

**SUMMARY OF THE FCC'S NOTICE OF INQUIRY
IN THE MATTER OF BROADCAST LOCALISM**



The FCC released a Notice of Inquiry on July 1, 2004 asking for input on how well broadcasters are serving the interests and needs of their local. **Comments are due on September 1, 2004 and Reply Comments are due on October 1, 2004.** The proceeding has the docket number MB Docket No. 04-233. A copy of this NOI may be obtained from the FCC's Localism Task Force website at: <http://www.fcc.gov/localism/>

FCC Introduction

At the heart of the Communications Act is the principle that radio and television stations receive free licenses for the purpose of serving their local communities. In order to further the goals of localism, the Commission has taken steps such as establishing the Localism Task Force to gather empirical data on broadcast localism and to advise the Commission on steps it should take to further this goal. Additionally, the Commission previously sought comments on individual proposals intended to facilitate localism. The Commission initiated this Notice of Inquiry in response to concerns from the public that broadcast stations may still be failing to meet the needs of their local communities.

Rules Addressing the Needs of Local Communities

In addition to seeking general comments from the public regarding television and radio broadcasting within their local communities, the Commission seeks comments on the following specific areas:

Communication with Communities: In 1999 and 2000, the Commission launched several proceedings soliciting comment on what specific requirements it should mandate for television broadcasters as part of the transition to digital television. The Commission seeks comments on whether it should take additional steps to ensure that programming is responsive to the problems, needs, and interests of communities before the digital transition is complete, or whether market forces sufficiently ensure that television and radio broadcasters air programming responsive to the needs of their communities.¹

Nature and Amount of Community Responsive Programming: The Commission seeks comments discussing whether a requirement for "local" programming serves the goal of ensuring that broadcasters are serving their communities' needs and interest. The Commission inquires as to what should qualify as "local" programming. Alternatively, the FCC asks whether the incentives inherent in market forces are sufficient to encourage broadcasters to air community-responsive programming, such that the Commission should rely on market forces alone to encourage broadcast stations to air community-responsive programming.²

Political Programming: In the interest of encouraging political and civic discourse, the Commission

¹ See *Notice of Inquiry in the Matter of Broadcast Localism*, 2004 WL 1469366 ¶¶ 9-11 (2004) ("Localism NOI").

² *Id.* at ¶¶ 12-18.

seeks comments on its authority to encourage voluntary coverage and the extent to which the current rules should be revised to facilitate such programming.³

Underserved Audiences: The Commission seeks data and trends evidencing the extent to which broadcast stations currently serve minority communities, particularly non-English language communities. The Commission also requests comments on the best way to promote coverage of issues important to minority communities.⁴

Disaster Warnings: The Commission is considering a requirement that broadcasters make their facilities available to local emergency managers, but seeks comments on whether voluntary arrangements are sufficient. The FCC seeks comments on whether digital technology should be used to enhance warnings and to what extent do broadcast stations currently make use of digital technology.⁵

Network-Affiliation Rules⁶

The Commission's rules govern the relationship between television networks and their affiliated stations. These rules are designed to promote localism by ensuring that stations themselves retain the power to make programming decisions. Despite the existing rules, the Commission is concerned that affiliates are not sufficiently independent. Affiliates' claim that networks are hindering their ability to preempt network shows for local programming, allege that local affiliates are unable to refuse to broadcast network programming that is indecent or unsuitable for an affiliate's local community, and allege that networks are inhibiting affiliates' use of their own digital signals for local programming.

Payola, Voice Tracking and National Playlists

Payola: The Future of Music Coalition previously commented to the FCC that a *de facto* form of payola exists in business practices, where independent promoters act as a liaison between the radio stations and the record labels so that labels do not pay the stations directly to play their songs in violation of current laws. The Commission recognized that payola-type practices are inconsistent with localism because they cause radio stations to air programming based on their financial needs at the expense of their communities' needs. The Commission would like more information on the frequency of these practices, the sufficiency of the current disclosure requirements, and comments on whether or not payola-type practices comply with the FCC's disclosure requirements and sponsorship identification regulations and whether the Commission currently has the authority to regulate in this area.⁷

Other Sponsorship Identification: The Commission's rules require stations to disclose whether broadcast materials is paid for and by whom. The Commission seeks comment on the adequacy of the existing sponsorship rules. Additionally, the Commission has received reports that guests pay for their appearances and seeks comments on the prevalence of this practice, the impact of this practice

3 *Id.* at ¶ 19.

4 *Id.* at ¶¶ 24-26.

5 *Id.* at ¶¶ 27-29.

6 See *Localism NOI*, 2004 WL 1469366 at ¶¶ 30-32.

7 *Id.* at ¶¶ 33-35.

on stations' tendencies to serve their financial interest at the expense of the community interest, whether these payments comply with the existing sponsorship identification rules, and how and whether the Commission should eliminate these practices all together.⁸

Voice-Tracking: Voice tracking refers to the practice of importing “popular out-of-town personalities from bigger markets to smaller ones, customizing their programs to make it sound as if they DJs are actually local residents.” The American Federation of Television and Radio Artists alleged that this practice of not using live broadcasts or hiring local employees hurts the station’s connection local community. The Commission does not currently have rules that directly addresses this practice and seeks comment the following questions: What steps are necessary to preserve localism? What is the FCC’s statutory authority to adopt such regulations?⁹

National Playlists: The Future of Music Coalition commented to the FCC that national playlists hurt the localism effort by denying talented local artists access to airtime. The Commission seeks comment on the prevalence of national playlists and their impact on localism. In particular, the Commission inquires about to what extent the use of playlists prevent local stations from making independent decisions about airplay, and thereby diminishes the diversity and types of music heard on the radio, such as music performed by local artists. The Commission seeks input on what steps, if any, the Commission should take in this area to protect localism.¹⁰

License Renewals¹¹

Prior to the passage of the Telecommunications Act of 1996, the Commission granted licenses for three years. Every three years, when applicants had to renew their licenses, competing applications could be filed against the existing licensee. Where competing applications were filed, the Commission undertook a comparative analysis between the applications to determine which licensee would best serve the public.

The Telecommunications Act eliminated the comparative renewal process and increased the term of licenses to eight years. The Commission now only accepts competing license applications if the renewal application fails to meet the statutory standard.

The Commission is concerned that the current process does not sufficiently examine whether a licensee has served the public interest and seeks comment on the adequacy of the current renewal process, the potential need for audits of broadcasters’ public files, and the scope of the FCC’s authority to evaluate a station’s service of the public interest. Additionally, the Commission questions whether the current interval between renewals is too long and whether the Commission should either shorten the period or conduct a mid-term review of the license fulfillment of their public interest obligations.

Additional Spectrum Allocations¹²

The Commission has recently taken steps to promote LPFM, such as opening a filing window for settlement agreements, passing change amendments that eliminate some of the conflicts between

8 *Id.* at ¶¶ 36-37.

9 *Id.* at ¶ 38.

10 *Id.* at ¶ 39.

11 See *Localism NOI*, 2004 WL 1469366 at ¶¶ 40-42.

12 *Id.* at ¶¶ 43-45.

LPFM applications, and waiving processing rules that made it difficult to resolve conflicts between applications. The Commission invites comments on what additional steps it could take to promote LPFM. In particular, the Commission would like to harmonize its process for licensing FM translators and LPFM stations to enhance localism and seeks comment on what effect its rules have on localism. Additionally, the Commission seeks comment on how its policies for translators affect the availability of spectrum for LPFM, and what changes it should make to the rules to promote entities with a local presence or local programming.

Conclusion

Although this Notice of Inquiry identifies several subjects that are of particular interest to the Commission, the NOI invited comments on any subject relevant to the desired end of ensuring that broadcasters fulfill their obligations to serve local communities.¹³

Commissioners Powell, Martin and Adelstein wrote separately to express their individual concerns. Commissioner Martin encourages the Commission to clarify its rules protecting an affiliate's ability to refuse to air network programming when the licensee believes the network programming is unsuitable for the local community. Commissioner Copps wrote to express his view that it is impossible to divorce localism from ownership. Commissioner Adelstein encouraged commenters to offer any and all thoughts on steps the Commission can take to better promote localism and further the public interest.¹⁴

How To Participate

Interested parties can review filed comments or can themselves file comments through the FCC's electronic comments filing system (ECFS), at <http://www.fcc.gov/cgb/ecfs/>. (For ECFS purposes, the Docket Number is just 04-233.)

Anyone can file a comment using nothing more than a standard web browser like Netscape or Internet Explorer. You do not have to be a lawyer or even a U.S. citizen. The Media Access Project maintains a resource page explaining the FCC and its filing process, <http://www.mediaaccess.org/fcc/>.

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¹³ *Id.* at ¶ 46.

¹⁴ See *Localism NOI*, 2004 WL 1469366 (statements of Michael K. Powell, Kevin Martin, Michael J. Copps attached).

