

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Priority Application Review for Broadcast Stations
that Provide Local Journalism or Other Locally
Originated Programming
MB Docket No. 24-14

NOTICE OF PROPOSED RULEMAKING

Adopted: January 10, 2024

Released: January 17, 2024

Comment Date: 30 days after date of publication in the Federal Register
Reply Comment Date: 60 days after date of publication in the Federal Register

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioners Carr and Simington
dissenting and issuing separate statements.

I. INTRODUCTION

1. In this Notice of Proposed Rulemaking (NPRM), we propose to prioritize processing
review of certain applications filed by commercial and noncommercial radio and television broadcast
stations that provide locally originated programming. Our goal is to provide additional incentive to
stations to provide programming that responds to the needs and interests of the communities they are
licensed to serve. In 2017, the Commission eliminated the rule that required broadcast stations to
maintain a main studio located in or near their community of license, as well as the associated
requirement that the main studio have program origination capability. We propose this processing
priority in order to further encourage radio and TV stations to serve their community of license with local
journalism or other locally originated programming. Such prioritization would be granted to renewal
applicants, as well as applicants for assignment or transfer of license, that certify they provide locally
originated programming, thereby advancing our efforts to promote localism and serve local communities
across the nation.

1 References to "local" programming in this docket are limited to programming produced consistent with the "local
market" and "locally originated" definitions that the Commission ultimately adopts in this proceeding. See infra
paras. 12-16. The term does not encompass content produced entirely outside of the broadcaster's service area,
regardless of the topics covered in the programming.

2 See, e.g., 47 CFR § 73.3539 (Application for renewal of license). See also FCC Form 3500, Schedule 303-S
(Application for Renewal of License for AM, FM, TV, Translator, or LPTV Station).

3 See, e.g., 47 CFR § 73.3540 (Application for voluntary assignment or transfer of control). See also FCC Forms
3500, Schedule 314 (Assignment of license), Schedule 315 (Transfer of control), Schedule 316 ("Short Form"
assignment or transfer application), and Schedule 345 (Application for Transfer of Control of Corporate Licensee or
Permittee or Assignment of License or Permit for an FM or TV Translator Station, or a Low Power TV Station).

II. BACKGROUND

2. One of a broadcaster's fundamental public service obligations is to provide programming that is responsive to the needs and interests of its community of license.⁴ The Communications Act requires the Commission to determine, in the case of applications for licenses, "whether the public interest, convenience, and necessity will be served by granting such application."⁵ The Commission has consistently interpreted this requirement to mean that licensees must air programming that serves their local community.⁶ The main studio and local program origination rules were originally adopted to ensure that broadcast stations fulfill their local service obligations.⁷ In furtherance of section 307(b) of the Communications Act of 1934, as amended (the Act), which 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,"⁸ each broadcast radio and television station is assigned to a community of license that it is obligated to serve. The main studio rule required stations to maintain the main studio in or near its community of license to facilitate interaction between the station and the local community it is licensed to serve.⁹ The Commission also required that the main studio have a "meaningful management and staff presence" to fulfill the main studio's function,¹⁰ and that the main studio be equipped with production and transmission facilities.¹¹

3. Locally originated programming was deemed an important element of a station's service obligations from the time location requirements for AM, FM, and TV broadcast stations were first adopted.¹² As the main studio played a key role in the origination of a broadcast station's programming, its location in the community helped to ensure that the station could participate in community activities, that community members could participate in live programs, and that community residents could more easily present complaints or suggestions to the station.¹³ The Commission reasoned that interaction

⁴ *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, Second Report and Order, 27 FCC Rcd 4535, 4537, para. 4 (2012), citing *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, 1091, para. 32 (1984) (*Commercial TV Deregulation Order*).

⁵ 47 U.S.C. § 309(a).

⁶ *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, para. 1 (2004).

⁷ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215, 3217-18, para. 29 (1987) (*1987 Main Studio and Program Origination Order*).

⁸ 47 U.S.C. §307(b).

⁹ *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425,12426, para 3 (2004).

¹⁰ *See Elimination of the Main Studio Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 4415, 4416-17, para. 4 (2017) (*Main Studio Elimination NPRM*), citing *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd 5024, 5026, para. 24 (1988) (*1988 Main Studio Program Origination Reconsideration Order*).

¹¹ *See Main Studio Elimination NPRM*, 32 FCC Rcd at 4416-17, para. 4. In 1987, the Commission deleted its rule requiring each broadcast station to originate more than 50 percent of its non-network programs from its main studio or other points within its community of license. *See 1987 Main Studio Program Origination Order*, 2 FCC Rcd at 3218-19, paras. 39-43 (1987).

¹² *See 1987 Main Studio Program Origination Order*, 2 FCC Rcd at 3217-18, para. 29, citing *Public Service Responsibility of Broadcast Licensees* (March 7, 1946) (the "Blue Book").

¹³ *See 1987 Main Studio Program Origination Order*, 2 FCC Rcd at 3217-18, para. 29. *See also Applications of the Tribune Company, Tampa, Florida, et. al.*, 19 FCC 100, 148 (1954) ("The accessibility of the broadcast station's

(continued....)

between the station and the community would help foster programming responsive to community needs and concerns.¹⁴

4. In 2017, however, the Commission eliminated the main studio rule and the associated requirements that the main studio have full-time management and staff present during normal business hours, and that it have program origination capability.¹⁵ The Commission found that technological changes have “rendered local studios unnecessary” as a means for viewers and listeners to contact or access their local station.¹⁶ The Commission noted that most community members communicate with stations via email, station websites, telephone, or other means, rather than visiting a main studio, and that public inspection files can now be viewed on the Commission’s Online Public Inspection File (OPIF) database.¹⁷ The Commission also found that there was no evidence that the physical location of a station’s main studio is the reason broadcasters are able to deliver content that meets the needs and interests of the local community.¹⁸

5. The elimination of the main studio rule and its associated requirements followed other, earlier steps taken by the Commission to reduce or eliminate regulations applicable to TV and radio broadcasters that were intended to reinforce the obligation of stations to provide programming responsive to community needs and interests. In its radio and television deregulation orders, the Commission eliminated its formal ascertainment and program log requirements and quantitative guidelines regarding the duration, type, and time of presentation of nonentertainment programming.¹⁹ While the Commission concluded generally that these requirements were no longer necessary or appropriate means to ensure station operation in the public interest, it reaffirmed the continuing obligation of all licensees to provide issue-responsive programming.²⁰

6. Currently, the Commission requires stations to prepare quarterly a list of programs that “have provided the most significant treatment of community issues.”²¹ The purpose of this requirement is to provide both the public and the Commission with information needed to monitor a licensee’s performance in meeting its public interest obligation of providing programming that is responsive to its

main studio may well determine in large part the extent to which the station (a) can participate and be an integral part of community activities, and (b) can enable members of the public to participate in live programs and present complaints or suggestions to the stations.”).

¹⁴ See *1987 Main Studio and Program Origination Order*, 2 FCC Rcd at 3217-18, para. 29.

¹⁵ *Elimination of the Main Studio Rule*, Report and Order, 32 FCC Rcd 8158 (2017) (*Main Studio Elimination Order*).

¹⁶ *Id.* at 8163, para. 9.

¹⁷ *Id.*

¹⁸ *Id.* at 8162, para. 8.

¹⁹ See *Deregulation of Radio*, 84 FCC 2d 968 (1981) (*Radio Deregulation Order*), recon. denied in part, 87 FCC 2d 797 (1981), aff’d in part and remanded in part, *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C.Cir.1983); *1984 TV Deregulation Order*, 98 FCC 2d 1076 (1984) (*Commercial TV Deregulation Order*), recon. denied, 104 FCC 2d 357 (1986), aff’d in part and remanded in part, *Action for Children’s Television v. FCC*, 821 F.2d 741 (D.C.Cir.1987).

²⁰ See, e.g., *1984 TV Deregulation Order*, 98 FCC 2d at 1091, para. 31 (“...the Commission’s involvement in the area of non-entertainment programming has always been driven by a concern that issues of importance to the community will be discovered and addressed in programming so that the informed public opinion, necessary in a functioning democracy, will be possible.”). See also *Deregulation of Radio*, 84 FCC 2d at 977, para. 24.

²¹ 47 CFR §§ 73.3526(e)(11)(i) (commercial broadcast stations) and 73.3527(e)(8) (noncommercial educational broadcast stations). See also *Radio Deregulation Order*, 84 FCC 2d at 998-99, para. 71; *Commercial TV Deregulation Order*, 98 FCC 2d at 1077, paras. 2-3.

community.²² Our current rules require full-power radio and TV and Class A TV broadcasters to post these issues/programs lists on the station's OPIF.²³ Further, as part of the broadcast station license renewal process, the Commission is required to find that "the station has served the public interest, convenience, and necessity" during its preceding license term.²⁴

III. DISCUSSION

7. To provide an additional incentive to stations to broadcast content responsive to the needs of the local community, particularly news and information, we propose to adopt a change in our application processing procedures that would benefit those radio and TV broadcasters that certify that they provide locally originated content. Specifically, when reviewing applications for renewal, transfer, or assignment of license, we propose to adopt a processing policy to prioritize evaluation of those applications filed by stations that certify that they provide locally originated programming. These applications would be the first to be reviewed, which would likely result in quicker action and, if the application is granted, quicker approval of these applications.

8. We tentatively conclude that our proposal to award priority application review to applicants that provide locally originated programming advances the Commission's longstanding policy goal of encouraging licensees to air programming that serves the needs and interests of their local community. We also tentatively conclude that the provision by a station of locally originated programming serves as a reasonable gauge of whether the station is serving the public interest by providing programming that is responsive to particular local needs.²⁵ In addition, by focusing on where the programming is created,²⁶ our proposal avoids having the Commission try to evaluate the content of a station's broadcasts to determine their local nature.²⁷

²² See *Standardized and Enhanced Disclosure Requirements for Television Broadcast Licensee Public Interest Obligations*, 15 FCC Rcd 19816, 19821, para. 13 (2000), citing *Commercial TV Deregulation Order*, 98 FCC 2d at 1076, 1107-11 (explaining the purpose of the issues/programs lists for commercial television).

²³ See 47 CFR §§ 73.3526(e)(11)(i) and 73.3527(e)(8).

²⁴ 47 U.S.C. § 309(k)(1). In addition, as a general matter, when a broadcast station seeks to renew or transfer its license, it must give public notice to its community to ensure that members of the community have an opportunity to file a petition to deny if they object to the station's application for renewal or transfer of license. See 47 CFR § 73.3580.

²⁵ See *Creation of a Low Power Radio Service*, Report and Order, 15 FCC Rcd 2205, 2262, para. 144 (2000) (*LPFM Report and Order*) (adopting a rule that favors the selection of LPFM applicants that pledge to provide locally originated programming) (subsequent history omitted).

²⁶ See *infra* Section II.B.2 for further discussion of the term "locally originated programming," including calls for comment on the value of content collected from local sources regardless of where the content producer may be located.

²⁷ See *Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19247, para. 98 (2000). In 2007, the Commission established a rebuttable presumption that the public interest would be served by waiving the Commission's rules that make LPFM stations secondary to subsequently authorized full-service stations if the LPFM station could demonstrate that it has regularly provided at least eight hours per day of locally originated programming. See *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21940-42, paras. 68-71 (2007). On review, the United States Court of Appeals for the D.C. Circuit concluded that the "presumption appears not to implicate the Commission's consideration of programming content as the Commission's reference to 'locally originating programming' refers under its rules to the geographic location of the production of programming, not the substantive content of the programs." *Nat'l Ass'n of Broad. v. FCC*, 569 F.3d 416, 427 (D.C. Cir. 2009). We also note that in both the Community Broadcasters Protection Act of 1999 (CBPA) and in the 2023 Low Power Protection Act, Congress required the Commission to adopt rules that would allow certain secondary LPTV stations to obtain primary

(continued....)

9. The Commission has recognized that programming does not have to be locally originated to have interest or value to audiences in any particular community and has suggested that locally originated content may not always be responsive to a community’s needs or interests.²⁸ But the corollary that some may read into those statements – that locally originated programming is not valuable enough to warrant Commission attention – goes too far. To the contrary, programming containing at least some locally sourced content appears quite likely to be responsive to local concerns and interests. We believe that the incentives behind the creation of local programming (including but not limited to financial incentives) tend to align local creators with the needs and interests of local audiences; evidence suggests that creators of local programming would be unlikely to expend time and financial resources on material that has little or no appeal to local listeners and viewers.²⁹ We also recognize that the line between “local” and “non-local” is not always a sharp one; broadcasters may “localize” a state, national, or international issue by providing local commentary or local expert explanations on the probable effect of the issue on people within the station’s signal contour.³⁰ Such content plainly also serves local needs and interests. We seek comment on these views.

10. Accordingly, to the degree that the *Main Studio Elimination Order* could be read to the contrary, we tentatively conclude that locally originated programming usually reflects needs, interests, circumstances, or perspectives that may be quite pertinent to that community and that production of local broadcast programming remains a key consideration. We also question whether the *Main Studio Elimination Order*’s predictive judgment – that the Commission’s action there would foster creation of more and better local content – has actually come to pass.³¹ We invite comment on these views and

interference protection if, among other things, they provided a certain amount of locally produced programming. See 47 U.S.C. § 336(f)(2)(A)(i)(II); Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023).

²⁸ See *Main Studio Elimination Order*, 32 FCC Rcd at 8169, para. 19.

²⁹ See, e.g., 2014 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 et al., MB Docket No. 14-50, Second Report and Order, 31 FCC Rcd 9864, para. 26 (2016) (“Competition within a local market motivates a broadcast television station to invest in better programming and to provide programming tailored to the needs and interests of the local community in order to gain market share. By thus strengthening its position in the local market, a television broadcaster also strengthens its ability to compete for advertising revenue and retransmission consent fees, an increasingly important source of revenue for many stations. As a result, viewers in the local market benefit from such competition among numerous strong rivals in the form of higher quality programming.”) Such an understanding also comports with the professional standards of broadcast newsrooms; like their programming counterparts throughout the station, broadcast journalists seek to gather and disseminate information that is relevant and interesting to their local audiences. See, e.g., Brian S. Brooks, Beverly J. Horvit, Daryl R. Moen, *News Reporting & Writing* 3, 8-9 (13th ed. 2020) (emphasizing in the first chapter of an academic textbook published by the Missouri School of Journalism that the key elements of news and journalism fundamentally include relevance and proximity to a local audience, and instructing, “Generally, people are more interested in and concerned about what happens close to home.”).

³⁰ See, e.g., New York Film Academy, “Localizing a National News Story,” (June 24, 2015), [https://www.nyfa.edu/student-resources/localizing-a-national-news-story/#:~:text=Adapting%20a%20national%20news%20story,concerns%20of%20their%20audience%20members](https://www.nyfa.edu/student-resources/localizing-a-national-news-story/#:~:text=Adapting%20a%20national%20news%20story,concerns%20of%20their%20audience%20members.). (“Adapting a national news story for local audiences has many benefits: It helps small-market journalists through slow news days, improves social media reach, engages local audiences with stories they’re already interested in, and allows reporters to learn more about the opinions and concerns of their audience members.”).

³¹ Recent anecdotal evidence is not encouraging in this regard. See, e.g., *Sinclair cuts TV news teams as it moves away from broadcast*, Baltimore Business Journal (May 26, 2023), <https://www.bizjournals.com/baltimore/news/2023/05/26/sinclair-cuts-local-teams-amid-reorganization.html>; *Sinclair-owned Medford station ends local news after 61 years*, Central Oregon Daily News (May 12, 2023), <https://centraloregondaily.com/ktvl-medford-sinclair-cbs-final-newscasts/>; *Gainesville’s CBS4 to cease local broadcasts, staff laid off by Sinclair*, The Gainesville Sun (May 2, 2023), <https://www.gainesville.com/story/news/2023/05/02/sinclair-shuts-down-local-gainesville-tv-station-lays-off->

(continued...)

request commenters to provide analysis and data in support of their positions. Under our proposal, licensees will continue to ultimately have the discretion to determine what mix of local and non-local programming will best serve the community. We tentatively conclude our proposal does not interfere with this discretion but merely offers an opportunity to licensees to obtain prioritized review of applications if they certify that they provide programming that is locally originated. We invite comment generally on these views.

A. Processing Priority

11. We tentatively conclude that our proposal would apply only to those applications for which processing is not immediately available because the application has a hold,³² petition to deny,³³ or other pending issue that requires further staff review. Applications without holds or other processing issues requiring additional staff review, also referred to here as “simple” applications, would be acted upon consistent with current routine processing procedures.³⁴ In contrast, applications that have holds related to the applicant’s failure to comply with Commission rules, or where petitions to deny or informal objections³⁵ have been filed, generally require additional staff research and processing time before they can be processed. The amount of time it takes to process these types of applications is often dependent upon the number of applications pending before the Commission at any given time, the complexity of the issues involved, and the availability of Commission staff to process the applications in light of other agency priorities. With respect to these more “complex” applications, we propose that the staff first would consider those that are filed together with a certification that the station provides programming that is locally originated. We tentatively conclude this approach will not slow the review of “simple” applications that are otherwise grantable but will create a priority system for more “complex” applications that require further staff attention. We will not delay the processing of a “simple” application while a more “complex” application with a certification is pending. We seek comment on this approach.

12. We propose that the decision by a licensee to elect to certify that the station meets the local programming guideline be purely voluntary, and we seek comment on this proposal. With respect to those licensees that either cannot, or choose not, to provide a certification, the Commission staff will process the licensee’s application pursuant to its normal procedures. Applications that do not include a certification will not be scrutinized or processed differently as a substantive matter than applications with a certification, other than the prioritization proposal discussed above.

13. While we do not propose at this time to extend our proposed application processing priority to modification applications,³⁶ waiver requests,³⁷ or requests for Special Temporary Authority

[employees/70174013007/](https://www.rtdna.org/news/local-news-staffing-doesnt-stick-to-the-trend), Recent research data suggests similar patterns. RTDNA Research, *Local News Staffing Doesn’t Stick to the Trend* (June 16, 2022), <https://www.rtdna.org/news/local-news-staffing-doesnt-stick-to-the-trend> (TV news employment down 6.3% in 2022; radio news staffing, already low, drops further).

³² The staff may place a “hold” on an application where a station licensee has failed to comply with a Commission rule. For example, stations are required to routinely file with the Commission information regarding station ownership (*see* 47 CFR § 73.3612) and to place information regarding political advertisements in the station’s online public inspection file (*see* 47 CFR §§ 73.1943, 73.3526(e)(6), 73.3527(e)(5)) and the Commission may place a hold on any application filed by the station if this information was not timely filed or placed in the public inspection file. *See also* 47 U.S.C. § 309 (requiring the Commission to determine that grant of an application would serve the public interest, convenience, and necessity).

³³ *See, e.g.*, 47 CFR § 73.3584 (Procedure for filing petitions to deny).

³⁴ *See, e.g.*, 47 CFR §§ 73.3584 (Staff consideration of applications requiring Commission action), 73.3562 (Staff consideration of applications not requiring action by the Commission).

³⁵ *See, e.g.*, 47 CFR § 73.3587 (Procedure for filing informal objections).

³⁶ *See, e.g.*, 47 CFR § 73.3538 (Application to make changes in an existing station).

³⁷ *See, e.g.*, 47 CFR § 1.3 (Suspension, amendment, or waiver of rules).

(STA),³⁸ we invite comment on whether these types of applications and requests should be included in our proposal herein. Based upon the experience of the Media's Bureaus licensing divisions, we note that the review time for these applications is generally more abbreviated than for renewals and transactions, and therefore such a prioritization may not be appreciably relevant. Despite this, should these, or other, kind of requests be treated in the same manner as renewal applications and applications for assignment and transfer of control for purposes of application processing priority?

14. Finally, we do not propose to offer priority application review, as outlined herein, to applications filed for radio translators or boosters or TV translators.³⁹ Booster stations do not originate programming and translator stations may only originate a very limited amount of programming so the underlying purpose of the proposed processing policy—i.e., to further incentivize broadcast licensees to serve community needs and interests through production of locally originated programming—would not apply.⁴⁰ Accordingly, we believe there would be minimal value, if any, in asking these stations to certify they provide locally originated programming content. As noted above, we tentatively conclude this approach will not slow the review of “simple” applications that are otherwise grantable. We seek comment on our proposals and findings.

B. Applications Eligible for Processing Priority

1. “Local” Market

15. Under our proposal, we would prioritize the review of applications filed by stations that provide locally originated programming. We invite comment on how we should define “local” for this purpose. The former main studio rule required each AM, FM, and television broadcast station to maintain a main studio that is located either: “(1) [w]ithin the station’s community of license;⁴¹ (2) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station’s community of license;⁴² or (3) [w]ithin twenty-five miles from the reference coordinates of the center of its community of license as described in § 73.208(a)(1).”⁴³ Should we define “locally originated” programming as programming originated within one or more of these geographic areas? One purpose of the former main studio rule was to ensure that the station complied with its local service obligations.⁴⁴ Would adopting a definition of the geographic area in which “locally originated” programming is created for purposes of priority application review in a manner similar to the geographic area used for the former main studio rule help ensure that this programming reflects the needs and interests of the local

³⁸ See, e.g., 47 CFR § 73.1635 (Special temporary authorizations (STA)).

³⁹ Translator and booster stations are operated for the purpose of retransmitting the programs and signals of a primary TV or radio station to expand the area where the primary station’s signal can be received and, with limited exceptions, do not originate programming. See 47 CFR §§ 74.701, 74.790, 74.1201, 74.1231. TV translators may originate only emergency warnings of imminent danger and, in addition, not more than thirty-seconds per hour of public service announcements and material seeking and acknowledging financial support necessary to the continued operation of the station. See 47 CFR § 74.790.

⁴⁰ See 47 CFR §§ 74.790 (permissible service of TV translator stations), 74.1231 (permissible service of FM translator and FM booster stations).

⁴¹ Each broadcast radio and television station is assigned to a community of license that it is obligated to serve. See 47 CFR §§ 73.622 (TV Table of Allotments), 73.202 (FM Table of Allotments), 73.24 and 73.37 (AM).

⁴² The principal community contour requirements for AM, FM, and full-power television broadcast stations are found in 47 CFR §§ 73.24(i), 73.315(a) and 73.685(a), respectively.

⁴³ See former 47 CFR § 73.1125(a)-(d) (June 1, 2017).

⁴⁴ See *Revitalization of the AM Radio Service*, First Report and Order, Further Notice of Proposed Rulemaking, and Notice of Inquiry, 30 FCC Rcd 12145, 12180, para. 88 (2015).

community? Should we instead define the “local” market as the station’s service contour?⁴⁵ As service contours generally encompass a larger geographic area than a station’s community of license or principal community contour, this definition would give the station more flexibility with respect to where local programming could be originated.⁴⁶ We invite comment generally on how to define the geographic area in which a program should be originated in order to qualify as “local” under our proposal herein. Should we define the local market differently for radio stations than for TV stations? Should we define the local market differently for low power TV stations than full power TV stations?

2. Locally “Originated” Programming

16. We also invite comment on how to define programming “originated” locally for purposes of qualifying for priority application review. We propose that any kind of activity involved in creating audio (radio) or video (TV) programming that occurs within the “local” market, as defined in this proceeding, would be sufficient. Local program origination could involve, for example, activities such as program scripting, recording (video or audio) at a studio or other location in the local market, or editing. Our proposed approach would include programming that contains video or audio recordings that were made at locations outside the local market, as long as the program also includes some other element of local creation.⁴⁷ For particular programming that contains content made at locations outside the local market, should we establish a minimum amount of required locally originated programming? What other kinds of local activities should qualify as local program origination?

17. We note that, in the case of mutually exclusive applications for new LPFM stations, the Commission’s rules favor the selection of applicants that pledge to provide at least eight hours of locally originated programming each day.⁴⁸ The LPFM rules define “local origination” as “the production of programming by the licensee within ten miles of the coordinates of the proposed transmitting antenna” and provides the following examples of locally originated programming: “licensee produced call-in shows, music selected and played by a disc jockey present on site, broadcasts of events at local schools,

⁴⁵ The service contour defines the area within which the station’s signal is protected from interference, and is an estimate of the station’s overall coverage. *See, e.g.*, 47 CFR §§ 73.182(d)(4) (AM), 73.622(e)(1) (full-power TV), 73.6010 (Class A TV), 74.792 (LPTV). *See also* <https://www.fcc.gov/media/radio/fm-and-tv-propagation-curves>. The principal community contour is the contour within which a station’s community of license should be located, while the community of license is the specific community to which the station is licensed.

⁴⁶ We note that when implementing the requirement in the CBPA that Class A TV stations broadcast programming “produced within the [station’s] market area” (47 U.S.C. § 336(f)(2)(A)(i)(II)), the Commission declined to allow programming to be produced anywhere within the station’s Designated Market Area (DMA). Instead, the Commission required that such programming be produced within the predicted Grade B contour of the Class A TV station. The Commission concluded that, because of the local nature of Class A TV service, defining the “market area” where Class A stations were required to produce programming as the smaller Grade B signal contour was more appropriate. *See In the Matter of Establishment of A Class A Television Service*, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 8244, 8253, para. 24 (2001) (*Class A MO&O*) (explaining that “the predicted Grade B signal contour of an LPTV station, which typically would not extend beyond 20-25 miles, is generally smaller than the DMA, which normally encompasses several counties. In some cases, different communities within a DMA might be served by different Class A stations. Given the disparity in size and the local nature of Class A service, defining a Class A station’s “market area” as the Grade B signal contour rather than the much larger DMA is more appropriate”).

⁴⁷ *See, e.g., Creation of a Low Power Radio Service*, Memorandum Opinion and Order on Reconsideration, 15 FCC Rcd 19208, 19246-47, para. 98 (2000) (clarifying that, under the point system for resolving mutual exclusivity among LPFM applicants, an LPFM station may claim a point for local origination based on coverage of a high school away game played more than 10 miles away, so long as the production involves facilities located within a 10-mile radius of the antenna). *See also Creation of a Low Power Radio Service*, Second Report and Order and Further Notice of Proposed Rulemaking, 20 FCC Rcd 6763, 6767, para. 10 (2005) (clarifying that LPFM programming that is produced outside of the local market and does not involve any local production facilities does not qualify as locally originated programming).

⁴⁸ *See* 47 CFR § 73.872(b)(2).

and broadcasts of musical performances at a local studio or festival, whether recorded or live.”⁴⁹ We propose that these kinds of programs and activities would qualify as locally originated programming for purposes of our proposed priority application review, and invite comment on this proposal. Are there other examples of locally originated programming we should provide?

18. We note that, in the LPFM context for resolving mutually exclusive applications, the rules require the locally originated programming to be produced by the licensee.⁵⁰ We do not propose to adopt a similar requirement for this priority application review proposal. Thus, we propose that the locally originated content can be produced by a third party that is not the licensee. We invite comment on this approach.

19. The LPFM rules further provide that local origination “does not include the broadcast of repetitive or automated programs or time-shifted recordings of non-local programming whatever its source.”⁵¹ Should we exclude these kinds of programs and/or time-shifted recordings from the definition of local programming for purposes of priority application review? In addition, the LPFM rules provide that “local origination does not include a local program that has been broadcast twice, even if the licensee broadcasts the program on a different day or makes small variations in the program thereafter.”⁵² In adopting this restriction for LPFM, the Commission noted that local origination is a “central virtue” of that service and that there was “room for abuse” if repetitious, automated programs could count as locally originated.⁵³ Should we adopt this same restriction on repetition of locally originated programming for purposes of priority application review? With respect to television stations, should we define “locally originated programming” for purposes of priority application review as programming containing simultaneous video and audio programming where the audio portion of the programming directly relates to the video portion of the program? This would mean that, for television applicants, video-only⁵⁴ or audio-only programming would not count for purposes of obtaining priority application review. For television stations, would this restriction help ensure that locally originated programming contains the type of television services viewers expect TV stations to provide?⁵⁵

C. Certification

20. We propose to provide priority staff review to licensees that certify that the station(s) provides on average at least three hours per week of locally originated programming. We note that, to be eligible for Class A status, the CBPA required that low power TV stations, during the 90 days preceding the date of enactment of the statute, broadcast an average of at least three hours per week of programming produced within the “market area” served by the station.⁵⁶ Should we adopt the same three-hour guideline for purposes of priority staff review? We note that under a three-hour per week criteria, stations

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Creation of a Low Power Radio Service*, Third Report and Order and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 21912, 21922-23, para. 24 (2007).

⁵⁴ One example of such video-only programming would be a television station that carried a channel showing only video from a traffic camera. *See, e.g., Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Report and Order, MB Docket 03-185, FCC 23-58 (rel. July 20, 2023) at paras. 40-41 (requiring that FM6 LPTV stations provide at least one stream of synchronized video and audio programming on the ATSC 3.0 portion of the spectrum at any time the station is operating).

⁵⁵ *Id.* at para. 40.

⁵⁶ *See supra* note 31. Class A stations must continue to meet these requirements to retain Class A status. *See* 47 CFR § 73.6001(c).

on the air 24 hours per day seven days each week that air locally originated programming for just two minutes at the top of each hour would exceed a three-hour guideline.⁵⁷ Should the guideline number be greater or less than three hours? Should it be prorated for stations that are on the air less than 24 hours per day? Should the amount be the same for radio and television stations? Should it be the same for commercial and non-commercial stations? Should applicants be required to have met the required amount of hours per week for a minimum number of days or weeks prior to filing of the application? If so, what would be an appropriate minimum number of days or weeks? As in the CBPA, would 90 days prior to the filing of the application be an appropriate timeframe? Should applicants also be required to continue to meet the required amount of hours per week while the subject application is pending? Should applicants be required to re-certify compliance while the application is pending? Should applicants also be required to continue to meet the required amount of hours per week for a minimum number of days or weeks after the application is granted? If so, what would be an appropriate minimum number of days or weeks?

21. We propose that the Media Bureau add a question to each FCC application form for which expedited processing would be made available (*e.g.*, each TV/radio renewal, transfer, and assignment application form) asking the licensee whether it certifies, under penalty of perjury, that the station(s) provides at least three hours per week of locally originated programming, consistent with the criteria adopted in this proceeding. We invite comment on this approach. We propose that, in the case of applications involving multiple stations (such as an application proposing the transfer or assignment of multiple stations), priority review be available only if the applicant certifies that every station included in the application meets the priority processing criteria, and invite comment on this proposal. Should we require the applicant to provide any additional information that would permit the Commission to review the certification, such as identifying the programs the applicant claims are locally originated?

D. Digital Equity and Inclusion

22. Finally, the Commission, as part of its continuing effort to advance digital equity for all,⁵⁸ including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations⁵⁹ and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, we seek comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority.

IV. PROCEDURAL MATTERS

23. *Ex Parte Rules - Permit-But-Disclose.* The proceeding this *NPRM* initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.⁶⁰

⁵⁷ 2 minutes/hour x 24 hours/day = 48 minutes/day x 7 days/week = 336 minutes/week or 5.60 hours/week.

⁵⁸ Section 1 of the Communications Act of 1934, as amended, provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. § 151.

⁵⁹ The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. *See* Exec. Order No. 13985, 86 Fed. Reg. 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

⁶⁰ 47 CFR §§ 1.1200 *et seq.*

Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

24. *Filing Requirements—Comments and Replies.* Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing.
- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
 - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, D.C. 20554.
- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID-19.⁶¹
- During the time the Commission's building is closed to the general public and until further notice, if more than one docket or rulemaking number appears in the caption of a proceeding, paper filers need not submit two additional copies for each additional docket or rulemaking number; an original and one copy are sufficient.

25. *Regulatory Flexibility Act.* The Regulatory Flexibility Act of 1980, as amended (RFA),⁶² requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings,

⁶¹ See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, 35 FCC Rcd 2788 (2020).

⁶² See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.”⁶³ Accordingly, we have prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the possible impact of the rule changes proposed in this *NPRM* on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the *NPRM* indicated on the first page of this document and must have a separate and distinct heading designating them as responses to the IRFA.

26. *Providing Accountability Through Transparency Act.* The Providing Accountability Through Transparency Act requires each agency, in providing notice of a rulemaking, to post online a brief plain-language summary of the proposed rule.⁶⁴ Accordingly, the Commission will publish the required summary of this Notice of Proposed Rulemaking/Further Notice of Proposed Rulemaking on <https://www.fcc.gov/proposed-rulemakings>.

27. *Paperwork Reduction Act.* This document proposes new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens and pursuant to the Paperwork Reduction Act of 1995, Public Law 104-13, invites the general public and the Office of Management and Budget (OMB) to comment on these information collection requirements. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

28. *People with Disabilities.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

29. *Additional Information.* For additional information on this proceeding, contact Kim Matthews, Kim.Matthews@fcc.gov, of the Policy Division, Media Bureau, (202) 418-2154.

V. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1, 2, 4(i), 4(j), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, and 309, this *Notice of Proposed Rulemaking* IS ADOPTED.

31. IT IS FURTHER ORDERED that the Office of the Secretary, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Act Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁶³ *See id.* § 605(b).

⁶⁴ 5 U.S.C. § 553(b)(4). The Providing Accountability Through Transparency Act, Pub. L. No. 118-9 (2023), amended section 553(b) of the Administrative Procedure Act.

APPENDIX A
Proposed Rules

NEW RULE LANGUAGE IS IN BOLD

The Federal Communications Commission proposes to amend 47 CFR part 73 to read as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The Authority citation for Part 73 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

2. Section 73.3514 is amended to add paragraph (c) to read as follows:

§ 73.3514 Content of Applications

(a) Each application shall include all information called for by the particular form on which the application is required to be filed, unless the information called for is inapplicable, in which case this fact shall be indicated.

(b) The FCC may require an applicant to submit such documents and written statements of fact as in its judgment may be necessary. The FCC may also, upon its own motion or upon motion of any party to a proceeding, order the applicant to amend the application so as to make it more definite and certain.

(c) Applicants for renewal, assignment, or transfer of license for commercial and noncommercial AM, FM, and TV broadcast stations may request priority staff review of such applications if the applicant certifies that the station provides an average of at least three hours per week of locally originated programming. This paragraph does not apply to TV translator or radio translator or booster stations.

(1) For purposes of this provision, locally originated programming is programming produced either

(i) [w]ithin the station's community of license;

(ii) [a]t any location within the principal community contour of any AM, FM, or TV broadcast station licensed to the station's community of license; or

(iii) [w]ithin 25 miles from the reference coordinates of the center of its community of license as described in § 73.208(a)(1).

(2) For purposes of this provision, locally originated programming is defined as

(i) programming that was created within the area defined in paragraph (c)(1).

Programming that contains video or audio recordings that were made at locations outside the area defined in paragraph (c)(1) qualifies as locally originated programming as long as the program also includes some other element of local creation that takes place in the area defined in paragraph (c)(1), including program

scripting, recording (video or audio) at a studio or other location in the local market, editing, or other activity.

(ii) Locally originated programming does not include: the broadcast of repetitive or automated programs or time-shifted recordings of non-local programming whatever its source; a local program that has been broadcast twice, even if the licensee broadcasts the program on a different day or makes small variations in the program thereafter. In addition, with respect to television stations, locally originated programming is programming containing simultaneous video and audio programming where the audio portion of the programming directly relates to the video portion of the program.

APPENDIX B

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),¹ the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) concerning the possible significant economic impact on small entities by the policies and rules proposed in the *Notice of Proposed Rulemaking (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided on the first page of the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for, and Objectives of, the Proposed Rules

2. In this *NPRM*, we propose to prioritize processing review of certain applications filed by commercial and noncommercial radio and television broadcast stations that provide locally originated programming. Our goal is to provide additional incentive to stations to provide programming that responds to the needs and interests of the communities they are licensed to serve. In 2017, the Commission eliminated the rule that required broadcast stations to maintain a main studio located in or near their community of license, as well as the associated requirement that the main studio have program origination capability. We propose this processing priority in order to further encourage radio and TV stations to serve their community of license with local journalism or other locally originated programming. Such prioritization would be granted to renewal applicants, as well as applicants for assignment or transfer of license, that certify they provide locally originated programming, thereby advancing our efforts to promote localism and serve local communities across the nation.

3. The *NPRM* also seeks comment on the Commission's proposal to exclude television translator and radio translator and booster stations from the proposed priority application review proposal and on whether its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

B. Legal Basis

4. The proposed action is authorized pursuant to sections 1, 2, 4(i), 4(j), 303, 307, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 303, 307, and 309.

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁴ The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."⁵ In addition, the term "small business" has the

¹ See 5 U.S.C. § 603. The RFA, 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

² See 5 U.S.C. § 603(a).

³ See *id.*

⁴ *Id.* § 603(b)(3).

⁵ *Id.* § 601(6).

same meaning as the term “small business concern” under the Small Business Act.⁶ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁷

6. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe, at the outset, three broad groups of small entities that could be directly affected herein.⁸ First, while there are industry specific size standards for small businesses that are used in the regulatory flexibility analysis, according to data from the Small Business Administration’s (SBA) Office of Advocacy, in general a small business is an independent business having fewer than 500 employees.⁹ These types of small businesses represent 99.9% of all businesses in the United States, which translates to 33.2 million businesses.¹⁰

7. Next, the type of small entity described as a “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”¹¹ The Internal Revenue Service (IRS) uses a revenue benchmark of \$50,000 or less to delineate its annual electronic filing requirements for small exempt organizations.¹² Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of \$50,000 or less according to the registration and tax data for exempt organizations available from the IRS.¹³

8. Finally, the small entity described as a “small governmental jurisdiction” is defined generally as “governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”¹⁴ U.S. Census Bureau data from the 2017 Census

⁶ *Id.* § 601(3) (incorporating by reference the definition of “small-business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁷ 15 U.S.C. § 632.

⁸ *See* 5 U.S.C. § 601(3)-(6).

⁹ *See* SBA, Office of Advocacy, “What’s New With Small Business?,”

<https://advocacy.sba.gov/wp-content/uploads/2023/03/Whats-New-Infographic-March-2023-508c.pdf>. (Mar. 2023)

¹⁰ *Id.*

¹¹ *See* 5 U.S.C. § 601(4).

¹² The IRS benchmark is similar to the population of less than 50,000 benchmark in 5 U.S.C § 601(5) that is used to define a small governmental jurisdiction. Therefore, the IRS benchmark has been used to estimate the number of small organizations in this small entity description. *See* Annual Electronic Filing Requirement for Small Exempt Organizations – Form 990-N (e-Postcard), “Who must file,” <https://www.irs.gov/charities-non-profits/annual-electronic-filing-requirement-for-small-exempt-organizations-form-990-n-e-postcard>. We note that the IRS data does not provide information on whether a small exempt organization is independently owned and operated or dominant in its field.

¹³ *See* Exempt Organizations Business Master File Extract (EO BMF), “CSV Files by Region,” <https://www.irs.gov/charities-non-profits/exempt-organizations-business-master-file-extract-EO-bmf>. The IRS Exempt Organization Business Master File (EO BMF) Extract provides information on all registered tax-exempt/non-profit organizations. The data utilized for purposes of this description was extracted from the IRS EO BMF data for businesses for the tax year 2020 with revenue less than or equal to \$50,000 for Region 1-Northeast Area (58,577), Region 2-Mid-Atlantic and Great Lakes Areas (175,272), and Region 3-Gulf Coast and Pacific Coast Areas (213,840) that includes the continental U.S., Alaska, and Hawaii. This data does not include information for Puerto Rico.

¹⁴ *See* 5 U.S.C. § 601(5).

of Governments¹⁵ indicate there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States.¹⁶ Of this number, there were 36,931 general purpose governments (county,¹⁷ municipal, and town or township¹⁸) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts¹⁹ with enrollment populations of less than 50,000.²⁰ Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of “small governmental jurisdictions.”²¹

9. *Television Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting images together with sound.”²² These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public.²³ These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having \$41.5 million or less in annual receipts as small.²⁴ 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the

¹⁵ See 13 U.S.C. § 161. The Census of Governments survey is conducted every five (5) years compiling data for years ending with “2” and “7”. See also Census of Governments, <https://www.census.gov/programs-surveys/cog/about.html>.

¹⁶ See U.S. Census Bureau, 2017 Census of Governments – Organization Table 2. Local Governments by Type and State: 2017 [CG1700ORG02], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. Local governmental jurisdictions are made up of general purpose governments (county, municipal and town or township) and special purpose governments (special districts and independent school districts). See also tbl.2. CG1700ORG02 Table Notes_Local Governments by Type and State_2017.

¹⁷ See *id.* at tbl.5. County Governments by Population-Size Group and State: 2017 [CG1700ORG05], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 2,105 county governments with populations less than 50,000. This category does not include subcounty (municipal and township) governments.

¹⁸ See *id.* at tbl.6. Subcounty General-Purpose Governments by Population-Size Group and State: 2017 [CG1700ORG06], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 18,729 municipal and 16,097 town and township governments with populations less than 50,000.

¹⁹ See *id.* at tbl.10. Elementary and Secondary School Systems by Enrollment-Size Group and State: 2017 [CG1700ORG10], <https://www.census.gov/data/tables/2017/econ/gus/2017-governments.html>. There were 12,040 independent school districts with enrollment populations less than 50,000. See also tbl.4. Special-Purpose Local Governments by State Census Years 1942 to 2017 [CG1700ORG04], CG1700ORG04 Table Notes_Special Purpose Local Governments by State_Census Years 1942 to 2017.

²⁰ While the special purpose governments category also includes local special district governments, the 2017 Census of Governments data does not provide data aggregated based on population size for the special purpose governments category. Therefore, only data from independent school districts is included in the special purpose governments category.

²¹ This total is derived from the sum of the number of general purpose governments (county, municipal and town or township) with populations of less than 50,000 (36,931) and the number of special purpose governments - independent school districts with enrollment populations of less than 50,000 (12,040), from the 2017 Census of Governments - Organizations tbls. 5, 6 & 10.

²² See U.S. Census Bureau, 2017 NAICS Definition, “515120 Television Broadcasting,” <https://www.census.gov/naics/?input=515120&year=2017&details=515120>.

²³ *Id.*

²⁴ See 13 CFR § 121.201, NAICS Code 515120 (as of 10/1/22 NAICS Code 516120).

entire year.²⁵ Of that number, 657 firms had revenue of less than \$25,000,000.²⁶ Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

10. As of March 31, 2023, there were 1,375 licensed commercial television stations.²⁷ Of this total, 1,282 stations (or 93.2%) had revenues of \$41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Media Access Pro Television Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2023, there were 383 licensed noncommercial educational (NCE) television stations, 381 Class A TV stations, and 1,887 LPTV stations.²⁸ The Commission, however, does not compile and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

11. *Radio Broadcasting.* This industry is comprised of “establishments primarily engaged in broadcasting aural programs by radio to the public.”²⁹ Programming may originate in the station's own studio, from an affiliated network, or from external sources.³⁰ The SBA small business size standard for this industry classifies firms having \$41.5 million or less in annual receipts as small.³¹ U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year.³² Of this number, 1,879 firms operated with revenue of less than \$25 million per year.³³ Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

²⁵ See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515120, <https://data.census.gov/cedsci/table?y=2017&n=515120&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>.

²⁶ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

²⁷ *Broadcast Station Totals as of March 31, 2023*, Public Notice, DA 23-300 (rel. April 6, 2023) (*March 2023 Broadcast Station Totals PN*), <https://docs.fcc.gov/public/attachments/DA-23-300A1.pdf>.

²⁸ March 2023 Broadcast Station Totals PN.

²⁹ See U.S. Census Bureau, *2017 NAICS Definition, “515112 Radio Stations,”* <https://www.census.gov/naics/?input=515112&year=2017&details=515112>.

³⁰ *Id.*

³¹ See 13 CFR § 121.201, NAICS Code 515112 (as of 10/1/22 NAICS Code 516110).

³² See U.S. Census Bureau, *2017 Economic Census of the United States, Selected Sectors: Sales, Value of Shipments, or Revenue Size of Firms for the U.S.: 2017*, Table ID: EC1700SIZEREVFIRM, NAICS Code 515112, <https://data.census.gov/cedsci/table?y=2017&n=515112&tid=ECNSIZE2017.EC1700SIZEREVFIRM&hidePreview=false>. We note that the US Census Bureau withheld publication of the number of firms that operated for the entire year.

³³ *Id.* The available U.S. Census Bureau data does not provide a more precise estimate of the number of firms that meet the SBA size standard. We note that the U.S. Census Bureau withheld publication of the number of firms that operated with sales/value of shipments/revenue in the individual categories for less than \$100,000, and \$100,000 to \$249,999 to avoid disclosing data for individual companies (see Cell Notes for the sales/value of shipments/revenue in these categories). Therefore, the number of firms with revenue that meet the SBA size standard would be higher than noted herein. We also note that according to the U.S. Census Bureau glossary, the terms receipts and revenues are used interchangeably, see https://www.census.gov/glossary/#term_ReceiptsRevenueServices.

12. The Commission has estimated the number of licensed commercial radio stations to be 11,153 (4,472 commercial AM stations and 6,681 commercial FM stations).³⁴ Of this total, 11,151 stations (or 99.98 %) had revenues of \$41.5 million or less in 2022, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on April 7, 2023, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2023, the number of licensed noncommercial radio stations to be 4,219, and the number of Low Power FM Stations (LPFM) to be 1,999.³⁵ The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

13. We note that in assessing whether a business entity qualifies as small under the above definition, business control affiliations³⁶ must be included. This estimate, therefore, likely overstates the number of small entities that might be affected, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. In addition, another element of the definition of "small business" is that the entity not be dominant in its field of operation. The Commission is unable at this time to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply does not exclude any radio station from the definition of a small business on this basis and therefore may be over-inclusive to that extent. Also, an additional element of the definition of "small business" is that the entity must be independently owned and operated. The Commission notes that it is difficult at times to assess these criteria in the context of media entities and the estimates of small businesses to which they apply may be over-inclusive to this extent.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

14. We expect that the proposed rules set forth in the *NPRM* will impose new or additional filing, recordkeeping and reporting requirements for small and other entities. We note, however, that while the proposed rules will create additional compliance requirements, the *NPRM* also proposes that the decision by a licensee to elect to certify that the station meets the local programming guideline be purely voluntary. With respect to those small or other licensees that either cannot, or choose not, to provide a certification, the Commission staff will process the licensee's application pursuant to its normal procedures.

15. The *NPRM* proposes to provide priority in terms of processing review to applications filed by commercial and noncommercial radio and television broadcast stations that certify that they provide on average at least three hours per week of locally originated programming. The *NPRM* also seeks comment on whether applicants should also be required to re-certify compliance while the subject application is pending, and whether they should be required to continue to meet the required amount of hours per week for a minimum number of days or weeks after the application is granted. We propose that the Media Bureau add a question to each FCC application form for which expedited processing would be made available (e.g., each TV/radio renewal, transfer, and assignment application form) asking the licensee whether it certifies, under penalty of perjury, that the station(s) provides at least three hours per week of locally originated programming, consistent with the criteria adopted in this proceeding. We also propose that, in the case of applications involving multiple stations, priority review be available only if

³⁴ See *March 2023 Broadcast Station Totals PN*.

³⁵ See *March 2023 Broadcast Station Totals PN*.

³⁶ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has power to control both." 13 CFR § 121.103(a)(1).

the applicant certifies that every station included in the application meets the priority processing criteria. We invite comment on these proposals. We also seek comment on whether we should require applicants to provide any additional information that would permit the Commission to review the certification, such as identifying the programs the applicant claims are locally originated.

16. We propose that licensees that request priority staff review of an application(s) be required to certify, under penalty of perjury, that the station meets the criteria adopted in this proceeding. The *NPRM* seeks comment on whether we should require applicants to provide any additional information that would permit the Commission to review the certification, such as identifying the programs the applicant claims are locally originated. We expect that the information we receive in the comments will help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may emerge as a result of the potential changes discussed in the *NPRM*.

E. Steps Taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”³⁷

18. The *NPRM* seeks comment generally on its proposal to provide priority staff review of applications filed by stations that certify that they provide an average of at least three hours per week of locally originated programming. The *NPRM* invites comment on whether this guideline is appropriate. We also invite comment on all the proposed approaches and on any alternatives, which will provide the Commission additional information on possible steps that can be taken to minimize any significant impact on small entities.

19. In an effort to minimize significant economic impact on small entities as a result of the proposals that are ultimately adopted, the *NPRM* makes clear that a station’s participation in certifying that it meets the qualifications for priority application review is purely voluntary. A station may choose whether it wants to provide the additional information to qualify for prioritized review of its application and, should it decline to, would have its application processed pursuant to its normal procedures. Applications that do not include a certification will not be scrutinized or processed differently as a substantive matter than applications with a certification, other than the prioritization proposal discussed in the *NPRM*.

20. Finally, we do not propose to offer priority application review, as outlined herein, to applications filed for radio translators or boosters or TV translators. Booster stations do not originate programming and translator stations may only originate a very limited amount of programming so the underlying purpose of the proposed processing policy—i.e., to further incentivize broadcast licensees to serve community needs and interests through production of locally originated programming—would not apply. Accordingly, we believe there would be minimal value, if any, in asking these stations to certify they provide locally originated programming. We tentatively conclude that our prioritized processing approach will not slow the review of “simple” applications that are otherwise grantable.

³⁷ 5 U.S.C. § 603(c)(1)-(c)(4).

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

21. None.

**STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL**

Re: Priority Application Review for Broadcast Stations that Provide Local Journalism or *Other Locally Originated Programming*; Notice of Proposed Rulemaking; MB Docket No. 24-14

This is an initiative to support local journalism. Local news is essential. It helps us make decisions about our lives, our communities, and our country.

For decades, the Federal Communications Commission has supported the development of local news and content through the distribution of broadcast licenses under the Communications Act. These local licenses are powerful. In exchange for access to the public airwaves, the law has long required that they broadcast in a manner that serves the interest of their community of license.

Here, we propose to sweeten the incentives for locally-originated news and content. After all, having the capacity to develop programming locally is important. It adds to the diversity of voices on our airwaves and strengthens the ability of stations to meet their obligation under the law to serve their community of license. Plus, without it, stations can just pump in programming from the largest metropolitan areas and miss opportunities for content creation in their own backyard. So in this rulemaking we build on the time-tested model used with the Children's Television Act and propose a first-in-class processing review for renewals when a station can certify that it provides locally-originated programming. This is a tried-and-true incentive-based system that creates no new obligations, but instead puts in place a structure to better support the capacity for local news and content—and the local journalism that is absolutely vital for our communities and our democracy.

**DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR**

Re: *Priority Application Review for Broadcast Stations that Provide Local Journalism or Other Locally Originated Programming*, Notice of Proposed Rulemaking, MB Docket No. 24-14

This one is a head scratcher.

My colleagues wanted to seek comment on prioritizing the FCC's processing of applications filed by broadcasters that provide locally originated programming. I was happy to support them and their proposal. I am not sure the idea will make much difference in the real world, but I don't see how it can do much harm. So I looked forward to offering my colleagues my support.

But then things went sideways fairly quickly. When I read the item, I was surprised to learn that it did something entirely different and separate from just proposing the prioritization of locally originated programming. It also raised the FCC's 2017 decision to repeal the main studio rule and determined—even though this is a Notice of Proposed Rulemaking with no evidentiary record before the agency—that this 2017 decision was an error. Of course, there is no basis for asserting that conclusion here, but more fundamentally there is no reason to get into that rule at all in this Notice. There are plenty of ways that the FCC can ground its prioritization proposal in the agency's long-standing and statutorily-grounded commitment to localism.

So I suggested a few edits to my colleagues along those lines. Let's cut back on the discussion of the main studio rule, which we don't need to get into here, and then move forward together with the localism proposal. After all, the Notice does not propose to reinstate the main studio rule, so dialing back the discussion seems like low hanging fruit. These changes represented the types of edits in service of finding common ground that had become common at the agency in recent years.

But, surprisingly, I was told that these edits were a no go. My colleagues were only interested in moving forward with the localism proposal if they could also cast aspersion on the separate main studio rule along the way. Odd. That's their choice, of course, but it is not one that I support. It also introduces unnecessary litigation risk. How can the FCC ground its localism proposal in the FCC's record-less conclusion that the 2017 main studio repeal was an error while simultaneously not proposing to reinstate that rule? Anyways, that will be for my colleagues to figure out.

For my part, I hope that this episode is just an isolated hiccup in our otherwise good working relationship. I will certainly work hard to find common ground with my colleagues on the next item. I hope that they reciprocate my willingness.

**DISSENTING STATEMENT OF
COMMISSIONER NATHAN SIMINGTON**

Re: *Priority Application Review for Broadcast Stations that Provide Local Journalism or Other Locally Originated Programming*; Notice of Proposed Rulemaking; MB Docket No. 24-14

Washington D.C., perhaps because it is full of lawyers who are frustrated writers, is replete with aphoristic language and metaphorical imagery. We inhabit a land of stalking horses and trial balloons; open doors and ropes on which to push. Yet, for me, the language that this item recollects is that of Chicagoan Emily Nicklin, the first female partner to serve on the Kirkland & Ellis executive committee in the mid-1980s. Emily described other partners at the firm as “wolves in wolves’ clothing”—meaning, presumably, that they lacked the decency or even wherewithal to hide their ambitions or aggression. A good thing, perhaps, when it comes to counsel! Less so when it comes to nominally public-minded regulation.

Commission leadership has clothed recent regulatory revanchism in broadcast in the language of localism, and this item is no different. It purports to serve localism by providing an incentive to broadcasters to create or retain sources of “locally-originated programming.” If broadcasters wish to have their broadcast license applications fast-tracked,—that is, timely processed—and those applications are otherwise encumbered by a hold, petition to deny, or “other processing issue” (left to the staff’s discretion), then staff will timely act on the application. While the language of the item suggests that this means that broadcasters with locally-originated programming have a leg up, what it *actually* means is that any broadcaster who originates news for Market A from a studio in Market B might now have any application—at least for which a “processing issue” credibly can be discovered or manufactured—slowed. This is a collateral attack on the Commission’s elimination of the Main Studio Rule, and the item all but says so.

But, does it serve localism? Well, I guess truth will out. If, as it turns out, local broadcasters with locally-originated programming, per the item’s definition, pour in to thank the Commission for its leadership in correcting a longstanding issue with application processing time, I will happily admit my mistake, eat humble pie at an Open Meeting, and may even vote to approve the final order. Or had an actual shot clock system been proposed instead of an approach to application processing that represents a flexible vacuity meant to arm the political opponents of broadcasters, there might have been some reason to support the item, and perhaps some commenters will agree. Instead, what I think more likely is that broadcasters will come in worried, as I am, about weaponization of application processing, and may even demonstrate by a review of application processing times that this item, unlike a refresh of the vMVPD record, is an answer to a question that no one asked.

Yet again, when it comes to broadcast, the Commission has forgotten its shearling coat—it is a wolf in wolf’s clothing. And when it comes to wolves, best not to answer the door. I dissent.