large group of community volunteers. Commercial broadcasters cannot argue that it is not feasible to meet the needs of the community in this manner when community radio is providing such diverse local programming, many times relying upon volunteer efforts and significantly fewer resources. NFCB adheres to the Commission's longstanding belief that broadcasters must use their medium to serve the public interest, and therefore must air programming responsive to the needs of their communities.³ Because many commercial stations are failing to adequately address these needs, the NFCB supports the Commission's intent to review and improve rules which will truly effectuate radio as a local medium.

I. Local Programming.

A. Underserved Audiences.

The Commission asks whether it should adopt additional methods to ensure broadcasters meet the needs and interests of all portions of their communities.⁴

Community radio is proud to be a leader in serving underserved audiences which may not be addressed by other types of media, including commercial radio. Community

³ 47 U.S.C. § 309(a).

⁴ *NOI* at ¶ 24.

radio is actively involving minorities and rural audiences, as 46 percent of NFCB member stations are minority-controlled. Minority ownership of radio stations is an excellent way to respond to the needs of underserved audiences, as minority owners are more likely to be aware of and responsive to these needs.

Additionally, NFCB members are addressing underserved audiences by meeting the needs of listeners in rural communities, which may not have any other source for information and rely on the radio for news, weather, emergency services and cultural programming. Rural communities are overlooked by many commercial enterprises, are sorely underserved in mass media and thus have the most urgent need to receive high quality local news, information and culture. Approximately 40 percent of NFCB members are operating in rural areas. As part of NFCB's leadership in serving underserved audiences, it recently completed a successful rural community outreach project in which it surveyed listeners of 17 public radio stations over several years to learn more about listening patterns and needs in rural communities.⁵ By asking listeners why they tune in to community radio stations, when they listen to the stations, and why they stop listening, NFCB and the stations involved learned to better understand the rural audiences and how to serve them. Stations involved in the project also met with each other to discuss the results of the research and how to change programming to incorporate what they had learned. Although each station's results were unique, NFCB did find some specific trends in rural listening. For example, there are seasonal patterns for many rural stations which have large influxes in the winter or summer months, and the stations must attempt to serve the seasonal listeners without alienating their year-round listeners. Additionally, many surveyed stated that the reason they listen to the station is because

⁵ <http://www.nfcb.org/projects/ruralprogramminginitiative.jsp> (last accessed Nov. 18, 2004).

they like the appeal of a local voice. As a result of the surveys, the stations involved were able to make changes to better address their rural audiences, and increase the number of listeners and revenue in the process.

Community radio stations also address many non-English speaking audiences. For example, station KPVL-FM is filling a void left by other stations in Postville, Iowa. The town's two meat plants have drawn workers to Postville from a variety of different countries, many of whom do not speak English.⁶ Initially, the cultural divide posed problems for many of the non-English-speaking residents, because no media responded to their needs for a multilingual broadcast. For instance, children from families who weren't fluent in English would show up at school when poor weather conditions had cancelled it because they could not understand the school cancellations broadcast only in English.⁷ When other radio stations continued to fail to respond to the growing needs for multilingual program, KPVL-FM, "Radio Postville," stepped in. In August 2002, the station began broadcasting, and in December of that year, Radio Postville began its multilingual programming schedule, broadcasting in each of the town's four dominant languages, English, Spanish, Hebrew and Russian.⁸

Not only is KPVL-FM providing a much needed resource to this community other stations have failed to, but it is doing so on a very small budget. They operated on under \$100,000 per year. KPVL-FM is a nonprofit radio station, and it uses volunteers who speak the different languages to broadcast spots dedicated to ethnic music, interviews,

⁶ Dane Stickney, *Postville, Iowa, Radio Station Has Multicultural Bent*, KNIGHT-RIDER TRIB. BUS. NEWS, Jan. 23, 2003.

⁷ *Id.*

⁸ *Id.*

and discussion.⁹ Additionally, in light of the fact that tensions among the different ethnic groups in Postville have often run high, the station hopes that it will be used as “an education tool to help residents understand the other cultures.”¹⁰

As part of community radio’s most recent initiative to serve underserved communities, NFCB has just created a Center for Native American Public Radio to aid stations who meet the needs of American Indians.¹¹ Funded by a grant from the Corporation for Public Broadcasting, the Center for Native American Public Radio provides technical, fundraising and programmatic assistance to over 30 public radio stations serving Native American listeners all across the country. All but one of these stations is located on an Indian Reservation. In addition to providing funding and more services to the stations, the Center will provide expertise on accounting, engineering, programming and other technical assistance. These community radio stations are essential because they provide vital programming and services to an audience that might not be able to receive the information any other way. Additionally, the stations bridge the gap in distance among tribal members and provide a forum to spread and preserve the native languages and cultures. Not only is community radio serving an audience that might not be otherwise addressed, but it is providing an important function in bringing together the Native American community and strengthening their bonds and culture.

Most commercial broadcast stations, in their desire to maximize profits at the expense of the community, fail to address audiences other than the majority audience of the community. Commercial radio targets the most demographically attractive listeners from the standpoint of advertisers, who seek to reach people based on the products they

⁹ *Id.*

¹⁰ *Id.*

¹¹ <http://www.cpb.org/programs/pr.php?prn=378> (last accessed Nov. 17, 2004).

are going to purchase. Programming choices on commercial radio are made to attract the listeners advertisers are trying to reach. For example, as agricultural equipment, seed and chemical companies have merged and farming has changed from a family to corporate business, the rural farming purchasing audience has shrunk and advertisers have less incentive to place ads on rural stations.¹² As a result, stations have cancelled and scaled back locally-produced farm programming.¹³ When an audience ceases to be a target for advertisers, stations will no longer provide programming that meets the needs of that audience. Because many advertisers are looking for the same target buying audience, with a specific age, race, and income-level, many audiences are not being served by commercial radio, even though the listeners' need for news and information has not changed.

Consequently, community radio is often the only station in the market addressing the needs of these underserved audiences, and it needs to be recognized as a valuable and necessary community resource. The rural listeners, non-English speakers, and American Indians in the above examples are not large target audiences for commercial stations, making it essential for community radio to address their needs. Radio faces unique problems in trying to serve these audiences because there is not enough spectrum dedicated to these communities. Community radio tries to serve these audiences by offering several hours a day or week of programming in underserved languages or about underserved culture. Listeners typically tune in to radio at peak times of day, such as the morning or afternoon commute. While community radio stations can provide niche programming to each of the listening audiences, not all of the programs can be offered at

¹² Leon Lazaroff, *Farm Radio's Frequency Fading Away*, CHICAGO TRIBUNE, Jan. 21, 2004 (online edition).

¹³ *Id.*

a peak listening time. Consequently, it is difficult for each of the programs to attract and reach the targeted audience, as listeners do not typically tune in to radio for specific programs, as they would for television.

To encourage other stations to address more of these underserved audiences, the FCC should consider the amount and quality of programming geared toward underserved audiences when granting license renewals. Also, the Commission should take steps to encourage people of color to gain licenses, to ensure people of color are more easily able to obtain licenses, and to prevent ownership from concentrating in the hands of the few.

B. Nature and Amount of Political Programming.

The Commission asks what specific steps it should take to promote political and civic discourse.¹⁴

NFCB members are already providing local political coverage and discourse, not only through their extensive public affairs programming. Community radio stations, by producing local news programs, are able to examine political issues in the communities in which audience members are located. In Madison, Wisconsin, WORT-FM produced three hours of bilingual election night coverage in English and Spanish, featuring interviews on the implications of election outcomes and focusing on local races.¹⁵ The station also established a call-in line for voters to share information about waiting times, long lines, and problems at the polls and recorded the calls for use in the evening news reports.¹⁶ KFAI-FM in Minneapolis, Minnesota provided news coverage of the local St.

¹⁴ *NOI* at ¶ 19.

¹⁵ <http://www.wort-fm.org/station/pr/electioncov.htm> (last accessed Nov. 17, 2004).

¹⁶ State Journal Staff, *More Cheese, Please: Kerry Will Return to Wisconsin on Saturday*, THE CAPITAL TIMES & WISCONSIN STATE JOURNAL, Oct. 28, 2004.

Paul City Council race on election night.¹⁷ WDFH-FM in Dobbs Ferry, New York provided extensive coverage of both national and local elections.¹⁸ The station broadcast the local mayoral candidate debate and also attended both the Democratic and Republican National Conventions.¹⁹ In a year where television stations were criticized for their lack of convention coverage, WDFH-FM produced four to eight hours of coverage each day, complete with interviews of political leaders and commentators.²⁰ In Northern California, KQED-FM's "Forum" program provides extensive coverage of local and state initiatives and races, including discussion with third-party candidates, in the months leading up to the election.²¹

NFCB urges the Commission to take steps to further promote political discourse in radio, particularly by taking into account the coverage of local candidates and issues at license renewal. Most commercial broadcast stations only cover local elections, and sometimes national, to the extent of reporting poll results, and fail completely to address other topics such as ballot initiatives. Local political programming might include broadcasts of candidate debates, interviews or statements and substantive discussions of ballot measures and candidates, rather than just reporting which candidate is ahead in the polls or has collected more money. Locally-responsive radio is essential to give information and address issues so that the public is involved in the electoral process and

¹⁷ <http://www.kfai.org/programs/locnews/archive.htm> (last accessed Nov. 17, 2004).

¹⁸ <http://www.wdfh.org/election.htm> (last accessed Nov. 17, 2004).

¹⁹ *Id.*

²⁰ *Id.*

²¹ See, e.g. Don Thompson, *Lockyer Echoes Concerns Voiced Against Prop. 69*, CONTRA COSTA TIMES, Oct. 17, 2004, at 4; Alexa H. Bluth, *Jones Lacks Money to Aid Senate Run*, SACRAMENTO BEE, Oct. 21, 2004, at A3; *Around the Dial*, CONTRA COSTA TIMES, Oct. 22, 2004, at 4.

is able to make an informed vote, particularly because television coverage of elections is dwindling.²²

C. Communication with Communities

In its *Notice of Inquiry in the Matter of Public Interest Obligations of TV Broadcast Licensees*, the Commission proposed to replace the current issue/programs lists with a standardized form, asking broadcasters to report on their efforts to identify the programming needs of various segments of the community and list their community-responsive programming by category.²³ The Commission now asks whether there are other steps it should take beyond this proposed form to further broadcasters' communication with the communities they serve.²⁴

NFCB strongly supports policies which inform the community about a station's activities and content. NFCB also supports any steps the Commission may take to improve the list and to make it less burdensome. Because community radio stations cover so many issues of local importance, the quarterly program list is a significant amount of work for NFCB's member stations to produce. NFCB encourages the Commission to develop a form which will provide the Commission with sufficient information to determine how stations are meeting their local needs. The Commission

²² A study done by the Annenberg Center in the 2002 election found that 56 percent of all local news stations carried no coverage that mentioned candidates or campaigns in the period right before the election. The average length of a soundbite by a presidential candidate on network evening news was less than 8 seconds in 2000 and 71 percent of the coverage dealt with who was winning and losing rather than substantive issues. See Lear Center Local News Archive (USC Anenberg School and the University of Wisconsin), *Local TV News Coverage of the 2002 General Election* (Oct. 16, 2002) available at: <http://www.learcenter.org/html/publications/?c=online+publications> (last visited Nov. 18, 2004); *Campaign 2000 Final: How TV News Covered the General Election Campaign*, Media Monitor, The Center for Media and Public Affairs (2000).

²³ *NOI* at ¶ 10. See *Notice of Inquiry in the Matter of Public Interest Obligations of TV Broadcast Licensees*, 14 F.C.C. Rcd. 21633, ¶¶ 7-20 (rel. Dec. 20, 1999).

²⁴ *NOI* at ¶¶ 10 and 11.

should then use that information when developing rules to meet the public interest and when considering license renewals.

The Commission also asks how effective market forces have been in ensuring that broadcasters are airing programming responsive to the needs and interests of their communities.²⁵ NFCB believes market forces have failed to sufficiently encourage stations to meet the needs of the local communities, as often community radio stations are the only radio broadcasters meeting these needs. NFCB members, as noncommercial stations, are not most responsive to market forces, but are the most proactive in terms of serving underserved audiences.

NFCB members are able to effectively communicate with their communities through many avenues, including the creation of Community Advisory Boards. Any station which receives funds from the Corporation for Public Broadcasting, a nonprofit corporation created by Congress to promote community broadcasting, must create a Community Advisory Board.²⁶ Additionally, the stations must take “good faith efforts” to ensure that the advisory board meets at regular intervals, the members of the board regularly attend its meetings, and the composition of the board is reasonably representative of the needs of the community served by the station.²⁷ The boards allow public broadcasters to be more responsive to their communities by providing input from a cross-section of the community to aid the participants with planning and decision-making at the stations. Because members of the board are representative of all facets of the listening community, they help the station address the needs of all audiences. The boards

²⁵ *NOI* at ¶ 11.

²⁶ 47 U.S.C. § 396(k)(8). Stations owned and operated by a state, a political or special purpose subdivision of a state, or a public agency, are exempted from this requirement.

²⁷ *Id.*

work with the governing body of the station, which will then make decisions regarding public service of the station, thus community members directly inform the programming of the station.

NFCB believes that the old ascertainment systems were beneficial to the extent they created connections between broadcasters and communities. The obligation, however, sometimes suffered from flaws in implementation. In some cases, commercial station employees who ran these ascertainment proceedings did not have any influence over programming at the station, and the proceedings were carried out merely to meet the FCC requirement, rather than to actually determine the needs of the community. In contrast, Community Advisory Boards are representative of the entire community and meet with station employees who are able to influence programming choices. If the Commission decides to use a proceeding such as the old ascertainments, it should require station employees who make the programming decisions to attend the proceedings, and it should ensure that all members of the community are able to present their ideas in the proceedings. Additionally, the Commission should not impose duplicative regulation. If stations with Community Advisory Boards meet any new outreach requirements, the Commission should be cognizant of the overlap. To ensure compliance with Commission rules, the Commission could allow stations with these boards to submit records, such as minutes of their meetings, to satisfy the FCC requirement. If the Commission were to make the unfortunate choice to rely on market forces and the licensing process to ensure broadcasters air programming responsive to the needs and interests of their communities, the FCC should be more stringent in its licensing reviews

and thoroughly examine whether market forces are sufficient in any particular case to ensure the stations are truly meeting the local needs.

D. Nature and Amount of Community Responsive Programming.

The Commission also asks whether broadcasters are serving the needs of their communities by airing enough community-responsive programming. It asks to what extent it should require a certain amount of local programming, what types of programming should qualify as local programming, and whether efforts to serve the community other than local programming also should be considered.²⁸

Community radio stations are already providing a significant amount of diverse public affairs programming, attracting a variety of listeners and connecting the community. In Hayward, Wisconsin, WOJB-FM produces a local morning public affairs program Monday through Friday which includes astronomy updates, Natural Resources information, and the Lac Courte Oreilles Tribal Reservation news.²⁹ KBOO-FM in Portland, Oregon broadcasts a variety of public affairs programs, including Healthwatch and Earthwatch, “Out Loud,” a half hour dedicated specifically to issues in the gay and lesbian community, and morning and evening news programs which focus on the station’s goal of “providing a forum for unpopular, controversial, or neglected perspectives on important local, national and international issues.”³⁰ And in Tampa, Florida, community radio station WMNF-FM runs a program “Reach Through Your Radio” which trains high school and college student listeners to write, record, edit and produce a variety of different types of broadcasts.³¹ WMNF-FM is finding a way to involve the community not only by producing programming which responds to the needs of a diversity of citizens, but also by allowing the community to use the radio station

²⁸ *NOI* at ¶¶ 13 and 14.

²⁹ <http://www.wojb.org/sched.htm#jumpmon> (last accessed 11/11/04).

³⁰ <http://www.kboo.fm/genre.php?g=11> (last accessed 11/11/04)

³¹ *Id.*

themselves. Allowing community members access to the airwaves is one of the best ways to encourage community involvement, and the Commission should encourage stations to grant wider access.

Each year, the NFCB honors a station which has made a positive, noticeable impact on its community through the use of the airwaves.³² In 2002, NFCB awarded KVMR-FM in Nevada City, California for its impact on the community when a dangerous situation erupted.³³ On January 10, 2001, a mental health patient began a shooting spree in the Nevada County Behavioral Health Services office.³⁴ He killed two people and injured another while in the office, and then entered a crowded restaurant and killed another person.³⁵ Immediately, the city shut down, stores closed, schools were locked down and people shut themselves indoors.³⁶ KVMR responded by immediately switching its programming to live community coverage, allowing law enforcement, mental health officials, health care professionals, county legislators and listeners to speak to each other through the airwaves.³⁷ The station broadcast emergency information, and emergency prescription drug delivery was worked out on the air by caregivers and community officials.³⁸

KVMR also responded with public affairs community programming. In fact, six weeks before the incident, the station had run a special entitled “Who Cares?,” a live town hall meeting on long term care, through its Sound Partners for Community Health

³² 2002 Community Impact Award, COMMUNITY RADIO NEWS, May 2002, Volume 15, #4.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

Project.³⁹ During this broadcast, mental health was identified as a significant and primary long term health care problem in the county.⁴⁰ Two nights after the shooting, KVMR held another in-studio two-hour town meeting giving listeners an opportunity to share their experiences and feelings and discuss them with a panel of therapists and civic leaders.⁴¹ Later, the station aired a third meeting specifically on mental health, with legislators, advocates, therapists and state and county officials sat on the discussion panel.⁴² Afterwards, the station distributed the testimony on CD to lawmakers, advocates and others.⁴³ In July, when the California State legislature approved the state budget, it allocated an additional \$400,000 in mental health care funds, and in August, the Nevada County Board of Supervisors formally recognized KVMR in helping to secure those funds.⁴⁴

Local programming has the ability to educate the community, address local issues, and provide important emergency information. As stated above, NFCB does not believe market forces have adequately encouraged stations to respond to the local needs of the community, and encourages the Commission to require some amount of local programming. When determining the amount of programming aired, NFCB urges the Commission to adopt the definition of “locally originated programming” designated in the LPFM proceedings: production of programming within 10 miles of the reference coordinates of the proposed transmitting antenna.⁴⁵ Local programming could include, but might not be limited to, interviews with local officials, broadcasts of community

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ 47 CFR § 73.872 (2002); *Report and Order in the Matter of Creation of a Low Power Radio Service*, 15 FCC Red. 2205, 2261 (rel. Jan. 27, 2000).

government meetings and legislative sessions, call-in discussions on topics of local interest, and local news reports. Additionally, NFCB believes the FCC should consider other outreach efforts, such as conducting programs and meetings with the community, when determining the amount of local programming a station has aired.

E. Disaster Warnings.

The Commission asks whether it should require broadcasters to make their facilities available to local emergency managers.⁴⁶ NFCB recognizes the importance of serving the community's need for local emergency alerts and notices as broadcasting is a vital link in times of crisis, particularly because battery-operated radios are relied upon to disseminate information in emergencies.

NFCB members are on the forefront of providing emergency information to people who might not otherwise receive it. In March of 2003, when a wave of blizzards hit Idaho Springs, Colorado, Clear Creek Radio, Inc. (KYGT-LP) worked in cooperation with emergency officials on its own initiative to provide emergency information.⁴⁷ The snowstorms hit Clear Creek's listening area, knocking out power, closing roads and the airport, and trapping citizens in their homes, motels, and in some cases, school gymnasiums. Although the station had just started broadcasting, the staff realized that KYGT was the only local news source which would be able to inform the public, so the station made arrangements with the local power company and was able to get back on the air in three hours. For the next four days, KYGT served as an information source and emergency service coordinator for the community. The station contacted the emergency services and the Colorado Department of Transportation and sent out emergency public

⁴⁶ *NOI* at ¶¶ 28 and 29.

⁴⁷ <http://www.mediaaccess.org/programs/lpfm/blizzard.pdf> (last accessed Nov. 17, 2004).

service announcements. People who were stuck on the roads called into the station and snow mobiles and snow cats were then able to locate them. The station informed listeners of which roads were open and closed and updated them when new drifts came through. Listeners also used the station for entertainment to ease their cabin fever and as a forum for venting their frustrations. When stations take the initiative and the responsibility to provide for their communities, they can be a vital component of disaster relief.

The Commission should ensure that physical plant and staffing policies allow emergency officials access to radio broadcast stations, but should be careful to explore any step that might affect the important role of broadcasters as journalists. While direct access by public officials may be necessary in limited circumstances, it does not replace the journalistic role broadcasters play – a role that is critical in times of emergency. NFCB strongly encourages the Commission to continue to improve the EAS system and to discover why it has not always been fully utilized during times of emergency, such as during the September 11, 2001 attacks in New York City and Washington, D.C., where government officials failed to use the EAS system.

II. License Renewals.

The Commission asks whether new procedures are necessary in the local renewal process to ensure that the station has served and will continue to serve the needs of the public.⁴⁸ The Commission is required to award licenses to communities under The Communications Act,⁴⁹ and localism is an historical mission of broadcasters licensed by

⁴⁸ *NOI* at ¶ 42.

⁴⁹ 47 USC § 307(b).

the FCC,⁵⁰ and of noncommercial broadcasting in particular.⁵¹ The NFCB believes that the renewal process is an important opportunity for the Commission to ensure stations are responding to the Commission's localism goals and meeting local needs, and the Commission should take full advantage of this opportunity. Local and community-responsive programming should be considered when determining renewals of licenses, as well as when granting initial licenses, because it is a fundamental component of a broadcasters' responsibility when granted use of the airwaves. Community radio stations have historically been vulnerable in the licensing process, so taking into account the amount of community programming aired should ensure they are more likely to receive licenses.

To aid itself in considering how broadcasters are meeting local needs when renewing licenses, the Commission may wish to consider using a point system similar to the system it uses in allocating non-commercial licenses.⁵² This could be an efficient and objective method to examine the extent to which stations are meeting their community obligations during the license renewal process.⁵³ NFCB urges the Commission to grant points based on, specifically:

- the percentage of programming on the station that is locally-produced,

⁵⁰ See, e.g., *Radio Deregulation Order*, 84 FCC 2d 968, 978 (1981) ("We do expect, and will require, radio broadcasters to be responsive to the issues facing their community"); *Second Radio Deregulation Order*, 96 FCC 2d 930, 931 (1984) ("A station still is expected to address those issues that it believes are of importance to its community of license....").

⁵¹ See, e.g., *Carnegie Commission Report* at 49-52 (1964) ("It is clear that by presenting and producing [local programming] the station manager can provide... a comprehensive service for his community which is not now being performed by any other medium.").

⁵² See *In the Matter of Reexamination of the Comparative Standards for Noncommercial Education Applicants*, MM Docket No. 95-31 (rel. Apr. 21, 2000).

⁵³ NFCB earlier proposed a point system for the Commission to adopt when determining licenses among competing applicants. A point system could be just as useful for promoting efficiency in license renewals, and could be crafted in a similar manner. For a more complete examination of a possible point system, see *In the Matter of the Comparative Standards for Noncommercial Educational Applicants*, Comments of National Federation of Community Broadcasters, MM Docket No. 95-31, January 28, 1999.

- the number of board members who are residents of the listening community (provided there is a board),
- whether members of the community will have an opportunity to obtain broadcast time on the station, and
- whether the applicant will be providing a program format not otherwise available in the community.

The Commission may award points based on the above qualifications, but it should be sure to set a point threshold high enough so that broadcasters must actually provide a significant amount of community involvement and programming to meet the requirements.

III. Payola, Sponsorship Identification, Voice-Tracking, and National Playlists.

A. Payola, Sponsorship Identification, and Voice-Tracking.

The Commission asks whether current rules and enforcement are sufficient to prevent payola.⁵⁴ The NFCB agrees with the Commission that payola is harmful to localism, as it results in airing only those voices which are able to pay to have their voice heard, and those who pay are not likely to be local voices. Although NFCB believes this practice may be prevalent among commercial stations, its members seek to encourage diverse and local programming choices, and therefore do not engage in payola practices. However, commercial stations are using independent record promoters, or “indies,” to act as middlemen between the station and the labels in order to evade payola rules.⁵⁵ The

⁵⁴ *NOI* at ¶ 35.

⁵⁵ See Eric Boehlert, *Pay for Play*, Salon, available at: <http://archive.salon.com/ent/feature/2001/03/14/payola> (Mar. 14, 2001).

labels hire independent promoters to promote the artist, and in return, the indies give stations promotional payments.⁵⁶

NFCB encourages the Commission to enforce stricter penalties against stations which engage in payola so that this practice will cease. Additionally, the Commission needs to examine and tighten the rules so that stations do not continue to use loopholes to engage in payola. The NFCB supports the Future of Music Coalition's comments on this issue.⁵⁷

The Commission seeks comment as to whether sponsorship identification rules are adequate in requiring stations to disclose when broadcast materials have been paid for and by whom.⁵⁸ NFCB believes that the current requirement is sufficient, and urges the FCC to continue enforcing this requirement.

The Commission asks whether it is within their authority to regulate voice-tracking.⁵⁹ The NFCB believes radio should be local and live, and community radio stations are currently providing local and live voices. Currently, Commission rules regarding voice-tracking only apply to licensee-conducted contests, and state only that "no contest description shall be false, misleading or deceptive with respect to any material term."⁶⁰ The Commission should clarify whether this rule prevents the use of voice-tracking in connection with call-in contests which might cause listeners to believe they are participating in local, rather than national, contests. Additionally, the Commission should further consider the effect of voice-tracking on localism. Portraying

⁵⁶ *Id.*

⁵⁷ *See Comments of Future of Music Coalition in the Matter of Broadcast Localism*, MB Docket No. 04-233 (rec. Nov. 1, 2004).

⁵⁸ *NOI* at ¶ 36.

⁵⁹ *NOI* at ¶ 38.

⁶⁰ 47 C.F.R. § 73.1216.

national voices as local not only deceives listeners, but it also takes the opportunity away from true local voices which are attempting to be heard. NFCB encourages the Commission to articulate and enforce rules to favor local voices.

B. National Playlists.

The Commission asks whether national playlists are prevalent and what type of effect these playlists have on localism.⁶¹ NFCB believes that national playlists are used by many commercial radio stations to the detriment of their audiences. Radio is a local medium, and when national playlists are used, local ownership is meaningless because a single large corporation is making the programming choices for stations all over the country. National playlists hurt the culture of the country because local voices and artists are not heard, eliminating local cultures and diversity among different listening areas.

Community radio may be used as a model for other stations as to how making program choices locally will help stations better serve the needs of the communities. For example, WMNF-FM in Tampa, Florida provides a mix of programming to meet the needs of many different types of audiences in the Tampa listening area. The station is supported only by listener donations and a number of small grants, and almost every disc jockey is a volunteer.⁶² The stations music choices include jazz, Native American, country, bluegrass, polka, salsa, hip hop, gospel, reggae, and folk.⁶³ WMNF-FM also responded to the needs of the younger audience by recently adding the program “The Eleventh Hour,” which features alternative music such as Cat Power, Postal Service, and

⁶¹ *NOI* at ¶ 39.

⁶² Jennifer Barrs, *Listener-Supported WMNF Gets a Tuneup*, THE TAMPA TRIBUNE, April 10, 2003.

⁶³ <http://www.wmnf.org/programming/index.shtml> (last accessed 11/8/04).

Massive Attack, familiar to college students.⁶⁴ WMNF-FM is able to provide interesting and diverse listening choices without the use of national playlists.

IV. Additional Spectrum Allocations.

The Commission asks how it can further LPFM, particularly in its licensing process.⁶⁵ The NFCB has submitted numerous comments in previous Commission proceedings regarding the need to promote LPFM community radio through licensing and spectrum allocation, and NFCB would like to reaffirm the position it has taken in those earlier comments.⁶⁶ NFCB has urged the Commission to grant licenses and spectrum to stations which are providing local community programming and encouraging community involvement, which will have the effect of promoting LPFM because these stations typically exemplify community radio. Specifically, NFCB has also asked the Commission to allow waivers or grant extensions for the length of a LPFM construction permit, give locally controlled and operated LPFM stations priority over distant translator stations, and to give LPFM stations more flexibility in license applications.⁶⁷ Because the Commission's main goal is localism, the main determination in spectrum allocation and licensing procedures should be the extent to which the station is locally producing programming, reporting local news, and actively engaging the community in its operations.

⁶⁴ Jennifer Barrs, *Listener-Supported WMNF Gets a Tuneup*, THE TAMPA TRIBUNE, April 10, 2003.

⁶⁵ *NOI* at ¶ 45.

⁶⁶ See e.g., *Notice of National Federation of Community Broadcasters*, MM Docket No. 99-25 (rec. Feb. 20, 2004); *Letter of National Federation of Community Broadcasters*, MM Docket 95-31 (rec. Oct. 17, 2002); *Reply Comments of National Federation of Community Broadcasters in the Matter of Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service*, MM Docket No. 99-325 (rec. Mar. 29, 2002).

⁶⁷ See *Notice of National Federation of Community Broadcasters*, MM Docket No. 99-25 (rec. Feb. 20, 2004).

In previous filings, NFCB and other commenters have also urged the Commission to allocate television Channel 6 for non-commercial FM use only, and NFCB would again like to encourage the Commission to consider this allotment.⁶⁸ It would provide much needed spectrum to community radio stations which struggle to gain spectrum, especially in auction proceedings, due to financial constraints.

Conclusion

The Commission has been entrusted with the responsibility of ensuring broadcasters are serving their communities. To be truly responsive and in touch with their communities, stations must be locally run and managed and seek involvement and input from their communities as much as possible. The Commission can ensure these practices are being followed by reviewing broadcasters' community attentiveness in the licensing process and favoring broadcasters in licensing and spectrum proceedings who are meeting the needs of their local communities and addressing underserved audiences. NFCB supports the Commission in its desire to do more to encourage localism, and is proud of its members, which are already exceeding the localism standard.

⁶⁸ See *Comments of National Federation of Community Broadcasters in the Matter of Reexamination of the Comparative Standards for Noncommercial Educational Applicants*, MM Docket No. 95-31 (rec. Jan. 28, 1999).

Respectfully submitted,

Andrew Jay Schwartzman

Harold J. Feld

MEDIA ACCESS PROJECT
1625 K St., NW
Suite 1000
Washington, DC 20006

Jacqueline Vitak
Law Student Intern
UCLA School of Law

May 12, 2005