

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, DC 20554**

In the Matter of  
Applications for Renewal of Station License of

WTMJ-TV	)	
Milwaukee, WI	)	BRCT20050729CYF
WITI-TV	)	
Milwaukee, WI	)	BRCT20050729DRL
WISN-TV	)	
Milwaukee, WI	)	BRCT20050801CEF
WVTV	)	
Milwaukee, WI	)	BRCT20050801BDQ
WCGV-TV	)	
Milwaukee, WI	)	BRCT20050801BBZ
WVCY-TV	)	
Milwaukee, WI	)	BRCT20050801AGS
WMLW-CA	)	
Milwaukee, WI	)	BRTTA20050801ADM
WJJA-TV	)	
Racine, WI	)	BRCT20050725ABE
WWRS-TV	)	
Mayville, WI	)	BRCT20050729DNH
WPXE-TV	)	
Kenosha, WI	)	BRCT20050729AIH
WDJT-TV	)	
Milwaukee, WI	)	BRCT20050801ADL

**PETITION TO DENY RENEWAL**

Pursuant to Section 309(d)(1) of the Communications Act, the Milwaukee Public Interest

Media Coalition (MPIMC)<sup>1</sup>(CMA) respectfully submits this petition to deny renewal of the above captioned applications. As is demonstrated below, grant of this applications is *prima facie* inconsistent with the public interest standard set forth in Section 309(a) of the Communications Act. Accordingly, these applications should be designated for hearing.

## INTRODUCTION

This petition challenges the renewal of all the commercial television stations in the Milwaukee market. The basis of this challenge is that, singly and together, each of these stations has failed to meet the needs of their community of license and, therefore, that renewal of their licenses would not serve the public interest. Specifically, as documented below, these stations failed to present adequate programming relating to state and local elections during the 2004 election campaign. In the four weeks prior to the election, less than 1% of newscast time was devoted to state level elections, about 2% to ballot issues and about 1% to other local elections.

The current policies relating to license renewals were adopted in 1984. At that time, the Commission eliminated programming guidelines as to quantities of news and public affairs programming which would be presumed to constitute service in the public interest. However, in so doing, the Commission stressed that “the basic responsibility to contribute to the overall discussion of issues confronting the community is a non-delegable duty for which each licensee will be held individually accountable.” *Deregulation of Radio*, 98 FCC 1075 (1984).

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<sup>1</sup>Attachment A hereto is the declaration of Michael McCabe, which identifies MPIMC’s interest in these applications. MPIMC is an *ad hoc* coalition of viewers and civic organizations concerned about the vitality of the electoral process. Its members include the Wisconsin Democracy Campaign, the League of Women Voters of Wisconsin, the Wisconsin State AFL-CIO, the Milwaukee County Labor Council (AFL-CIO), Wisconsin Citizen Action, the Coordinating Committee Against Hate Speech and the Lutheran Office for Public Policy in Wisconsin, Common Cause in Wisconsin and Peace Action Wisconsin.

Attachment B hereto is a study prepared by the Center for Media and Public Affairs (CMPA).<sup>2</sup> CMPA was commissioned to analyze all regularly scheduled news programming and public affairs programming carried by the five highest-rated commercial stations in Milwaukee for the four weeks prior to the November, 2004 election. This programming represented substantially all of the regularly scheduled locally produced news available in Milwaukee.<sup>3</sup> Additional information on the methodology and data collection for the study is contained in Attachment C, the declaration of Meredith McGhehee, Director of the Media Policy Program of the Campaign Media Legal Center.

As Ms. McGhehee explains, trained volunteers taped the programming,<sup>4</sup> which was provided to CMPA for analysis using coding methodology which employs numerous statistical and other controls to assure completeness and accuracy of its analysis.<sup>5</sup> She continues:

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<sup>2</sup>CMPA is a nonpartisan research and educational organization which was founded in 1985 and conducts scientific studies of the news and the entertainment media.

<sup>3</sup>The remaining stations challenged carried no regularly scheduled locally-originated news programming or merely rebroadcast newscasts produced by another station.

<sup>4</sup>Between 93 and 99 percent of targeted programming was recovered, assuring a high degree of statistical reliability.

<sup>5</sup>As CMPA explains on its website,

Categories and criteria are rigorously defined and applied consistently to all material. Each system must be reliable, meaning that additional researchers using the same criteria should reach the same conclusions. Because it is both systematic and reliable, content analysis permits the research to transcend the realm of impressionistic generalizations, which are subject to individual preferences and prejudices.

CMPA researchers have honed their skills on a wide variety of projects since 1987, making them among the best trained and most experienced at news media content analysis. Researchers examine news stories on a statement-by-statement level, recording all overt opinions expressed by either the reporter or other individuals quoted in the story. Each opinion is catalogued according to the source of the comment, the target, and the issue under discussion.

Researchers do not assign overall positive and negative scores to entire stories, since such an approach is inherently subjective and fails to fully account for

The data show clearly an overall lack of news coverage of the 2004 local elections by the five highest-rated Milwaukee stations and illustrate further that there was a market-wide failure to provide voters in the Milwaukee viewing area with the information they needed about local races to be the informed voters essential to a healthy, working democracy.

Specifically, the data show that only 5.2 % of total newscast time was devoted to elections in the four weeks prior to a major election, and that the U.S. Presidential and U.S. Senate races accounted for 77% of that coverage.<sup>6</sup> All other Wisconsin elections and ballot referenda together counted for approximately 4% of the election news coverage. This is well under 1% of the total time devoted to news on the stations on the five monitored stations.<sup>7</sup>

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the nuances within each story. Individual statements are logged into a computerized database, allowing statistical analyses to fully describe the relationships among news sources, time periods, the focus of coverage and the tone of coverage.

Depending on the length and breadth of the study, CMPA's codebooks (which contain the categories and rules for coding) range from 100 to 300 pages long and include 20 to 50 different analytic variables. Research assistants are trained for between 150 and 200 hours before they begin work on a project. During the training process, researchers code sets of stories, and their work is compared to that of previous coders until a minimum reliability level of 80% is reached for all variables. That means that the new coders must reach the same conclusions as their counterparts at least four out of five times. For most variables, the level of agreement is much higher.

<http://www.cmpa.com/ourMethodology/index.htm>

<sup>6</sup>This figure actually overstates the amount of coverage, a single station, WVTM, accounted for a disproportionate share because it carries a largely national newscast masquerading as a local program.

<sup>7</sup>To examine whether information about non-Presidential races were made available on the national news programming, volunteers also examined national news programming aired during the two weeks leading up to Election Day. That analysis of 132 hours of national news and public affairs programming that aired on ABC, CBS, NBC and Fox networks found that 92% of the election coverage aired on national networks was devoted to the presidential contest, with 81.6% of the candidate soundbites coming from the presidential candidates. Candidate soundbites for U.S. Senate candidates constituted 0.4%, for U.S. House 1.2% and for other candidates 0.3%. Two percent of stories examined ballot initiatives and referenda, and slightly less than 2% were devoted to U.S. Senate or House races. The remaining stories were devoted to voting issues not specific to any

Analysis of the content of the election coverage demonstrates that qualitative factors make the picture even worse. CMPA reports that the dominant frame in Milwaukee coverage (over one third of all election coverage) was the strategic element of campaign and campaign activities, and that “horse race coverage” was about 10% of time devoted to campaign news. While these are certainly newsworthy, fully half of the news coverage did not inform voters about issues or other facts which actually assist them in voting or in deciding for whom to vote. Moreover, only 13% of the news coverage was devoted to carriage of candidates speaking on behalf of themselves, and the average candidate soundbite was 10.7 seconds long.

WTMJ carried a modicum of local coverage outside of news programming.<sup>8</sup> This programming tended to follow the same pattern. In particular, about one-third of election related discussion on was devoted to “horse race” and strategic matters.

#### **ADDITIONAL FACTS**

Members and representatives of MPIMC have presented several declarations which elaborate on the consequences of the inadequate coverage of state and local elections in Milwaukee.

Jennifer Morales is an elected member of the Milwaukee School Board and an unsuccessful candidate for State Senate in November, 2004. She explains that the failure of Milwaukee’s commercial TV stations to cover such elections required her to purchase air time on cable and radio.

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particular race (like absentee ballots or voting machines). All told, the national networks devoted about 30 hours to local elections news – approximately one-fifth of their news hole. However, the majority of coverage focused on the horse race of the candidates’ campaign strategies rather than issues.

<sup>8</sup>This petition does not address advertising. Such programming is no substitute for news or public affairs coverage conducted by journalists. Indeed, under Section 315(a) of the Communications Act, licensees have no discretion whatsoever as to the content of candidate “uses.”

Even so, she was “struck by the number of voters who, when I came to their doors, were totally unaware that” there was a contested State Senate seat. See Attachment D.

Donald Richards is a former member of the Milwaukee City Council. He complains that the only candidate discourse available on over the air stations was in candidate advertising in which “questions were not answered.” See Attachment E.

Viewer Jerry Fredrickson says that “to be adequately informed, I need television stations to broadcast candidate debates at reasonable times; report on developments in geographically relevant races; and announce opportunities to attend candidate events.” See Attachment F.

Melanie Ramey is President of the League of Women Voters of Wisconsin, which has a statewide membership of 1,400. She declares that the League leadership has “found that most citizens were completely unfamiliar with” local electoral issues and that the League “believes that one of the causes of the failure of citizens to be informed is the lack of sufficient coverage of local politics and local public affairs by broadcast television stations.” See Attachment G.

Eva Robar-Orlich of Peace Action Wisconsin explains that her organization has some 2,000 members, half of whom reside in Milwaukee. She identifies debates which went uncovered, and declares that during Peace Action Wisconsin’s voter registration activities, “we discovered that members of the public we talked with had little knowledge of the local races that were occurring and [were] confused as to how and where to vote.” Ms. Robar-Orlich also discusses the dearth of information on voting rights.<sup>9</sup> She attributes “this lack of an informed citizenry to the lack of sufficient coverage of local politics and local public affairs by broadcast television stations.” See Attachment

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<sup>9</sup>The CMPA study documents how little voter information was provided; well under 1% of the total newscast time analyzed consisted of voter information.

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Geoff Davidian's expertise on the electoral process comes from his experience as a journalist. He states that the inadequate coverage of electoral issues impedes his ability to "intelligently and fully meet my responsibility as a citizen in the greater Milwaukee area...." See Attachment I.

Robert F. Miranda submits his declaration on behalf of the Coordinating Committee Against Hate Speech (CCAHS), which serves the Latino community in the Milwaukee area. He asserts that the Spanish language TV station has no state or local news coverage, and that this and other stations collectively failed to cover issues that were important to local races. He describes the failure of the TV stations in Milwaukee to cover inflammatory abuse of the Latino community during the election campaign. He states that "Increased coverage of political candidate activities and events would have significantly improved voter turnout by the Latino community...." See Attachment J.

### **LEGAL ANALYSIS**

The Commission cannot grant a license renewal without hearing unless it determines, based on the available information, that the applicant has met its burden of establishing that grant is in the public interest. 47 USC §309. If, as here, a petition to deny raises substantial and material questions of fact as to whether grant of the application is in the public interest, the Commission must designate the matter for hearing. *Id.*

Localism (along with diversity and competition) is one of the three basic elements of the Commission's public interest analysis of broadcast applications. *See NBC v. U.S.*, 319 U.S. 190, 203 (1943) ("Local program service is a vital part of community life. A station should be ready, able, and willing to serve the needs of the local community ...."). Section 307(b) of the Communications Act assures that licenses are distributed with regard to assuring localism. *See FCC v. Allentown Broadcast*

*Corp.*, 349 U.S. 358, 362 (1955) (upholding authority to distribute licenses “to a community in order to secure local competition for originating and broadcasting programs of local interest.”); *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 139 (1940) (renewal not in the public interest where “applicant did not sufficiently represent local interests in the community.”). Localism has been reaffirmed legislatively on countless occasions; *MPAA v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (upholding power to promote localism). *See, e.g.*, H.R. Rep. 104-104 (1996) (“[Localism] is a vitally important value ... [and] should be preserved and enhanced as we reform our laws for the next century.”); Pub. L. 102-385 §§2(a)(10-11) (substantial governmental interest in ensuring localism and local program origination and “broadcast television stations continue to be an important source of local news and public affairs programming ... critical to an informed electorate.”).<sup>10</sup>

MPIMC recognizes that the Commission has afforded broadcasters wide discretion in determining how to meet the needs of their communities. However, the paucity of coverage of local elections available to Chicago area voters cannot be reconciled with the localism which the Communications Act demands. The failure to provide such coverage is a gross abuse of discretion which is incompatible with the broadcasters’ most fundamental obligations to the public and absolutely precludes grant of renewal without exploration at a hearing.

“It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here.” *Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969). From the standpoint of the citizenry, their single most important need is access to information from and about candidates for public office.

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<sup>10</sup>The Commission has recently reaffirmed its commitment to localism. *See, 2002 Biennial Review*, 18 FCCRcd 13620, 13643-44 ¶¶73-77, *rev’d on other grounds sub nom. Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2004) (*citing NBC v. U.S., supra*).

The FCC itself has stressed the importance of political broadcasting many times. In one statement, it said:

In short, the presentation of political broadcasting, while only one of the many elements of service to the public ... is an important facet, deserving the licensee's closest attention, because of the contribution broadcasting can thus make to an informed electorate--in turn so vital to the proper functioning of our Republic. *Licensee Responsibility as to Political Broadcasts*, 15 FCC 2d 94 (1968).

*Political Primer*, 100 FCC2d 1476 (1984). Because freedom of speech is valuable not only as a personal liberty but also for the role it plays in the proper functioning of our entire democratic form of government, the Supreme Court has repeatedly recognized that the First Amendment “‘has its fullest and most urgent application’ to speech uttered during a campaign for political office.” *Eu v. San Francisco Democratic Committee*, 489 US 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 US 265, 272 [1971]); *Mills v. Alabama*, 384 US 214, 218 (1966) (“[T]here is practically universal agreement that a major purpose of th[e First] Amendment was to protect the free discussion of governmental affairs.”); *Garrison v. Louisiana*, 379 US 64, 74-75 (1964) (“[S]peech concerning public affairs is more than self-expression; it is the essence of self-government.

Moreover, in 1984, the Commission made plain that, in giving greater discretion to TV broadcasters in meeting their programming obligations, it did “not constitute a retreat from our concern with the programming performance of television station licensees.” *TV Deregulation*, 98 FCC2d 1075 (1984).<sup>11</sup> It emphasized that the fact that a broadcaster carries some issue responsive programming is not dispositive, and that the Commission will conduct an “ad hoc review” to look into well-pleaded

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<sup>11</sup>In affirming the Commission’s radio programming policies, the Court of Appeals stressed that “[t]his power to license in the public interest ... necessarily entail[s] the power to license on the basis of program service.” *UCC v. FCC*, 707 F.2d 1413, 1428 (D.C. Cir. 1983).

allegations of insufficiency to determine “whether the challenged licensee acted reasonably in choosing the issues it addressed in its programming...,” and that “the burden will be on the licensee to demonstrate that the exercise of discretion was appropriate in the circumstances.” *Id.* See also, *UCC v. FCC, supra*, 707 F.2d at 1434 (“Quantity of programming remains ...a factor that the Commission may choose to deemphasize, but may not ignore altogether.”); *Television Deregulation (Reconsideration)*, 104 FCC2d 358, 362-3 n.8 (“Our decision ... cannot be reasonably read to have rendered quantity irrelevant.”).

### CONCLUSION

WPIC has established a fundamental marketplace failure in the coverage of what is arguably the most important kind of programming in a modern democracy - coverage of local elections. It is impossible to find that Milwaukee TV stations have fulfilled their public interest obligation singly, or taken together. Accordingly, the Commission must grant this petition, designate the above-captioned applications for hearing, and grant all such other relief as may be just and proper.

Respectfully submitted,

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