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## **Summary and Background**

The Minority Media and Telecommunications Council (“MMTC”) and the Independent Spanish Broadcasters Association (“ISBA”) respectfully submit these comments in response to the Report on Broadcast Localism and Notice of Proposed Rulemaking (“Localism NPRM”),<sup>1</sup> which seeks comment on certain changes to the Commission’s rules and policies in an effort to promote both localism and diversity.

MMTC and ISBA support the Commission’s efforts to “promote diversity by increasing and expanding broadcast ownership opportunities for minority- and women-owned businesses and small businesses,”<sup>2</sup> through proposals such as expanding service of FM translator stations to allow for their use to provide fill-in service for AM radio stations.<sup>3</sup> However, many of the proposals presented for comment would have a disproportional negative impact on minority broadcasters because of their relatively small size and limited access to capital. These proposals include: mandating permanent advisory boards,<sup>4</sup> requiring a physical presence in broadcasting facilities during all hours of operation,<sup>5</sup> prohibiting voice-tracking,<sup>6</sup> adopting localism programming guidelines,<sup>7</sup> and reverting to its pre-1980s main studio rule.<sup>8</sup>

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<sup>1</sup> Broadcast Localism, Report and Notice of Proposed Rulemaking, MB Docket No. 04-233, 23 FCC Rcd 1324 (2007) (“Localism NPRM”).

<sup>2</sup> Id. at 1326, ¶ 3.

<sup>3</sup> Id. at 1346-47 ¶ 51.

<sup>4</sup> Id. at 1336 ¶ 26.

<sup>5</sup> Id. at 1337-38 ¶ 29. The Commission sought comment on whether radio licensees should maintain a physical presence at each radio broadcasting facility during all hours of operation in a separate proceeding. See Enhanced Disclosure Order: Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10390 ¶ 119 (2007) (“Digital Audio FNPRM”).

<sup>6</sup> Localism NPRM, 23 FCC Rcd at 1369 ¶ 111.

<sup>7</sup> Id. at 1343, 1373 ¶¶ 40, 124. The Commission asked “should these guidelines be expressed as hours of programming per week or, as in the past, percentages of overall programming? Should the guidelines cover particular types of programming, such as local news, political, public affairs and entertainment, or simply generally reflect locally-oriented programming? What should the categories and amounts or percentages be? Should we adopt processing guidelines regarding specific types of locally-oriented programming to be aired at particular times

## I. AM Use of FM Translators

The Commission tentatively concludes that certain revisions to the rules will expand the purpose and permissible service of FM translator stations to allow for their use to provide fill-in service for AM radio stations.<sup>9</sup> These proposed revisions, which will promote diversity and localism, arose in reference to a rulemaking proceeding initiated by the National Association of Broadcasters (“NAB”).<sup>10</sup>

The Commission acknowledges that minority and female ownership remain key objectives of structural regulation,<sup>11</sup> and these proposed changes to the rules present race-neutral and gender-neutral means of advancing those objectives. As petitioner NAB recognized its Petition for Rulemaking, minority and female owned stations “further the goal of the Commission’s diversity policy – ensuring that information is available from a multiplicity of sources...the action NAB suggests in this Petition would help AM stations remain viable and

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of the day? Should the Commission create other renewal processing guidelines that give processing priority to stations that meet certain measurable standards? How should we define local programming? Must it be locally produced?” *Id.* at ¶ 124.

<sup>8</sup> *Id.* at 1343-44 ¶ 41.

<sup>9</sup> *Id.* at 1346-47 ¶ 51 (citing Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, Notice of Proposed Rule Making, MB Docket No. 07-172, 22 FCC Rcd 15890, 15890-92 ¶¶ 1-6 (2007) (“The Commission has tentatively concluded that, *inter alia*, (1) daytime-only AM licensees should be permitted to originate programming over fill-in FM translators during the nighttime hours when their stations are not authorized to operate; and (2) any AM station should be permitted to operate an available FM translator to retransmit its AM programming as a fill-in service, as long as no portion of the 60 dBu contour of the FM translator exceeds the lesser of: (a) the 2 mV/m daytime contour of the AM station or; (b) the 25-mile radius of the AM transmitter site.”).

<sup>10</sup> *Id.* at 1346-47 ¶ 51, n. 125 (citing “Petition for Rulemaking of the National Association of Broadcasters,” RM Docket No. 11338 (July 14, 2006) (“NAB Petition”).

<sup>11</sup> See 2006 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, MM Docket No. 06-121 (Further Notice of Proposed Rulemaking), 21 FCC Rcd 8834, 8838 ¶ 6 (2006) (urging commenters to “explain the effects, if any, that their ownership rule proposals will have on ownership of broadcast outlets by minorities, women and small businesses.”); see also Promoting Diversification of Ownership In the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, MB Docket No. 07-294, 23 FCC Rcd 5922, ¶ 2 (released March 5, 2008) (“Diversity Order”).

therefore continue to be relevant to their communities, and further the government's interest in diversity."<sup>12</sup>

Minority owners' asset values would increase substantially if AM stations could extend their signals using FM translators. The vast majority of minority-owned stations are on the AM band, and these stations tend to have inferior facilities. These initiatives would help cure this disparity in service that originated with the late entry of minorities into radio ownership, which was caused in significant part by regulatory barriers to entry.

Owing to societal discrimination that was facilitated by the Commission,<sup>13</sup> minority broadcasters entered the business 50 years later than other broadcasters. Therefore, minority broadcasters tended not to have access to FM stations or low dial position AM stations. In 2001, 5.9% of AM stations were minority owned; a minority owned station was 43% more likely to be an AM station than was a non-minority owned station. Only 3.9% of the low-band (540 kHz to 800 kHz) stations were minority owned; minorities were 36% less likely than non-minorities to own these desirable facilities. Further, 33.9% of minority owned AM stations operated between 1410-1600 kHz, and minorities were 19% more likely than non-minorities to own these generally less desirable high band facilities.<sup>14</sup> Examining station asset values, the Commission's Advisory Committee on Diversity for Communications in the Digital Age concluded that "the typical

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<sup>12</sup> NAB Petition, p. 3.

<sup>13</sup> For decades the Commission routinely and deliberately granted broadcast licenses to segregationist companies and colleges, thereby facilitating the exclusion of minorities from broadcast employment and ownership. See, e.g. Southland Television, 10 RR 699, recon. denied, 20 FCC 159 (1955) (holding that because Louisiana's movie theater segregation law was not inconsistent with the Communications Act, a segregationist movie theater owner could hold a television license). When the Commission started to include minorities in broadcast ownership, it misadministered the process. See generally Initial Comments of the Diversity and Competition Supporters in MB Docket 02-277 (2002 Biennial Broadcast Ownership Review) (filed January 2, 2003), pp. 19-35.

<sup>14</sup> See Advisory Committee on Diversity, FM Radio Recommendations, June 11, 2004 ("FM Recommendations"), pp. 2-4 (citing Kofi Ofori, "Radio Local Market Consolidation & Minority Ownership" (MMTC, March 2002)).

minority owned station is worth only about 30% of the value of the typical non-minority owned station.”<sup>15</sup>

Given these inherent disadvantages facing minority broadcasters, initiatives to enable AM stations to use FM translators to expand their coverage areas could not be more welcome. Such initiatives would do much to increase AM stations’ asset values, and thereby enhance minority broadcasters’ ability to raise capital and expand their holdings.<sup>16</sup>

## **II. Community Advisory Boards & Localism Outreach Activities**

The Commission seeks comment on how broadcasters may convene advisory boards to determine the needs and interests of their communities.<sup>17</sup> The Commission tentatively concludes that each licensee should convene a permanent advisory board made up of officials and other leaders from the service area of its broadcast station and seeks comment on this proposal.<sup>18</sup> However, the Commission also tentatively concludes that the same fundamental objectives can be achieved through other means, including regular, quarterly licensee meetings with a board of community advisors and improved access by the public to station decision makers.<sup>19</sup>

Localism outreach methods, such as community advisory boards, are content-neutral methods of ensuring that broadcasters are responsible to their communities of license. While we

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<sup>15</sup> See FM Recommendations at 2.

<sup>16</sup> To offset any unintended adverse impact on LPFM, the Commission should act promptly to repeal its outdated third adjacent channel restrictions, which operate as a classic market entry barrier of the type Congress sought to eliminate when it adopted Section 257 of the Communications Act, 47 U.S.C. § 257 (1996). Eliminating those outdated rules, long rendered irrelevant by advances in receiver technology, would free up sufficient FM spectrum to accommodate the needs of commercial AM stations and the needs of potential LPFM operators.

<sup>17</sup> Localism NPRM, 23 FCC Rcd at 1336 ¶ 26. The Commission specifically seeks comment on: “Will such community advisory boards be able to alert each broadcaster to issues that are important to its community of license? How should members of the advisory boards be selected or elected? Should the former ascertainment guidelines be a starting point to identify those various segments in the community with whom the licensees should consult? How can the advisory boards be composed so as to ensure that all segments of the community, including minority or underserved members of the community, would also have an opportunity to voice their concerns about local issues facing the area? How frequently should licensees be required to meet with these advisory boards?” Id.

<sup>18</sup> Id.

<sup>19</sup> Id. at ¶ 25.

agree that community advisory boards could promote both localism and diversity and could be an integral component of the Commission's localism efforts,<sup>20</sup> these measures work best on a marketwide basis, not when each licensee must create a separate advisory board. Very few small, local broadcast owners can afford to formally administer the permanent advisory boards proposed in the Localism NPRM.<sup>21</sup> While the ideal, formal advisory board could alert broadcasters to issues that are important to its community of license,<sup>22</sup> most new entrants, small broadcasters, and minority broadcasters do not have the time or the financial resources to assemble search committees for the selection or election of board members. It is inefficient and redundant for multiple broadcasters in the community to convene multiple advisory boards comprised of the same community leaders. A better use of broadcasters' and community time and resources would be to authorize quarterly market-wide community advisory meetings with community leaders that represent a cross-section of local interests.

Broadcasters should have some flexibility in determining their local outreach methods. The former ascertainment guidelines that required broadcasters to meet with community leaders from various segments in the community<sup>23</sup> could be a starting point when assembling formal or informal advisory boards. However, when assembling these boards, broadcasters should engage in genuine outreach efforts to sectors of the community with which they do not routinely interact in the normal course of business. In other words, it would not do for broadcasters to meet with

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<sup>20</sup> Id. at ¶ 26.

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> Id. at 1136 ¶ 26 n. 50 (citing Ascertainment of Community Problems by Broadcast Applicants, First Report and Order, 57 F.C.C. 2d 418, 442 (1976) ("Renewal Primer")) ("It stated that the requirement may be met by interviews with leaders of the following institutions and elements found in the community: agriculture, business, charities, civic, neighborhood and fraternal organizations, consumer services, culture, education, environment, government (local, county, state and federal), labor, military, minority and ethnic groups, organizations of and for the elderly, organizations of and for women, organizations of and for youth (including children) and students, professions, public safety, health and welfare, recreation, and religion"). These ascertainment guidelines were a content neutral method of ensuring broadcasters were responsible to their community of license.

the business leaders whose companies advertise on their station. Broadcasters must reach beyond the business sector and look for leaders in the civic, religious, and non-profit sectors that regularly serve the needs of the community, particularly the needs of minority groups that are typically poorly served by the broadcasting industry as a whole.<sup>24</sup>

### **III. Remote Station Operation & Voice Tracking**

The Commission seeks comment on whether television licensees should maintain a physical presence at each broadcasting facility during all hours of operation.<sup>25</sup> The reasoning behind this proposal is that requiring a physical presence “may increase the likelihood that each broadcaster will be capable of relaying critical life-saving information to the public” and “increase the ability of the station to provide information of a local nature to the community of license.”<sup>26</sup> Further, the Commission believes that practices such as voice-tracking “may diminish the presence of licensees in the communities and thus hinder their ability to assess the needs and interests of their local communities.”<sup>27</sup>

Many small and minority broadcasters have found voice tracking to be a necessary, cost-saving means of providing high-quality programming. The cost savings free up scarce funds for news and public service programming. While the Commission maintains that the proposals in

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<sup>24</sup> Similar to the sentiment of the Commission when formal ascertainment requirements were eliminated, composing community advisory boards should not be “an end in and of itself,” but should serve as a “tool to be used as an aid in the provision of programming responsive to the needs and problems of the community,” with the purpose of “foster[ing] relevant programming relating to community issues.” In re Deregulation of Radio, Report and Order, 84 F.C.C.2d 968, 993 (1981). Just as “the principal focus of ascertainment has been to uncover issues facing the community that go beyond those that might be discovered through the licensee’s ordinary contacts, which might be limited to, a rather narrow range of persons or groups,” so too should the focus of any community advisory program. Id. at 997.

<sup>25</sup> Localism NPRM, 23 FCC Rcd at 1337-38 ¶ 29. The Commission sought comment on whether radio licensees should maintain a physical presence at each radio broadcasting facility during all hours of operation in a separate proceeding. See Enhanced Disclosure Order, Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10390 ¶ 119 (2007).

<sup>26</sup> Localism NPRM, 23 FCC Rcd at 1337-38 ¶ 29.

<sup>27</sup> Id. at 1369 ¶ 111.

this localism proceeding are “designed to promote diversity by increasing and expanding broadcast ownership opportunities for minority- and women-owned businesses and small businesses,”<sup>28</sup> requiring these small broadcasters to maintain staff during all hours of the broadcast day would do just the opposite. Such requirements would force licensees that experience increased difficulties in generating revenue and retaining qualified talent to spread their limited resources even thinner.

#### **IV. Guidelines for Localism Programming Performance**

The Commission tentatively concludes that it should reintroduce specific procedural guidelines for the processing of renewal applications for stations based on their localism programming performance and seeks comment on issues it should consider in connection with the adoption of localism processing guidelines.<sup>29</sup> While many licensees commented on the amount of community oriented programming they broadcast,<sup>30</sup> others questioned the validity of these comments<sup>31</sup> and also suggested that the amount of programming was overstated.<sup>32</sup> In short, there are no identifiable or quantifiable standards as to what constitutes such programming or how the amount of programming is calculated. Nor is it clear how the Commission intends to enforce these standards.

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<sup>28</sup> Id. at 1326 ¶ 3.

<sup>29</sup> Id. at 1343, 1373 ¶¶ 40, 124. The Commission asked “should these guidelines be expressed as hours of programming per week or, as in the past, percentages of overall programming? Should the guidelines cover particular types of programming, such as local news, political, public affairs and entertainment, or simply generally reflect locally-oriented programming? What should the categories and amounts or percentages be? Should we adopt processing guidelines regarding specific types of locally-oriented programming to be aired at particular times of the day? Should the Commission create other renewal processing guidelines that give processing priority to stations that meet certain measurable standards? How should we define local programming? Must it be locally produced?” Id. at ¶ 124.

<sup>30</sup> Id. at 1338-40 ¶¶ 31-33.

<sup>31</sup> Id. at 1340 ¶ 34.

<sup>32</sup> Id. at 1341 ¶ 37.

Without reasonable guidelines as to what qualifies as “localism programming,” small and minority owners will be at a disadvantage compared to other broadcasters at renewal. Based on the comments submitted in the localism proceeding, there is evidence that stations with more employees<sup>33</sup> and more station revenues<sup>34</sup> are able to provide more locally-oriented programming. Small and minority broadcasters tend to have fewer employees and do not generate the amount of revenue larger stations generate. Therefore, imposing guidelines for localism performance without specific standards, or without considering the challenges faced by small and minority broadcasters, will result in a disproportionate adverse impact on these licensees.

#### **V. Main Studio Rule**

The Commission seeks comment on whether it should revert to its pre-1987 main studio rule in an effort to encourage broadcasters to produce locally originated programming, and on whether accessibility of the main studio increases interaction between the broadcast station and the community of service.<sup>35</sup> The main studio rule stems from Section 307(b) of the Communications Act and requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a *fair, efficient, and equitable* distribution of radio service to each of the same.”<sup>36</sup>

The proposed reversion to the main studio rule of the early 1980s appears to be neither fair, efficient, nor equitable for minority broadcasters. It would impose a greater disadvantage on broadcasters who entered the industry later and were thus unable to assemble clusters of

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<sup>33</sup> *Id.* at 1338 ¶ 31 citing Comments of WJTV/Media General (Oct. 29, 2004) at 1 (discussing a station that “weekly airs 24.5 hours of local news, using a staff of almost 50 employees dedicated to local newsgathering and production”).

<sup>34</sup> *Id.* at 1342 ¶ 38 citing Comments of the Donald McGannon Communication Research Center (Oct. 28, 2004) at 20-21 (stating that the provision of public affairs programming appears to be a function of station revenues).

<sup>35</sup> *Id.* at 1343-44 ¶ 41.

<sup>36</sup> 47 U.S.C. § 307(b) (emphasis added).

stations which each shared the same community of license. To quantify the disparate impact of the proposed new rule, a statistician engaged by MMTC is reviewing BIAfn's top 50 market radio cluster ownership data now. MMTC and ISBA will supplement these Comments shortly when his report is completed.

Respectfully submitted,

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