



Ensuring that policymakers understand the impact of their actions on the Native American population is critical to NPM's efforts. With respect to the instant proceeding, NPM regrets that none of the field hearings were conducted on a Native American reservation or concerned issues specific to Indian Country, and thus submits these Comments to address that void. NPM urges the Commission to recognize and address the unique problems that affect Native radio stations and their ability to service local communities, while complying with FCC mandates.

Native nations, as sovereign governments engaged in the exercise of modern self-determination, are responsible for the health, safety, education, and welfare of their citizens. Commensurately, Native radio stations play an important role in supporting the Native American community by providing programming and information that is significant to residents of various reservations. Given the overall lack of available telecommunications infrastructure on most reservations, the important role of Native radio stations in relaying important messages cannot be overstated. Terrestrial radio in Indian Country is a universally accessible method by which locally-originated news, information and entertainment are provided to local communities. In addition to providing the community with programming of local interest, Native stations are *essential* to their communities for the widespread dissemination of public safety communications in times of severe weather or other emergencies (such as an Amber Alert).<sup>2</sup>

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<sup>2</sup> Just recently, melting snow blocked roads and left families on the Navajo Reservation stranded in their homes for days with little food or water. Given their unique ability to broadcast despite a breakdown in other infrastructure, Native stations KUYI and KGHR, Hopi and Navajo respectively, served as the primary conduit through which emergency announcements and communications were made to stranded families. *See, e.g.,* [http://www.azdailysun.com/articles/2008/02/07/news/local/20080207\\_local\\_news\\_21.txt](http://www.azdailysun.com/articles/2008/02/07/news/local/20080207_local_news_21.txt); [http://www.daily-times.com/news/ci\\_8220620](http://www.daily-times.com/news/ci_8220620).

Given their unique circumstances, Native radio stations, which are inherently local by nature, strive to provide quality, in-depth, locally-produced programming for their listeners in the face of a number of challenges not often found in other terrestrial radio markets. First, there is little funding available for the development of Native radio on some reservations. Second, Native stations are limited in their capacity to produce local programming due to shoestring budgets, distances radio personnel and staff must travel to get to the station, and the absence of broadcast training opportunities in tribal communities. Third, Native stations in rural areas must transmit under less than ideal circumstances. Lack of dependable electricity, uneven terrain, and the large area that must be covered in order to broadcast to even a small community create serious complications.

In light of these challenges, and mindful of the paramount importance of local programming to Native populations, NPM submits the following Comments.

## **II. COMMENTS REGARDING COMMUNICATIONS BETWEEN LICENSEES AND THEIR COMMUNITIES.**

### **A. The Public and Broadcasting.**

As an initial matter, NPM applauds the FCC's decision to direct the Media Bureau to update "The Public and Broadcasting" publication to include the additional information located on the Commission's website relating to the broadcast renewal process, applicable deadline and complaint procedures.<sup>3</sup> In addition, NPM fully supports the establishment of "a contact point at the Commission . . . dedicated to providing information to members of the public regarding how

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<sup>3</sup> Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07-218, MB Docket No. 04-233, ¶ 18 (rel. Jan. 24, 2008) (hereinafter "NPRM").

they can become involved in the Commission's processes."<sup>4</sup> Such a point of contact will be of great value to NPM's members as a means by which information can be disseminated and questions answered concerning, among other things, the license renewal process and the Commission's complaint procedures.

B. Enhanced Disclosure.

As noted in the NPRM, the Commission has determined that the current rules mandating disclosure of locally-oriented programming were inadequate, and thus adopted for television licensees an enhanced disclosure form that is intended to replace the existing current issues/program lists.<sup>5</sup> Each such licensee must disclose on this standardized form the specific categories of programming aired for a given three-month period, and indicate whether it has undertaken any effort to determine and address the programming needs of its community.<sup>6</sup> The television licensee is also required to place most of the contents of their public inspection file, along with the new enhanced disclosure form, on the Internet for the community to review and consider.<sup>7</sup> The Commission is currently considering whether to extend these enhanced disclosure requirements to radio licensees, operating in analog or digital.<sup>8</sup>

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<sup>4</sup> NPRM at ¶ 19. NPM also notes that it has long supported the establishment of an Indian Desk at the Commission, whereby a single point of contact would be responsible for working with the Native Nations on FCC-related issues, including increasing Native American media ownership, access and control.

<sup>5</sup> *Id.* at ¶¶ 20-23

<sup>6</sup> *Id.* at ¶ 21.

<sup>7</sup> *Id.* at ¶ 22.

<sup>8</sup> *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, ¶¶ 116-17 (2007).

NPM raises two specific concerns with respect to this proposal. First, many Native stations are located in remote areas that lack reliable broadband Internet connectivity. Accordingly, any requirement that stations possess Internet connectivity in order to post disclosure forms online would fail to serve the local community, which cannot access the Internet, while simultaneously placing a significant burden on Native stations, which likewise have little or no broadband connectivity.<sup>9</sup>

Second, the enhanced disclosure form would require a significantly enhanced level of disclosure over and above that already required by the Commission. Native station personnel are already tasked with preparing a variety of administrative reports required by the FCC; the proposed disclosure form would add significantly to this burden. Unlike larger stations with sizable staffs, many Native stations operate on limited budgets with incredibly small staffs.<sup>10</sup> Those human resources that do exist are often fully dedicated to creating unique local programming.<sup>11</sup> Accordingly, any effort to divert manpower away from programming, and dedicate it to quarterly local program reporting requirements, would defeat the very purpose of the enhanced disclosures.

NPM proposes that non-commercial stations airing eight or more hours of original locally-produced programming per week should be exempt from any enhanced disclosure requirements and not required to keep Program/Issues lists. Instead, these stations should be required to keep an updated Program Schedule in their public file in lieu of the other mandates.

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<sup>9</sup> For example, KUYI in First Mesa, Arizona, employed a dial-up connection for many years until it recently installed a satellite system, which still provides only spotty service. Meanwhile, KNNB in Whitemountain, Arizona, remains completely off-line.

<sup>10</sup> See Section I, *supra*.

<sup>11</sup> It is for this reason as well that NPM commends the FCC for not shortening the license term to a period less than that already mandated by current law. See NPRM at ¶ 121.

However, an enhanced disclosure form for commercial, non-Native stations may provide much needed information about the programming that is actually being produced, particularly in urban radio markets with large Native American populations. Likewise, an enhanced disclosure requirement for commercial stations may identify programming voids, such as Native news, for which funding for non-commercial stations has not been readily available.

C. Renewal Application Pre- and Post-Filing Announcements.

The Commission seeks comment on whether it should incorporate website postings into the process by which renewal application pre- and post-filing announcements are made.<sup>12</sup> While NPM recognizes that in many (if not most) situations, Internet access to such announcements will improve the public's and other broadcasters' ability to access this information, NPM urges the Commission to be mindful of the unintended burdens such a requirement will place on many Native stations. As noted above, many Native stations operate in areas with little to no Internet connectivity and, where broadband is available, it is often only offered at exorbitant prices.<sup>13</sup> Hence, any requirement that announcements of renewal applications be posted online raises significant, and very real, concerns for NPM. Many Native stations are already struggling with the Commission's electronic filing requirements, where spotty or nonexistent Internet access can result in delinquent filings and fines that threaten the very existence of some stations. Any new requirement that additional information be posted on station websites should include specific exceptions for non-commercial stations that do not have reliable, affordable access to the requisite technology to meet this mandate.

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<sup>12</sup> NPRM at ¶ 24.

<sup>13</sup> For example, on the Navajo reservation, some people pay almost one-hundred dollars a month for broadband service, while others are denied access completely due to the unavailability of DSL or wireless broadband.

D. Community Advisory Boards.

The Commission has tentatively determined that licensees should be required to convene a permanent advisory board of local officials and leaders from the service area in order to better serve their communities.<sup>14</sup> Given that Native stations were established with the sole purpose of serving their respective communities, NPM applauds the Commission's efforts to ensure that licensees are more responsive to their serving areas.

However, NPM is not convinced that the establishment of permanent advisory boards is the best, or only, way to ensure responsiveness to community needs and desires. While many commercial radio stations would benefit greatly from input from various community representatives, Native stations – given their smaller serving areas and staff made up almost entirely of those that they serve – are already enriched by an outpouring of community input and opinion with respect to local programming.<sup>15</sup> Moreover, because the establishment of community advisory boards is a prerequisite to the receipt of funding from the Corporation for Public Broadcasting, the vast majority of Native stations already consult with such boards to determine the needs of the community. Thus, most Native stations already benefit from a great deal of local input, and have formal groups in place to assist in ascertaining the local programming most desired and valued by the community. The Commission should not impose the additional regulatory mandate of a permanent advisory board on these licensees, but rather

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<sup>14</sup> NPRM at ¶ 26.

<sup>15</sup> NPM does believe, however, that commercial, non-Native stations located in areas with large concentrations of Native populations (e.g., Phoenix, Los Angeles, and Minneapolis) should demonstrate their commitment to Native Americans and other underserved groups by offering them places on any permanent advisory boards established, and hence the ability to exert a real influence on local programming decisions.

should allow Native stations to determine their own approach for eliciting and expanding community participation and feedback.

To the extent the Commission requires licensees to establish and consult with community advisory boards on local programming decisions, NPM believes that Native stations (which are intimately familiar with the communities they serve), in conjunction with their local communities, should be afforded the discretionary authority to determine the composition of the advisory board. The establishment of a rigid rule regarding the make-up of any such board, especially at such a preliminary stage, would necessarily fail to reflect (and may actually conflict with) the unique qualities that distinguish one community from another. Accordingly, NPM believes that the Commission should limit itself to establishing general policies regarding the representation of Native and other underserved groups on permanent advisory boards.

E. Remote Station Operation.

Due to concerns over the prevalence of remote station operation, the Commission has requested comment regarding whether radio licensees should be required to maintain a physical presence at each radio broadcasting facility during all hours of operation.<sup>16</sup> While NPM recognizes that this issue will be resolved in the Digital Audio Broadcasting docket, NPM comments briefly here to voice its strong opposition to this measure. Native stations – with limited budgets and a commensurately small staff – are dependant upon remote operation technology in order to transmit continuous programming during all hours of the day. If unattended operations were eliminated altogether, many Native stations, particularly those in

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<sup>16</sup> NPRM at ¶ 29.

rural areas, would have to cease operations overnight.<sup>17</sup> Hence, NPM proposes that non-commercial, Native stations be allowed at least twelve hours per day of unattended station operation. To address the public safety concerns raised by the Commission, NPM proposes that stations without personnel present during all hours of operation be required to designate staff members who will be on-call and available in the event there is an emergency or other situation that threatens the safety of the community served by the station.

### **III. COMMENTS REGARDING THE NATURE AND AMOUNT OF COMMUNITY-RESPONSIVE PROGRAMMING.**

#### **A. Local Programming Renewal Application Processing Guidelines.**

The Commission has tentatively concluded that it “should reintroduce renewal application processing guidelines that will ensure that all broadcasters . . . provide some locally-oriented programming.”<sup>18</sup> While NPM commends the Commission for its desire to address the undeniable lack of locally-oriented programming on many stations, NPM urges the Commission to put forth concrete proposals for achieving this laudable objective. Guidelines for the processing of renewal applications based upon local programming benchmarks is a positive first step, but NPM believes the Commission can do more. Programming for Native Americans, both on the reservations and in urban areas, is lacking due to the scarcity of available resources and necessary funding. While a station's cost of producing locally-oriented programming is the same for a station serving a small tribe versus a large urban area, the audience (and commensurate

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<sup>17</sup> KUYI, which broadcasts on the Hopi reservation, provides a useful example. The station, which serves the 2.6 million acre Hopi Reservation, employs a staff of only three. In order to compensate for a lack of employees, the station uses automated equipment that can make daily telemetry readings and remedy certain transmission problems at the studio site, thereby avoiding the significant cost and time commitment of frequent on-site tower checks, each of which would require a minimum half-day trip to the top of the mesa.

<sup>18</sup> NPRM at ¶ 40.

resources) available to small tribes are significantly smaller. Hence, training and production funds are greatly needed in Native communities for both stations and independent producers. Accordingly, NPM believes that the Commission should begin a meaningful dialogue with tribal representatives to examine ways in which the Commission can reduce the costs and burdens associated with, and unique to, the operation of Native stations.

B. Main Studio Rule.

The Commission sought comment "on whether [the FCC] should revert to [its] pre-1987 main studio rule in order 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>19</sup> NPM believes that the current, more-liberalized rule is superior for Native stations. Allowing stations to reside outside their communities of license is advantageous to Native stations that are sometimes prevented from having a centralized location due to land use, conflict with tribal cultural sites, and terrain shielding.

However, commercial and non-commercial stations, during their license renewal, should be required to demonstrate how local interests are reflected in their programming decisions, including but not limited to, a required amount of locally-originated programming, seats on the board or community advisory board, or open town hall meetings in the community.

C. AM Use of FM Translators.

The Commission has tentatively concluded that AM stations should be allowed to rebroadcast their signal over FM translators both at night and as a fill-in service in order to enhance local programming options.<sup>20</sup> NPM does not disagree, but also believes that the

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<sup>19</sup> *Id.* at ¶ 41.

<sup>20</sup> *Id.* at ¶¶ 51-54.

Commission should also assess – more globally – the impact that digital conversion is having (or may have) on Native-owned and Native-operated analog stations. As the Commission itself noted, the infirmities of the AM spectrum band have resulted in "a well-documented shift of AM listeners to newer mass media services that offer higher technical quality and superior audio fidelity."<sup>21</sup> The dynamics of this “shift” must be monitored and studied. The result cannot be the continued displacement of local programming generally, and Native American programming specifically. In addition, if AM stations use FM translators to air “local” programming that is not determined by the very locality being served, then true localism will not be attained. NPM encourages the Commission to be vigilant that such outcomes do not result.

#### **IV. COMMENTS REGARDING UNDERSERVED AUDIENCES.**

NPM’s Comments with respect to the “Issues for Commission Action” in the NPRM’s section on “Underserved Audiences” are already addressed in Sections II and III, *supra*, and hence NPM directs the Commission’s attention to that discussion. In addition, NPM would like to highlight the need to address in a comprehensive manner the need to “take into account *all* significant groups within their communities when developing balanced, community-responsive programming, including those groups with specialized needs and interests.”<sup>22</sup> To this end, the Commission must increase its data collection efforts to ensure that accurate information is obtained from all segments of the broadcasting community (commercial and non-commercial, large and small communities of service, etc.). The FCC must also examine the role of Internet connectivity, and the obstacles many local broadcasters face in obtaining broadcast licenses and spectrum allocations, when making its regulatory and policy recommendations and decisions.

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<sup>21</sup> *Id.* at ¶ 53.

<sup>22</sup> *Id.* at ¶ 69.

Finally, the Commission needs to understand (and work to remedy) the numerous economic and financial barriers existing today that operate to deny many Native American communities a voice in local programming.

**V. CONCLUSION.**

The promotion of localism and diversity is perhaps the most laudable goal the Commission can pursue. In its endeavor to enlarge and improve the amount and nature of local programming, NPM urges the Commission to consider the issues confronting, and barriers faced by, Native American broadcasters, as well as the fundamental differences between commercial and non-commercial stations (the latter of which have consistently demonstrated their steadfast commitment to local broadcasting). NPM looks forward to working with the Commission to ensure the continued, increased provision of programs targeted to the specific needs and interests of a broadcaster's community of service.

Respectfully submitted,

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## Appendix A

### List of Native Public Media Member Radio Stations

KABR(AM), Alamo Community, NM, The Alamo Navajo School Board  
KABU(FM), Fort Totten, ND, Dakota Circle Tipi, Inc.  
KBRW(AM), Barrow, AK, Silakkuagvik Communications, Inc.  
KCIE(FM), Dulce, NM, Jicarilla Apache Tribe  
KCUK(FM), Chevak, AK, Kashunamiut School District  
KCUW-LP, Pendleton, OR, Confederated Tribes of the Umatilla Indian Reservation  
KEYA(FM), Belcourt, ND, KEYA, Inc.  
KGHR(FM), Tuba City, AZ, Tuba City High School Board, Inc.  
KGVA(FM), Fort Belknap, Agency, MT, Fort Belknap College  
KIDE(FM), Hoopa, CA, Hoopa Valley Tribe  
KILI(FM), Porcupine, SD, Lakota Communications, Inc.  
KIYU(AM), Galena, AK, Big River Public Broadcasting Corp.  
KLND(FM), Little Eagle, SD, Seventh Generation Media Services, Inc.  
KMHA(FM), Four Bears, ND, Fort Berthold Communications Enterprises  
KNBA(FM), Anchorage, AK, Kohanic Broadcast Corporation  
KNNB(FM), Whiteriver, AZ, Apache Radio Broadcasting Corporation  
KNSA(AM), Unalakleet, AK, Unalakleet Broadcasting, Inc.  
KOHN(FM), Sells, AZ, Tohono O'ohdam Nation  
KOTZ(AM), Kotzebue, AK, Kotzebue Broadcasting, Inc.  
KPYT-LP, Tucson, AZ, Pascua Yaqui Tribe, a Federally Recognized Indian Tribe  
KRMH(FM), Red Mesa, AZ, Red Mesa Unified School District No. 27  
KSDP(AM), Sand Point, AK, Aleutian Peninsula Broadcasting, Inc.  
KSHI(FM), Zuni, NM, Zuni Communications Authority  
KTDB(FM), Ramah, NM, Ramah Navajo School Board, Inc.  
KUHB-FM, St. Paul, AK, Pribilof School District Board of Education  
KUTE(FM), Ignacio, CO, KUTE, Inc.  
KUYI(FM), Hotevilla, AZ, The Hopi Foundation  
KWRR(FM), Ethete, WY, Business Council of the Northern Arapaho Tribe  
KWSO(FM), Warm Springs, OR, Confederated Tribes Warm Springs Reservation  
KYNR(AM), Toppenish, WA, Confederated Tribes and Bands of the Yakima Nation  
KYUK(AM), Bethel, AK, Bethel Broadcasting, Inc.  
KZPA(AM), Fort Yukon, AK, Gwandak Public Broadcasting, Inc.  
WOJB(FM), Reserve, WI, Lac Courte Oreilles Ojibwa Public