

Registered Federal Report

Friday
October 5, 1979

Part III

Federal Communications Commission

Inquiry and Proposed Rulemaking;
Deregulation of Radio

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 73

[BC Docket No. 79-219; FCC 79-518]

Inquiry and Proposed Rulemaking; Deregulation of Radio

AGENCY: Federal Communications Commission.

ACTION: Notice of Inquiry and Notice of Proposed Rule Making.

SUMMARY: With this Notice, the Commission proposes to modify or eliminate certain rules applicable to commercial radio broadcast stations. The proposed deregulation encompasses limits on commercial matter, guidelines for the amount of non-entertainment programming, and formalized procedures for the ascertainment of community needs and interests.

DATES: Comments must be received on or before January 25, 1980, and reply comments must be received on or before April 25, 1980.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Roger Holberg, Broadcast Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION:

Adopted: September 6, 1979.

Released: September 27, 1979.

In the matter of deregulation of radio, BC Docket No. 79-219, RM-3099, RM-3273.

By the Commission: Commissioners Ferris (Chairman), Quello, and Brown issuing separate statements; Commissioners Lee and Jones concurring and issuing separate statements; Commissioners Washburn and Fogarty concurring in part, dissenting in part, and issuing separate statements.

I. Introduction

1. We are today initiating a proceeding looking toward the substantial deregulation of commercial broadcast radio. The Commission is proposing rule and policy changes that would remove current requirements in nontechnical areas including nonentertainment programming, ascertainment, and commercialization. This represents a clear departure from our present involvement in such matters and we therefore solicit comments on these proposed changes. In this proceeding, we will examine existing and proposed policies and regulations relevant to these areas as they affect all commercial radio licensees without

regard to the size of the market in which they are located or the nature of service that they provide.

2. The proceeding that we are instituting reflects the Commission's continuing concern that its rules and policies should be relevant to an industry and a technology characterized by dynamic and rapid change. It also reaffirms the Commission's commitment to fostering a broadcast system that maximizes the well-being of the consumers of broadcast programming. The present proceeding does not represent a sudden change in direction. In 1972, the Commission commenced a re-regulation study and created a multidisciplinary Reregulation Staff to examine all technical broadcast rules.¹ The object of this study was to determine the validity of such rules given current broadcasting art and technology. The process has been a continuing one. The Commission has either relaxed or deleted rules it has determined were no longer necessary or appropriate. In this effort, over 800 rule revisions and deletions have been made since 1972. Most recently, we adopted an Order further reorganizing, restructuring and revising Part 73 of Volume III of the Commission's rules pertaining to broadcast services.² The deregulation process itself was commenced on October 19, 1978, when the Commission asked the Broadcast Bureau, the Office of Plans and Policy, and the General Counsel to review the scope of existing Commission regulation of radio. Additionally, the Commission staff was asked to supply a set of options for potential reduction or elimination of regulations no longer appropriate to certain marketplace conditions and whose elimination would be consistent with the Commission's public interest obligations.³ The

¹ See, Public Notice entitled "Broadcast Regulation Study," FCC Mimeo No. 83444, April 6, 1972.

² See, Order released June 22, 1979, (FCC 79-371), Mimeo No. 5921.

³ This was followed on December 11, 1978, by the filing of a Petition for Rule Making by the National Association of Broadcasters seeking the deregulation of radio in the areas of delegations of authority on commercial and nonentertainment program levels, ascertainment and program logging requirements. These were precisely the areas that the Commission had requested the Broadcast Bureau, Office of Plans and Policy, and General Counsel to address and that are the subject of this Notice. NAB had previously filed a Petition for Rule Making (RM-3099) requesting the deletion of the Broadcast Bureau's delegation of authority with regard to commercial time standards for AM and FM radio. On February 15, 1979, the Michigan Association of Broadcasters filed comments in support of the December 11, 1978, NAB filing. The issues raised by both of the above-described NAB petitions, and comments upon them, will be considered in this proceeding.

Commission considered staff proposals in this regard at a meeting on May 8, 1979. The proposals in this Notice reflect the Commission's concerns as expressed at that meeting.

3. The growth of the radio industry since 1912 has led to continuing changes in what we require of broadcast licensees. We have long been, and remain, committed to the principle that radio must serve the needs of the public. We have never, however, believed that radio is a static medium that requires the retention of every rule and policy once adopted. A regulation that was reasonable when adopted, and appropriate to meet a given problem, may be most inappropriate if retained once the problem ceases to exist.³ In our view, it is vital that our rules and policies be appropriate for the industry and marketplace we regulate, reducing regulation to the maximum extent consistent with the public interest, convenience and necessity. We note in passing that Congress is now examining whether legislative reform is necessary to foster optimum development of all communications industries, including broadcasting. Additionally, the President has ordered Executive Agencies to adopt procedures to improve existing and future regulations, including the deletion of unneeded ones.⁴

4. The fundamental departure we are proposing raises a number of issues for our consideration. Among the matters that must be addressed are:

In addition to these matters, the Commission has before it a number of other proceedings concerning radio programming that may be at least partially affected by the instant rule making. These include the following: (1) BC Docket Number 78-237, RM-2937, Notice of Proposed Rule Making on Amendment of the Primers on Ascertainment of Community Problems by Commercial Broadcast Renewal Applicants and Noncommercial Educational Broadcast Applicants; (2) BC Docket Number 78-335, RM-2709, Notice of Inquiry on Adding a New Program Type, "Community Service" Program, and Expanding the "Public Affairs" Program Category; (3) BC Docket No. 78-251, RM-2712, Notice of Inquiry on the Airing of Public Service Announcements by Broadcast Licensees; and (4) RM-3366, Petition for rule making concerning revised procedures for the comparative hearing process for new applicants. We also note our experiment with respect to the ascertainment documentation exemption for small market broadcasters. Any actions that are taken in these cases will be coordinated and consistent with any action taken in this proceeding.

³ *Home Box Office, Inc. v. F.C.C.*, 567 F.2d 9, 36 (D.C. Cir. 1977), citing *City of Chicago v. F.P.C.*, 458 F.2d 731, 742 (D.C. Cir. 1971), cert. denied, 405 U.S. 1074 (1972).

⁴ Executive Order No. 12044, March 23, 1978, 43 FR 12661. Although this Order does not apply to the Commission, which is not an Executive Agency, it clearly evidences a national policy to reduce the burdens imposed by unnecessary governmental regulation.

A. What were the conditions, especially in the radio marketplace, that led to our current rules and policies?

B. To what extent have those conditions changed since our adoption of those rules and policies, and what effect do those changes have upon the need for such rules and policies?

C. Are the burdens associated with our rules, policies and regulations justified by their benefits? In measuring those benefits, has appropriate consideration been given to how closely our rules, policies, and regulations attain their intended public interest goals? Are those goals themselves in the public interest?

D. To what extent are consumer needs, wants, and desires met by the market under the current regulatory scheme? Would they be better met in the absence of some or all of our current policies, rules, or regulations?

E. How should the Commission weigh consumer needs, wants, and desires in establishing those policies, rules and regulations? Should they be given greater deference than currently in determining what is in the public interest?

F. If current Commission policies, rules, and regulations are unneeded, ineffective, or inappropriate, for whatever reason, which option or options for removing or relaxing them is the most appropriate, and what problems legal or otherwise, does the Commission face in doing so?

Because this proceeding involves fundamental matters of Commission rules and policies, we invite the public to comment on the above and any other aspects of our proposal.

II. Historical Perspective

A. General

5. The first attempt by the government to regulate radio was the Radio Act of 1912. That Act primarily made the Secretary of Commerce and Labor responsible for the licensing of radio stations and operators. That Act was not sufficient, however, to cope with the fledgling radio field. In 1923, the courts ruled that under the 1912 Act the Secretary of Commerce and Labor could not refuse to issue a license not specifically barred by the statute.⁵ In 1926, the Secretary was found to lack authority under the Act to fix wavelengths within authorized bands upon which licensees could operate, or to specify periods of operation.⁶ Thus,

the government was left without any discretionary authority to choose among applicants, to specify hours of operation, or to assign frequencies. The Secretary of Commerce and Labor was left with only the ministerial duty of issuing licenses to applicants. Therefore he abandoned all other attempts at regulation.

6. The situation in radio quickly became chaotic. Radio stations increased their power and changed their operating hours and frequencies at will in "a frenzied effort to enlarge their coverage areas, reach larger audiences, and achieve competitive advantage."⁷ The period has been described as one in which "chaos rode the air waves, pandemonium filled every loud-speaker and the twentieth century Tower of Babel was made in the image of the antenna towers of some thousand broadcasters who, like the Kilkenny cats, were about to eat each other up."⁸

7. The radio field during the period prior to 1927 was also characterized by the advent and growth of networks. Even prior to the first network broadcast on January 4, 1923, steps were taken in the radio industry to form a comprehensive, vertically integrated type of "network" that is unknown today. The Radio Corporation of America, formed and largely owned by General Electric, was able to secure properties and patents owned by the American Marconi Company. However, to bring about the intended radio monopoly, other patents had to be brought under the control of RCA. Accordingly, agreements were negotiated with the American Telephone and Telegraph Company, Westinghouse, and their affiliates whereby they became stockholders in RCA and cross-licensed the patents.⁹ Thus the patents for the crucial components of radio transmission and reception were brought together in one consortium. Each of the partners in this consortium was given the right to engage in specific aspects of the industry.

8. Westinghouse, General Electric and RCA, the so-called radio group, were authorized to manufacture and sell radio receivers while AT&T and Western Electric, the so-called telephone group, were given control of telephonic

communications by wire and by radio and the right to manufacture transmitters.¹⁰ Within two years after this arrangement was finalized the actual network broadcasting of radio programs commenced. Strains developed in the consortium, however, when AT&T, the initiator of network broadcasts, refused to rent long distance telephone lines to RCA for use by its network due to a dispute over RCA's authority to engage in radio broadcasting under the cross-licensing agreements.

9. Because of (1) the dispute, (2) public dissatisfaction with what had become known as the "radio trust" and (3) the possibility of government antitrust action against RCA and the other partners, AT&T withdrew from both broadcasting and the consortium by selling its network to the National Broadcasting Company, an RCA subsidiary, in 1928.¹¹ NBC, which was owned in varying proportions by RCA, GE and Westinghouse, thus was able to maintain two networks, the Red and the Blue networks. The next year, 1927, saw the founding of a new network, which became the Columbia Broadcasting System. Thus, in addition to the chaotic conditions on the airwaves described above, the early history of broadcasting in this country was characterized by the rise of networks, controlled by a few.

10. The combination of noncompetitive programming and frequency chaos convinced Secretary of Commerce Herbert Hoover of the necessity for government regulation of broadcasting. In 1922, he called the first of a series of conferences of radio experts. That conference, which lasted for two months, recommended the extension of the Secretary's authority to regulate radio. Although legislation in Congress was proposed to that end, none was passed. Additional conferences were convened by Secretary Hoover and additional legislation was introduced without conclusive result.¹² Finally, legislation which was to become the Radio Act of 1927 was introduced and hearings were held.

11. Secretary Hoover testified at the hearings, expressing two major points. The first was that legislation was

¹⁰ *Id.*, page 53.

¹¹ *Id.*, page 61.

¹² It is interesting to note that although Hoover was in favor of federal regulation of radio he withdrew his support of one bill because he felt that the rapidly changing state of radio necessitated additional experience prior to the passage of legislation that might impede flexibility. The rapidly changing nature of broadcast radio has been a continuing phenomenon and is one of the factors leading us to the action that we are currently proposing.

⁵ *Hoover v. Intercity Radio Company*, 286 Fed. 1003 (D.C. Cir. 1923).

⁶ *United States v. Zenith Radio Corp.*, 12 F. 2d (N.D. Ill. 1926). This case held that a licensee could not be criminally prosecuted for its failure to

operate at authorized times on authorized wavelengths. Subsequently, the Attorney General issued an opinion concluding the Secretary had no authority to make such assignments.

⁷ Emery, *Broadcasting and Government*, Michigan State University Press, 1971, page 23.

⁸ *Id.*, pages 23-24, citing, Chase, *Sound and Fury*, New York, 1942, page 21.

⁹ Hybels and Ulloth, *Broadcasting, An Introduction to Radio and Television*, D. Van Nostrand Co., New York, 1978.

necessary to properly allocate frequencies. At the time of the Congressional hearings there were 536 broadcast stations operating on 89 wavelengths, which was thought to be the limit of available frequencies. The second was to assure that no individual, group, or combination would have the right to determine what communications could be made available to the American people.¹³ Hoover's comments in this regard¹⁴ clearly were in reference to the "radio trust" and indicated a belief in the desirability of diversity, of a multitude of voices being heard over the airwaves. Concern about the possibility of a radio trust underlay Hoover's warning that:

Radio communication is not to be considered as merely a business carried on for private gain, for private advertisement, or for entertainment of the curious. It is a public trust and to be considered primarily from the standpoint of public interest to the same extent and upon the basis of the same general principles as our other public utilities.¹⁵

12. The legislative history of the Radio Act of 1927 reveals that Congress feared that control of the radio industry by a small group would lead to censorship, mal-distribution of, and discrimination in, service. Accordingly, Congress enacted the Radio Act of 1927, mandating that radio stations were to be operated in "the public interest," a term that at the time was primarily used with regard to public utilities regulation. As will be more fully discussed below, Congress did not define the phrase or enumerate its elements.

13. Subsequently, the Communications Act of 1934 was enacted, centralizing the regulatory authority over radio in the Federal Communications Commission. Previously, such authority resided in the Interstate Commerce Commission, the Federal Radio Commission, and, to some extent, the Postmaster General. The Communications Act of 1934, however, did not undertake to change in any substantive manner the radio law as it existed under the Radio Act, and the objectives of the Communication Act were substantially unaltered from those of the 1927 Act.¹⁶

14. Both the Radio Act of 1927, and the Communications Act of 1934, were enacted within particular historical contexts. For instance, in 1927, there were some 681 broadcast stations; by 1934, this had fallen to 583 stations.

¹³ Of the 89 effective wavelengths available, 70 were said to be controlled by RCA. See, 68 Cong. Rec. 3030.

¹⁴ Read into the record at 67 Cong. Rec. 5483, 5484.

¹⁵ *Id.* at 5484.

¹⁶ *Federal Communications Commission v. Pottsville Broadcasting Co.*, 309 U.S. 134, 137 (1940).

Because of the geographic distribution of these stations, in 1929 approximately 40% of the population of the United States were "distant listeners" remote from any broadcast station.¹⁷ In 1925, only 10% of American households had a radio. By 1935, 67% were so equipped.¹⁸ There were no alternate sources of broadcast news and public affairs programming—television had not yet been developed and neither commercial FM nor educational broadcast stations existed. Aside from newsreels shown in movie theaters, news sources were limited primarily to the print media, newspapers and periodicals. In 1927, there were 1,949 daily and 526 Sunday newspapers; these numbers decreased slightly by 1934.¹⁹ Thus, the period was characterized by disorder on the airwaves, concentration of control within the broadcasting industry, no alternate broadcast sources for news and public affairs information, and inaccessibility of large portions of the population to broadcast stations and signals.

14. Because of the limited number of radio stations and competing media sources, there was concern about the type of programming that would be broadcast. As a result it was not long before the government became involved in determining what types of programming were, and were not, in the public interest. Several rationales were offered for this involvement. While alternate theories exist justifying government intrusion into programming, the most widely accepted one is the scarcity theory. The origins of that theory predate even the enactment of the Radio Act of 1927.

15. The Fourth National Radio Conference called by Secretary Hoover recommended to Congress that certain principles be incorporated in any radio act to be enacted by Congress. One of these was to require licensees to either render a benefit to the public, be necessary in the public interest, or contribute to the development of the radio art. The reasoning behind this recommendation was that because spectrum space was limited, not all applicants could be granted licenses. There would have to be a basis for

¹⁷ Testimony of Commissioner Orestes H. Caldwell, Federal Radio Commission, before the Committee on the Merchant Marine and Fisheries, House of Representatives, 70th Congress, 2nd Session, on H.R. 15430, page 451.

¹⁸ Hybels and Ulloth, *supra.*, page 72. Citing, Lichty and Topping, *A Source Book on the History of Radio and Television*, (New York: Hastings House, 1975), p. 521.

¹⁹ United States Bureau of the Census, *Historical Statistics of the United States, Colonial Time to 1957*, Washington, D.C. 1960, page 506. Library of Congress Card No. A 60 9150.

choosing among applicants. This approach was shared by, among others, Congressman White, the House sponsor of what was to become the Radio Act of 1927. The next logical step was to create a government regulatory agency to determine what constituted a benefit to the public. Presumably any such benefits were derived from the programming. Hence, regulation of programming.

16. This rationale has enjoyed great longevity. For instance, Justice Frankfurter's opinion in *National Broadcasting Company v. United States*²¹ concluded that the chaos present on the airwaves prior to the Radio Act necessitated governmental regulation which would result in too few frequencies to accommodate all applicants. Accordingly, he continued, this scarcity required that licenses be granted to applicants based in part upon a consideration of their programming. Still later, Congress, when considering the amendment of Section 315 of the Communications Act of 1934, noted that, "broadcast frequencies are limited and, therefore, they have been necessarily considered a public trust."²²

17. More recently, the scarcity doctrine was reaffirmed in *Red Lion Broadcasting Co. v. F.C.C.*, *supra.* The Court, in *Red Lion*, found that the Commission could require a licensee to afford persons who had been personally attacked over the licensee's facility the opportunity to respond without violating the licensee's First Amendment rights. One of the factors that strongly influenced the Court in its decision was the scarcity of radio frequencies. The Court stated that scarcity was not "entirely a thing of the past" and that although there had been advances in the efficient use of the frequency spectrum, this scarcity impelled its regulation by the Commission. The Court concluded that in view of the scarcity of broadcast frequencies the Commission's challenged regulations did not violate the First Amendment.

18. Based upon its mandate to operate in the public interest, which stemmed in part from the scarcity rationale, the Commission and its predecessor agency, the Federal Radio Commission, undertook to regulate broadcasting. This regulation involved licensees' programming almost from the start. It was clear in the Congressional debates leading to the passage of the 1927 Act that Congress saw the government as

²¹ 319 U.S. 190 (1943).

²² This quotation from the Senate report on the amendment of Section 315 in 1959 is cited in *Red Lion Broadcasting Company v. F.C.C.*, 395 U.S. 367, 376 (1969).

having a proper role in the regulation of programming. Senator Dill, the Act's sponsor in the Senate, felt that the whole basis of the Radio Act was public service to the listeners.²² That service can only be rendered through programming and thus Congress saw that the regulatory body that they were creating would have the authority to act in that area where required by the public interest.

19. It was not long before that authority was translated into action. The Federal Radio Commission stated in its 1928 Annual Report to Congress that it believed that it was, " * * * entitled to consider the program service rendered by the various applicants, to compare them, and to favor those which render the best service."²³ Moreover, its renewal forms requested that licensees:

(1) Attach printed program for the last week.

(12) [Explain] Why will the operation of the station be in the public convenience, interest and necessity?

(a) Average amount of time weekly devoted to the following services (1) entertainment (2) religious (3) commercial (4) educational (5) agricultural (6) fraternal.

At the same time, however, the Commission recognized that it would be inappropriate for it to "erect a rigid schedule specifying the hours or minutes that may be devoted to one kind of program or another."²⁴ The Commission, while concerned with the public's First Amendment interests in radio, was also sensitive to the broadcasters' right of free speech. Of this tension, Stephen Davis, the Solicitor of the Department of Commerce—which was the agency initially charged with the task of radio regulation—wrote:

The character of the programs furnished is an essential factor in the determination of the public interest but a most difficult test to apply, for to classify on this basis is to verge on censorship. Consideration of programs involves questions of taste, for which standards are impossible. It necessitates the determination of the relative importance of the broadcasting of religion, instruction, news, market reports, entertainment, and a dozen other subjects.²⁵

20. With the passage of the Communications Act of 1934, the regulatory authority was transferred to the Federal Communications Commission. The public interest standard, however, remained and the Act has generally been viewed as

having the same objectives as the Radio Act of 1927.²⁷ In fact, most of Title III of the 1934 Act, which governs broadcast regulation, was virtually identical to the provisions of the Radio Act of 1927.²⁸ Thus, the Commission to some extent was empowered by Congress to continue its regulatory concern with the types of programs offered by its licensees.²⁹

B. The Development of Present Informational Programming Regulation

21. Among the first major Commission policy statements on programming was its 1946 *Report on Public Service Responsibility of Broadcast Licensees*.³⁰ This document came to be known as *The Blue Book*.³¹

While the *Blue Book* stressed that,

[I]n granting and renewing licenses, the Commission has given repeated and explicit recognition to the need for adequate reflection in programs of local interests, activities and talent.³²

It also noted that:

Primary responsibility for the American system of broadcasting rests with the licensees of broadcast stations, including the network organizations. It is to the stations and networks rather than to federal regulation that listeners must turn for improved standards of program service.³³

Although the Commission asserted that, "the public interest clearly requires that an adequate amount of time be devoted to the discussion of public issues," and that at least some portion of the broadcast day should consist of "local live" and "sustaining" (nonsponsored) broadcasts, it refrained from specifying particular amounts of time to be devoted to such programming.

22. The Commission's discussion of the two specific kinds of programming noted above—sustaining and local live programming—sheds some light on how it viewed both the commercial aspect of broadcasting and localism in the 1940's.

²⁷ *Federal Communications Commission v. Pottsville Broadcasting Co.*, *supra*.

²⁸ See, for example, S. Report No. 781 Committee on Interstate Commerce, U.S. Senate, 73rd Cong., 2d Session (1934).

²⁹ Although the Commission's regulatory activity relating to programming stems from the scarcity theory, neither the Commission nor the courts has ever scrutinized the validity or generality of that theory. Since we are reviewing Commission programming policies in this Notice, we must analyze the concept of scarcity that has been used. We shall perform this task at paragraphs 121-129, *infra*.

³⁰ The first major Commission policy statement on programming came in 1935, and involved non-profit programs.

³¹ This "book" was issued as an internal Commission document and is available in the Commission's library.

³² *Blue Book*, page 37.

³³ *Id.*, page 10.

Sustaining programs were regarded as serving a five-fold function: (1) Maintaining an overall program balance; (2) providing time for programs inappropriate for sponsorship; (3) providing time for programs serving particular minority needs and interests; (4) providing time for nonprofit organizations; and (5) providing time for experimental and unfettered artistic expression.³⁴ It was the Commission's view that a well-balanced program structure could not be assured if programming decisions were influenced primarily or predominantly by either local sponsors or national advertisers. The extent of radio time devoted to "soap operas" was used to illustrate this potential for imbalance: in 1940 the four networks provided listeners with 59½ daytime hours of sponsored programs weekly, and of these, 55 hours were devoted to soap operas. With respect to local live programming, the Commission restated its continuing concern that such programming reflect local interests, public expression, activities, and talent.

23. The *Blue Book* also discussed the relevance of the market in the provision of programming. It stated:

[I]n Metropolitan areas where the listener has his choice of several stations, balanced service to listeners can be achieved either by means of a balanced program structure for each station or by means of a number of comparatively specialized stations which, considered together, offer a balanced service to the community.³⁵ (Emphasis added.) Similarly, the Commission made this point in discussing revisions of the broadcast application form when it stated:

Stations will be asked whether they propose to render a well balanced program service, or to specialize in programs of a particular type addressed to a particular audience. If their proposal is for a specialized rather than a balanced program service a showing will be requested concerning the relative need for such service in the community as compared with the need for an additional station affording a balanced program service.³⁶

Thus, the Commission recognized that a balanced service to listeners could be achieved either by a balanced program structure for each station or by means of a number of specialized stations that offered a balanced service to the community.

24. In 1949, the Commission issued its *Report on Editorializing by Broadcast Licensees*, 13 FCC 1246 (1949), which formalized the Fairness Doctrine and which again stressed, *inter alia*, the duty of all licensees to devote a "reasonable

³⁴ *Id.* at 13.

³⁵ *Ibid.*

³⁶ *Id.* at 58.

²² 68 Cong. Rec. 4111.

²³ 1928 Annual Report to Congress by the federal Radio Commission, page 161.

²⁴ 3 FRC Ann. Report 32 (1929).

²⁵ Davis, *The Law of Radio Communication*, 1st Edition. McGraw-Hill Book Company, Inc., New York, 1927, page 62.

amount of time" to the discussion of public issues.³⁷ The Commission, however, still did not itself establish precise quantitative standards. Instead, it stated that "it is the licensee * * * who must determine what percentage of the limited broadcast day should appropriately be devoted to news and discussion or consideration of public issues, rather than to the other legitimate services of broadcast."³⁸ In the next decade, however, the Commission had little opportunity to apply these principles. There were only a very limited number of Fairness Doctrine complaints against broadcasters, and there were very few complaints or petitions alleging that a broadcaster had failed to provide programming responsive to public needs. It should be noted, however, that prior to *United Church of Christ v. F.C.C.*, 359 F. 2d 994 (D.C. Cir. 1966) the Commission believed that to be entitled to standing, petitioners would have to show a potential direct, substantial injury or adverse effect from the administrative action under consideration. This was primarily limited to instances where economic injury or electrical interference could be shown and thus limited the potential for the filing of such petitions.

25. Because of the limited case law, there was understandable confusion and uncertainty among broadcasters and public alike as to the precise nature of the broadcaster's public obligations. Accordingly, in 1960 the Commission issued its *Report re En Banc Programming Inquiry*; 44 FCC 2303 (1960) (*Programming Statement*). The Commission stated that licensees must ascertain the needs and interests of their service areas and "reasonably attempt to meet all such needs on an equitable basis." Thus the licensee's obligation to operate in the public interest primarily involved its "diligent, positive and continuing effort * * * to discover and fulfill the tastes, needs and desires of his community or area for broadcast service."³⁹ It recognized, however, that "[p]articular areas of interest and types of appropriate service may, of course, differ from community to community,

³⁷ Interestingly, the Commission previously had been of the opinion that radio could not be used for advocacy, and therefore for the presentation of editorials. See, for instance, *Mayflower Broadcasting Corp.*, 8 FCC 333 (1940). In its *Report on Editorializing*, the Commission concluded that licensees could present the identified expression of their personal viewpoint as part of the "more generalized presentation of views or comments on various issues." The Commission had made a 180 degree turn to a policy that today seems farthest from radical.

³⁸ 13 FCC at 1247.

³⁹ 44 FCC at 2316.

and from time to time." Further, after listing fourteen "major elements [of programming] usually necessary to meet the public interest, needs and desires of the community,"⁴⁰ the Commission went on to say that these elements:

Are neither all-embracing nor constant. We reemphasize that they do not serve and have never been intended to serve as a rigid mold or fixed formula for station operations. The ascertainment of the needed elements of the broadcast matter to be provided by a particular licensee for the audience he is obligated to serve remains primarily the function of the licensee. His honest and prudent judgments will be accorded great weight by the Commission. Indeed, any other course would tend to substitute the judgment of the Commission for that of the licensee.⁴¹

26. In the same document, the Commission also reasserted the inherent limitations of quantitative measurements. Quoting from a 1946 Public Notice, the Commission stated:

It should be emphasized that the statistical data before the Commission constitutes an index only of the manner of operation of the stations and are not considered by the Commission as conclusive of the overall operation of the stations in question. Licensees will have an opportunity to show the nature of their program service and to introduce other relevant evidence which would demonstrate that in actual operation the program service of the station is, in fact, a well rounded program service.⁴²

In short, although the licensee had a clear obligation to serve the public with programming responsive to local needs, the Commission left the licensee with broad discretion in deciding how to achieve that goal, stating that it did:

* * * Not intend to guide the licensee along the path of programming; on the contrary, the licensee must find his own path with the guidance of those whom his signal is to serve.⁴³

27. The licensee's discretion here was not unlimited. The Commission could not sanction programming decisions that discriminated against minorities.⁴⁴

⁴⁰ The listed elements are: (1) Opportunity for local self-expression, (2) the development and use of local talent, (3) programs for children, (4) religious programs, (5) educational programs, (6) public affairs programs, (7) editorialization by licensees, (8) political broadcasts, (9) agricultural programs, (10) news programs, (11) weather and market reports, (12) sports programs, (13) service to minority groups, and (14) entertainment programs. The Commission also concluded that there no longer was a public interest basis for distinguishing between sustaining and commercially sponsored programs in evaluating a station's performance. This constituted a major change in Commission policy toward programming.

⁴¹ 44 FCC at 2314.

⁴² 44 FCC at 2315-16.

⁴³ *Id.* at 2316.

⁴⁴ *Office of Communications of United Church of Christ v. FCC*, 425 F. 2d 543 (D.C. Cir. 1969); *Office of Communications of United Church of Christ v.*

Likewise, the Commission could not sanction a broadcaster's willingness to ignore "a strongly expressed need" that was or should have been known to it.⁴⁵ Many of the decisions on these points were not made until the late 1960's or 1970's. Earlier, however, broadcasters and citizen complaints about ambiguities in the *1960 Programming Statement* caused the Commission to further delineate the nature and scope of a broadcaster's obligation to ascertain community needs and to air informational programming responsive to those needs. The development of the ascertainment obligation is traced in the next section.

28. The Commission's policies on nonentertainment programming were further refined by the adoption of the Broadcast Bureau's current delegations of authority. On April 18, 1973, the Commission directed the staff to redraft these delegations of authority in terms of matters that had to be referred to the Commission. Prior to that time, the delegations of authority had enumerated specific powers that were delegated to the Chief of the Broadcast Bureau. As a result of the Commission's request § 0.281 of the Commission's Rules was redrafted to have the same basic structure and content as are in effect today, including the delegation with regard to levels of nonentertainment programming. (See, *Amendment of Part O of the Commission's Rules—Commission Organization—With Respect to Delegation of Authority to the Chief, Broadcast Bureau*, 43 FCC 2d 638 (1973).) Since the adoption of this revision, the only changes in § 0.281(a)(8)(i) have pertained to commercial television applications. (See, *Amendment to § 0.281 of the Commission's Rules: Delegations of Authority to the Chief, Broadcast Bureau*, 59 FCC 2d 491 (1976).) The delegations as applied to AM and FM radio, with regard to nonentertainment programming levels, have, however, remained the same since 1973.

C. The Development of Ascertainment Procedures

29. Even before the *1960 Programming Statement* the Commission had alluded to the broadcaster's obligation to make a specific effort to understand the needs of his community.⁴⁶ The *Programming*

FCC, 359 F. 2d 994 (D.C. Cir. 1966); *Alabama Educational Television Commission*, 50 FCC 2d 461 (1975).

⁴⁵ *Stone v. FCC*, 466 F. 2d 316, 328 (D.C. Cir. 1972); *Alabama Educational Television Commission*, *supra*.

⁴⁶ See e.g., *P. B. Huff*, 11 FCC 1211, 1218 (1947); *Alexandria Broadcasting Corp.*, 13 FCC 601, 614 (1949); *Pilgrim Broadcasting Co.*, 14 FCC 1308, 1348

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Statement represented the first formal policy statement on the issue, however. Subsequent to the issuance of the *Statement*, the Commission proposed that broadcast applicants explain their efforts to identify community needs and to plan responsive programming.⁴⁷

30. In the period between the adoption of the *program Statement* in 1960 and the amendment of the forms in 1965 and 1966, The Commission began implementing its policies. In 1961, the Commission denied an application for a new FM station in Elizabeth, New Jersey, on the ground that the applicant had not adequately ascertained community problems and needs. The Commission stated:

• • "It is not sufficient that the applicant will bring a first transmission service to the community—it must in fact provide a first local outlet for community self-expression. Communities may differ, and so may their needs; an applicant has the responsibility of ascertaining his community's needs and of programming to meet those needs (footnote omitted). The instant program proposals were drawn up on the basis of the principal's apparent belief—unsubstantiated by inquiry, insofar as the record shows—that Elizabeth's needs duplicated those of Alameda, California and Berwyn, Ill., (footnote omitted) or, in the words of the examiner, "could be served by FM broadcasters generally." • • • [T]he evidence admits no other conclusion than that the applicant's program proposals were not "designed" to serve the needs of Elizabeth • • • [T]he applicant has made no showing as to Elizabeth's programming needs, and a determination of whether Suburban's program proposals "would be expected" to meet such needs is rendered impossible. In essence, we are asked to grant an application prepared by individuals totally without knowledge of the area they seek to serve. We feel that the public deserves something more in the way of preparation for the responsibilities sought by [the] applicant than was demonstrated on this record."⁴⁸

31. The applicant raised statutory and constitutional objections to the decision on appeal. The Court rejected the objections as follows:

As we see it, the question presented on the instant record is simply whether the Commission may require that an applicant demonstrate an earnest interest in serving a local community by evidencing a familiarity with its particular needs and an effort to meet them. We think *National Broadcasting Co., v. United States*, 319 U.S. 190, 63 S. Ct. 997, 87 L. Ed. 1344 (1943), settles the narrow question

Footnotes continued from last page (1950); *Mid-Island Radio, Inc.*, 15 FCC 617, 640 (1951); and *Wayne M. Nelson*, 44 FCC 1132, 1136 (1957).

⁴⁷ The forms were not amended until 1965 for radio and 1966 for television. *AM and FM Program Form*, 1 FCC 2d 439 (1965); *Television Program Form*, 5 FCC 2d 175 (1968).

⁴⁸ *Suburban Broadcasters*, 30 FCC 1021, 1022-23 (1961).

before us in the affirmative. There, the Commission promulgated regulations which provided, *inter alia*, that no license be granted to stations whose network contracts would prevent them from developing programs "to serve the needs of the local community." 319 U.S. at 203. *National Broadcasting Company* challenged the regulations on precisely the grounds appellants advance here: That since the regulations were calculated to affect program content, they exceeded statutory and constitutional limitations. In sustaining the regulations, the Supreme Court held the Commission may impose reasonable restrictions upon the grant of licenses to assure programming designed to meet the needs of the local community. We think it clear that the Commission's action in the instant case reflects no greater interference with a broadcaster's alleged right to choose its programs free from Commission control than the interference involved in *National Broadcasting Co.* [footnote omitted].⁴⁹

32. When the new application forms were adopted in 1965 and 1966, the Commission imposed a four-step ascertainment process. Applicants were expected to provide full information on the following matters:

(a) The steps taken to become informed of the problems and needs of the area to be served;

(b) The suggestions received as to how the station could help meet those problems and needs;

(c) The applicant's evaluation of the suggestions; and,

(d) The programming proposed to meet evaluated problems and needs.⁵⁰ These changes were soon reflected in the Commission's actions. Issues were added in hearings⁵¹ and petitions to deny applications raised questions about compliance with the ascertainment requirements.⁵² The Commission, perceiving a problem, issued a Public Notice⁵³ to publicize its requirements and to lessen a "costly workload burden on the Commission."⁵⁴ The Commission later made another change. It ruled that the applicant's subjective evaluation of the ascertained problems and needs must be made, but that it need not be submitted as part of the application.⁵⁵

⁴⁹ *Henry v. FCC*, 302 F. 2d 191, 193-94 (D.C. Cir. 1962), cert. denied, 371 U.S. 821 (1962)

⁵⁰ *Television Program Form*, supra, 5 FCC 2d at 178.

⁵¹ See, *Minshall Broadcasting Co.*, 11 FCC 2d 796 (1966)

⁵² See, *Andy Valley Broadcasting System*, Where the Commission stated: "The new form now makes a program survey mandatory. Applicants, despite long residence in the area, may no longer be considered, *ipso facto*, familiar with the programming needs and interests of the community." 12 FCC 2d 3, 6 (1968).

⁵³ 13 RR 2d 1903 (1968).

⁵⁴ *Id.*

⁵⁵ *Siaux Empire Broadcasting Co.*, 16 FCC 2d 995 (1969).

33. Considerable problems remained over the precise nature of the Commission's requirements. In *City of Camden*,⁵⁶ the Commission denied an application for assignment of license because the assignee had not adequately ascertained community problems. Among the shortcomings described in the Commission's decision was the fact that the community leaders canvassed did not appear to reflect a cross-section of the community when compared to known demographic information.⁵⁷

34. Motivated in part by the *City of Camden* decision, the Federal Communications Bar Association asked for clarification. As a consequence, the Commission initiated a Notice of Inquiry in which it proposed a detailed ascertainment primer.⁵⁸ A primer containing 36 questions and answers was adopted after consideration of the many comments filed in that proceeding.⁵⁹ The Commission set out procedures for determining the composition of the area to be served, consultations with community leaders and members of the general public, enumeration of community problems and needs, evaluation of the problems and needs,⁶⁰ and relating proposed programming to the evaluated problems and needs. Failure to conduct the ascertainment in accordance with the requirements of *The Primer* has resulted in the denial of applications. Such denials have been upheld in court.⁶¹

35. *The Primer* was applicable at the outset to all applicants. On the same day, however, that *The Primer* was issued, another proceeding was initiated to determine whether different standards should be applicable to renewal applicants. A *Renewal Primer*, with different standards, was ultimately adopted.⁶² The four basic requirements in the original primer were retained for renewal applicants. Procedurally, though, the *Renewal Primer* made some changes:

⁵⁶ 18 FCC 2d 412 (1969).

⁵⁷ *Id.* at 422.

⁵⁸ 20 FCC 2d 880 (1969).

⁵⁹ *Ascertainment of Community Problems*, 27 FCC 2d 650 (1971).

⁶⁰ The word "evaluation" as used in *The Primer* means the process in which the licensee: considers the ascertained problems and needs of its area; considers the characteristics of that area, the characteristics of its specific audience, and its own skills and resources to determine which problems and needs it should serve; and, decides upon the programming that will be most responsive to those problems and needs. See, generally, *Ascertainment of Community Problems*, 27 FCC 2d at 671-74.

⁶¹ E.g., *Bamford v. FCC*, 535 F. 2d 78 (D.C. Cir. 1976).

⁶² *Ascertainment of Community Problems by Renewal Applicants*, 57 FCC 2d 418 (1975), *reca.* granted in part, 61 FCC 2d 1 (1976).

(a) It calls for an on-going process, rather than conducting ascertainment solely in the six months preceding the filing of the renewal application;

(b) It provides a community leader "checklist;"

(c) It specifies the number of consultations to be made, based on the size of the city of license;

(d) It requires renewal applicants to maintain information on the composition of their communities in their public inspection file, but they are not required to compile such information separately for each successive renewal application filed;

(e) It requires that licensees annually deposit in their public inspection files a list of no more than ten problems and needs existing in their service areas during the preceding year, and a list of programs treating those problems and needs; and,

(f) It requires documentation of ascertainment procedures to be placed in the station's public inspection file.⁶³

36. The *Renewal Primer* experimentally created a partial "small-market" exemption for stations licensed to certain cities of 10,000 or less on the ground that the licensees of small communities should know the problems and needs without formal ascertainment requirements.⁶⁴ The exemption, however, does not relieve small-market licensees from the duty to respond to the problems and needs of their communities.

37. In general, although they have provided very specific guidance for and oversight of broadcasters, the ascertainment primers carried over three basic principles of broadcast regulation. First, the Primers made it clear that the broadcaster has broad discretion. The *Primer* stated that

There is no single answer for all stations. The time required to deal with community problems can vary from community to community and from time to time within a community. Initially, this is a matter which falls within the discretion of the applicant.⁶⁵

Similarly, the *Renewal Primer*, *supra*, declared:

It is the responsibility of the individual licensee to determine the appropriate amount, kind and time period of broadcast matter which should be presented in response to the ascertained problems, needs

and interests of its community and service area.⁶⁶

38. Second—and of major importance for present purposes—the primers acknowledged that a broadcaster could take into account its particular audience and the programming of other stations in the market in making programming decisions. The Commission did clearly state that a broadcaster could not ignore a community problem simply because few in the broadcaster's audience shared that problem.⁶⁷ By the same token, the Commission said the make-up of the audience and market were relevant factors:

Answer 25 does rest on the applicant's good faith determination (in making programming decisions), which, of course, gives him considerable discretion. Thus, he may choose to meet as many problems as he believes he can. He may be selective, giving more extensive treatment to those problems he believes most important or to nascent problems, which if not met now are likely to become critical. Or he may recognize that another station in the community traditionally presents extensive broadcast matter to meet a particular problem. If it is an important problem, and if the stations' respective audiences differ only slightly in their composition, the broadcaster may decide to present some broadcast matter to meet the problem, but less than he would ordinarily due to the efforts of the other station.⁶⁸

Similar language was included in the 1976 *Renewal Primer*:

In making this (programming) determination, the licensee may consider the programming offered by other stations in the area as well as its station's program format and the composition of its audience. With respect to the latter factor, however, it should be borne in mind that many problems affect and are pertinent to diverse groups within the community. All members of the public are entitled to some service from each station. While a station may focus relatively more attention on community problems affecting the audience to which it orients its program service, it cannot exclude all other members of the community from its ascertainment efforts and its nonentertainment programming.⁶⁹

In other words, other stations' programming and audience make-up could influence the broadcaster's programming judgment; but those factors could not justify totally disregarding a problem.⁷⁰

39. Third, the Commission retained the right to inquire about the basis for a licensee's programming choices; and if the licensee's actions were unreasonable or made in bad faith, we made it clear that further actions—including denial of a license application—could result. As we said in the 1971 *Primer*:

[W]here the amount of broadcast matter proposed to meet community problems appears patently insufficient to meet significantly the community's problems disclosed by the applicant's consultations, he will be asked for an explanation by letter of inquiry from the Commission.⁷¹

Similarly, the 1976 *Renewal Primer* states:

Where the licensee * * * has chosen a brief and unusually superficial manner of presentations, such as news and public service announcements, to the exclusion of all others, a question could be raised as to the reasonableness of the licensee's action. The licensee would then be required to clearly demonstrate that its single type of presentations would be the most effective method for its station to respond to the community's ascertained problems.⁷²

40. In essence, then, the Commission allows the broadcaster to consider his individual circumstances and make his own choices—unless these appear to be unreasonable.

Commercial Practices

41. The Commission's concern with commercial practices has been marked by two basic features: A desire to prevent use of scarce broadcast time primarily to advertise private interests, and a refusal to adopt definitive standards. Hence, while the Commission has always closely scrutinized a licensee's commercial practices, the Commission has not specified any outer limit which no licensee can ever transcend. It is also noteworthy that, in making decisions on individual license applications, the Commission has almost always viewed commercial practices from the perspective of an individual broadcaster; rarely has the Commission justified its conclusion by reference to general market conditions.⁷³

42. Concern about the commercial practices of broadcast stations goes back more than 50 years. In *Great Lakes Broadcasting Company*, the Federal Radio Commission stated: "Advertising

appeared to be saying that a broadcaster's choice of problems must be such as to reach everyone in the community to some extent.

⁶³ 27 FCC 2d at 686.

⁶⁴ 27 FCC 2d at 445.

⁶⁵ 27 FCC 2d at 445.

⁶⁶ *Id.*

⁶⁷ 27 FCC 2d at 445.

⁶⁸ 27 FCC 2d at 445.

⁶⁹ 27 FCC 2d at 445.

⁷⁰ 27 FCC 2d at 445.

⁷¹ 27 FCC 2d at 686.

⁷² 27 FCC 2d at 445.

⁷³ It should be noted, however, that our processing guidelines do account, in a limited way, for the market conditions in which licensees operate. As noted below, our processing guidelines distinguish between seasonal and nonseasonal markets.

⁶³ 47 CFR 73.3526(a)(11) and (12).

⁶⁴ *Ascertainment of Community Problems by Renewal Applicants*, *supra*, 57 FCC 2d at 437.

Noncommercial applicants are not the subject of this proceeding. However, it should be noted that ascertainment requirements have been imposed upon noncommercial applicants. *Ascertainment of Community Problems by Noncommercial Applicants*, 58 FCC 2d 526 (1976).

⁶⁵ 27 FCC 2d at 686.

⁶⁶ 57 FCC 2d at 445.

⁶⁷ 27 FCC 2d at 673.

⁶⁸ *Id.*

⁶⁹ 57 FCC 2d at 445.

⁷⁰ In some respects, the language of the primers, in retrospect, seems inconsistent. On the one hand, the Commission stated that the broadcaster need not respond to all community problems and that he should use his good faith judgment in selecting problems; on the other hand, the Commission

must be accepted for the present as the sole means of support for broadcasting, and regulation must be relied upon to prevent abuse or overuse of the privilege."⁷⁴ The Commission took actions that also reflected concern about commercial practices. Based on proposed or past commercial practices, the Commission has denied applications,⁷⁵ conducted hearings on renewal applications,⁷⁶ considered commercial practices in comparing mutually exclusive applications,⁷⁷ and granted short-term renewals.⁷⁸ In the earlier cases, the phrase "commercial practices" included the number of spot announcements or program interruptions, the length of individual announcements, and the balance between "commercial" (sponsored) programs and "sustaining" (nonsponsored) programs, as well as the total amount of commercial time.⁷⁹

43. In 1960, the Commission summarized its policy as follows:

"With respect to advertising material, the licensee has the additional responsibility . . . to avoid abuses with respect to the total amount of time devoted to advertising continuity as well as the frequency with which regular programs are interrupted for advertising messages."⁸⁰

There were, however, no standards by which to judge compliance with that policy and the cases cited in the preceding paragraph were case-by-case rulings. As a consequence, E. William Henry, then Chairman of the Commission, testified before the House Committee on Interstate and Foreign Commerce in 1963, that he, "did not know and no one could know" what the Commission's policy on overcommercialization was.⁸¹

44. Chairman Henry's words came during Congressional testimony concerning a Commission rulemaking proceeding proposing commercial standards.⁸² The Commission's proposal

received strong opposition. In fact, the House, but not the Senate, passed legislation (H.R. 8316) in 1963 that would have prohibited any Commission rule that prescribed "standards with respect to the length or frequency of advertisements which may be broadcast by all or any class of stations in the broadcast services."⁸³ The Commission later decided not to adopt a rule in light of the opposition, the absence of certain information believed necessary for an informed judgment, and growing industry efforts at self-regulation.⁸⁴ The Commission did, however, warn broadcasters that the Commission would still closely watch commercial practices:

We emphasize that we will give closer attention to the subject of commercial activity by broadcast stations and applicants on a case-by-case basis. Thus, we will continue to require station applicants to state their policies with regard to the number and frequency of commercial spot announcements as well as their past performance in these areas. These will be considered in our overall evaluation of station performance.⁸⁵

45. The case-by-case approach still presented problems.⁸⁶ New administrative tools, however, began to be employed. In *Florida Renewals*,⁸⁷ the Commission granted the renewal applications of stations that had heavy commercial loads, but asked for a follow-up report on the number of complaints received, the number of times the licensees exceeded 18 minutes of commercial matter per hour, and a statement as to why its commercial policies were consistent with the public interest. In *WDIX Inc.*, the Commission found that a renewal applicant had "failed to show that [its] policy serves the needs and interest of [its] service area."⁸⁸ Further information was sought from the applicant.

46. In 1970 the Chief of the Broadcast Bureau, with the approval of the Commission, sent a letter to Peoria Valley Broadcasting, Inc., licensee of Station WXCL. The letter was never published, but became a processing standard for the staff. It stated that the licensee's commercial policy "would

obviate any problem with the commercial aspects of your operation at the next renewal period." That commercial policy specified:

. . . a normal commercial content of 18 minutes in each hour with specified exceptions permitting up to 20 minutes in each hour during no more than 10% of the total weekly hours of operation. A further exception would permit up to 22 minutes where the excess over the 20-minute ceiling is purely political advertising.⁸⁹

The standards set out in the WXCL letter were later incorporated in the rules setting out the authority delegated to the Chief of the Broadcast Bureau.⁹⁰ In 1976, by Public Notice, the 22-minute exception was expanded by 4 minutes during 10 percent of the broadcast hours in periods when lowest-unit-charge requirements are applicable to the broadcast of political advertising.⁹¹ The present delegation of authority with respect to commercial policy is set out below.⁹²

⁸⁰Note that by this time the Commission's concern was directed solely to the total amount of commercial matter broadcast per hour. The number of interruptions was not mentioned in the WXCL letter. The balance between sponsored and nonsponsored (sustaining) programs had been dropped from Commission considerations with the adoption in 1960 of the *Programming Statement*, supra, where the Commission observed at p. 2315, ". . . sponsorship fosters rather than diminishes the availability of important public affairs and 'cultural' broadcast programming." The Commission has ruled, however, that the broadcast of a commercial message lasting 15 or more minutes is contrary to the public interest. See, for example, *KCOP-TV Inc.*, 24 FCC 2d 149 (1970); *Weigel Broadcasting Co.*, 41 FCC 2d 370 (1973); *Program-Length Commercials*, 44 FCC 2d 985 (1973).

⁸¹*Delegation of Authority*, 43 FCC 2d 638 (1973).

⁸²*Political Spot Announcements on Radio*, 58 FCC 2d 103 (1976). Under 47 U.S.C. 315(b)(1), qualified candidates for public office must be accorded the licensee's lowest unit charge for use "during the forty-five days preceding the date of a primary or primary runoff election and during the sixty days preceding the date of a general or special election."

⁸³47 CFR § 0.281(a)(7) provides that the Chief of the Broadcast Bureau may not grant applications exceeding the following criteria:

(i) Commercial AM and FM proposals in non-seasonal markets exceeding 18 minutes of commercial matter per hour, or providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the stations' total weekly hours of operation.

(ii) Commercial AM and FM proposals in seasonal markets (e.g., resort markets) exceeding 20 minutes of commercial matter per hour during 10 percent or more of the stations' total weekly hours of operation.

(iii) During periods of high demand for political advertising proposals exceeding either (a) an additional 4 minutes per hour of purely political advertising or (b) exceeding 10 percent of the station's total hours of operation in the applicable lowest-unit-charge period.

(iv) Commercial TV proposals exceeding 18 minutes of commercial matter per hour, or, during periods of high demand for political advertising, providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10

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⁷⁴Reported at 3 FRC Ann. Rep. 32, 35 (1929), *off'd* 37 F.2d 993 (D.C. Cir. 1930) *cert. den.* 281 U.S. 706 (1930).

⁷⁵*R. R. Jockson*, 5 FCC 496 (1938); *Travelers Broadcasting Service Corporation*, 6 FCC 456 (1938).

⁷⁶*The Community Broadcasting Co.*, 12 FCC 85 (1947); *The Wolmac Co.*, 12 FCC 91 (1947); and *Michigan Broadcasting Co.*, 20 RR 687 (1960).

⁷⁷*Sheffield Broadcasting Co.*, 30 FCC 579 (1961); *Fischer Broadcasting Co.*, 30 FCC 177 (1961).

⁷⁸*Gordon Country Broadcasting Co.*, 24 RR 315 (1962).

⁷⁹For more information on the balance between commercial and sustaining programs, and the background and development of Commission policies on advertising, see pp. 29-57 and 73-89 of *The Blue Book*.

⁸⁰*Programming Statement*, 44 FCC at 2313.

⁸¹*H. R. Rep. No. 1054*, 88th Cong., 1st Sess. 24 (1963).

⁸²The Notice of Proposed Rule-Making is published at 28 Fed. Reg. 5158 (1973).

⁸³*H. R. Rep. No. 1054*, supra, at 9.

⁸⁴*Commercial Advertising*, 36 FCC 45 (1964).

Although it declined to adopt a rule, the Commission did assert that it had ample authority to adopt one, a point that had been contested by many of the parties filing comments in the proceeding. The decision was followed by a memorandum from the General Counsel supporting Commission authority to adopt such a rule (36 FCC at 50-61).

⁸⁵*Id.* at 49-50.

⁸⁶*Commercial Practices of Broadcast Licensees*, 2 RR 2d 885 (1964) (Chairman Henry dissenting).

⁸⁷9 RR 2d 639 (1967).

⁸⁸14 FCC 2d 265 (1968).

47. The Commission has issued prehearing letters in cases where licensees have proposed commercial policies that greatly exceed the guidelines set out in the delegations of authority to the Chief of the Broadcast Bureau. For example, in *Marion Broadcasting Co.*,⁹³ the Commissions stated:

" * * * approval of the guidelines set forth in § 0.281(a)(7) of the rules does not foreclose the right of each broadcaster to make a different judgment on any reasonable basis in light of its particular situation. We recognize that special circumstances may warrant adoption of different commercial policies. However, the Commission—which reviews *en banc* all applications proposing to exceed the commercial guidelines summarized above—has found that policies exceeding the guidelines serve the public interest only when evidence clearly indicates that such policies are essential to maintain service to the public. At present, you have produced no such evidence.

" * * * [Y]ou are given this final opportunity to provide a meaningful justification for your commercial proposal or amend your application to conform to Commission guidelines in this area. If you fail to do so, it will be necessary to designate your application for hearing to determine whether your proposal would serve the public interest."⁹⁴

48. Licensees that exceed the proposals submitted to the Commission have been granted short-term renewals⁹⁵ or admonished,⁹⁶ depending on the circumstances.

49. There have been few court cases on the subject. In *Bay State Beacon v. FCC*, the Court held that the Commission, in a comparative proceeding, may properly inquire "into the amount of sustaining time a prospective licensee purports to reserve if granted a license."⁹⁷ In another comparative proceeding, while on appeal, the Court asked the Commission to respond to several questions, including the following:

1. Is the amount of TV time actually used in stating, singing or otherwise showing commercials a public interest consideration?
2. If so, should the Commission be required to consider the length and number of commercials proposed by the competing applicants in this case?⁹⁸

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percent or more of the station's total weekly hours of operation.

⁹³ 44 RR 2d 1045, 1056 (1978).

⁹⁴ *Id.* at 1046-47.

⁹⁵ *Enid Radiotelephone Co.*, 67 FCC 2d 19 (1977).

⁹⁶ *CBS, Inc.*, 41 RR 2d 1350 (1977); *Chattahoochie Broadcasting Company*, 69 FCC 2d 1460 (1978).

⁹⁷ 171 F. 2d 826, 827 (D.C. Cir. 1948).

⁹⁸ *South Florida Television Corp. v. FCC*, 4 RR 2d 2048 (D.C. Cir. 1965).

In its supplemental brief submitted in response to these questions, the Commission stated:

The amount of time devoted by television broadcast stations to advertising messages is one of the factors which the Commission may properly consider, and may assume significance in the public interest judgment in particular circumstances. The governing statute, decisions of the courts, and Commission precedent make this amply clear.⁹⁹

The Commission urged that the circumstances of the case did not warrant remand for consideration of the commercial practices of the applicants. The case was not remanded, and the Commission's award of a construction permit to one of the applicants was affirmed. Other than to note the Commission's response, the matter was not further discussed by the majority of the panel,¹⁰⁰ although the dissenting judge did briefly comment on the matter.¹⁰¹ Later, however, in *Citizens Communications Center v. FCC*, the Court stated that the "elimination of excessive and loud commercials" was one of several tests of "superior service" in comparative hearings between new and renewal applicants.¹⁰²

50. In sum, although the Commission may and does review the commercial practices of licensees, the Commission has not adopted rigid rules. Nor has the Commission foreclosed the possibility that competitive market conditions may, under some circumstances, render the Commission's scrutiny unnecessary.

III. A Reevaluation of Our Current Regulatory Approach in Light of Changed Circumstances

A. Our Interpretation of the Public Interest

51. It was clear from the very beginning of broadcasting that radio was a rapidly developing medium. Accordingly, Congress' efforts to legislate in the area were complicated by the need to write a law at a fixed point in time that would be sufficiently flexible to allow for this quickly changing technology and industry. Therefore it couched the Commission's regulatory authority in terms of the public interest, convenience and necessity. Thus, the Commission was given neither unfettered discretion to regulate all phases of radio nor an itemized list of specific manifestations

that it could or should regulate. As the Supreme Court has said, to have done otherwise:

" * * * would have stereotyped the powers of the Commission to specific details in regulating a field of enterprise the dominant characteristic of which was the rapid pace of its unfolding. And so Congress did what experience had taught it in similar attempts at regulation, even in fields where the subject-matter of regulation was far less fluid and dynamic than radio. The essence of that experience was to define broad areas for regulation and to establish standards for judgment adequately related in their application to the problems to be solved."¹⁰³

52. It has been said that the term "public interest" cannot be defined by legislation.¹⁰⁴ It is well settled, however, that the term was not unconstitutionally vague when applied to the Radio Act and, accordingly, met constitutional requirements when it was included in the Communications Act.¹⁰⁵ The term has been described as providing the "fullest and most effective use," of radio frequencies and to " * * * be interpreted by its context, by the nature of radio transmission and reception, and by the scope, character and quality of services * * *"¹⁰⁶ It also has been described as " * * * the interest of the listening public in the larger and more effective use of radio."¹⁰⁷ Thus, it is our task to ensure through our rules, policies and decisions, that the radio frequency spectrum is given the largest and most effective use for the benefit of the public.

53. The question, then, arises as to whether or not, based on significant changes in the broadcasting industry and in the market place in which it operates, we can, consistent with our public interest mandate, undertake the radical departure from prior and current Commission rules and policies proposed herein. That question has consistently been answered in the affirmative by courts and by our own actions. The Supreme Court has recognized that:

(U)nderlying the whole law (of communications) is recognition of the rapidly fluctuating factors characteristic of the evolution of broadcasting and of the corresponding requirement that the administrative process possess sufficient flexibility to adjust itself to these factors.¹⁰⁸

This flexibility permits Commission reassessment of the public interest, even

⁹⁹ *National Broadcasting Company v. United States*, 319 U.S. 190, 219-20 (1943).

¹⁰⁰ *Davis, supra.*, Note 26, page 59.

¹⁰¹ *White v. Federal Radio Commission*, 29 F. 2d 113 (N.D. Ill. 1928).

¹⁰² *National Broadcasting Co., v. United States, supra.*, page 218.

¹⁰³ *Id.* at 216.

¹⁰⁴ *Federal Communications Commission v. Pottsville Broadcasting Co., supra.*, Note 16, page 138.

if it means a complete reversal of prior policies. As Judge E. Barrett Prettyman wrote:

And it is also true that the Commission's view of what is best in the public interest may change from time to time. Commissions themselves change, underlying philosophies differ, and experience often dictates changes. Two diametrically opposite schools of thought in respect to the public welfare may both be rational; e.g., both free trade and protective tariff are rational positions. All such matters are for the Congress and the executive and their agencies.¹⁰⁰

54. More recently, it has been stated that an agency's view of what is in the public interest may change even absent a change in circumstances, provided that it supplies a reasoned analysis indicating that its change of prior policies was deliberate.¹¹⁰ Thus, the public interest is a "supple instrument" providing the flexibility to deal with changing circumstances and philosophies.¹¹¹

55. We have never hesitated to change policies and rules when they cease to be required by the public interest. For instance, as noted above, for some fifteen years, the Commission maintained a policy prohibiting editorials by radio licensees. Once we determined, however, that such a ban no longer served the public interest, we changed our policy and permitted such editorializing.¹¹² Similarly, for many years the Commission believed that "sustaining" programs were essential to service in the public interest. Yet, once we concluded that conditions no longer warranted distinguishing between sustaining and sponsored programs in evaluating stations' performances, we did not hesitate to reverse our prior course.¹¹³ Simply, the settled case law does not require that we retain rules and policies *ad infinitum* and it has consistently been our practice to discard unneeded regulations.

56. In view of our forty-five years of experience in regulating broadcast radio, mindful of the legislative history of the Communications Act and our rules and policies as noted above, and in light of the data set forth below, we believe that it is appropriate for the Commission to initiate substantial

deregulation of broadcast radio. We note that circumstances have changed greatly since 1927. At that time there were but 661 broadcast radio stations.¹¹⁴ As of July 31, 1979, 8,654 such stations were comprised of 4,547 AM stations, 3,114 commercial FM stations, and 993 educational FM stations.¹¹⁵ This increase in stations has been steady and dramatic. For instance, when the *Blue Book* was issued there were 931 AM and 46 FM stations licensed.¹¹⁶ By the time of the *En Banc Programming Inquiry* report the number had grown to 3,581 AM stations, 912 commercial FM stations, and 181 educational FM stations for a total of 4,674 broadcast stations.¹¹⁷ And this was nearly 4,000 fewer radio stations that are licensed today. Additionally, since the advent of modern broadcast regulation, alternative sources of informational programming have arisen such as commercial television, public television, and cable television.¹¹⁸

57. Traditionally, we have carried out our public interest mandate primarily by means of conduct related regulation. The First Amendment implications of such regulation have placed us in the difficult position of attempting to promote specific types of programming while at the same time avoiding supplanting of licensee discretion with the Commission's programming views. In addition to the content related approach, the Commission has also sought to achieve program diversity through structural means. Notable examples include our multiple ownership rules, which foster diversity of voices by limiting the number of outlets that any one source can control; our EEO and minority ownership rules and policies, which foster increased minority representation in the workforce and ownership of broadcast stations, thereby increasing the diversity of voices represented in broadcasting; and our efforts to increase or more

efficiently use the broadcast radio spectrum, including the 9 kHz proceeding, BC Docket No. 79-164, (FCC 79-395), the Clear Channel proceeding, Docket No. 20642, and our proposal to the 1979 World Administrative Radio Conference that the AM band be expanded. We believe that in the future the emphasis of our regulatory effort should be shifted away where possible from content regulation and towards these types of structural vehicles. To do otherwise would continue to embroil unnecessarily the Commission in questions of what is, and is not, good or desirable radio programming.

58. This does not mean that we must await further structural diversity prior to taking the deregulatory steps that we are proposing today. Significant diversification in the communications industry has already taken place. The advent and growth of FM radio, noncommercial broadcasting, and television have all contributed to broadcast diversification since the early days of radio. Efforts to promote minority ownership¹¹⁹ and EEO are underway and promise to bring about a more demographically representative radio industry.

59. It is of the highest importance that we begin to chart the course of the Commission's regulatory activity for the foreseeable future. In the context of commercial AM and FM broadcasting, the course that appears in the public interest is the one that permits the market to dictate the programming decisions while the Commission regulates the structural aspects of that medium.

60. In that regard we recognize with reference to commercial radio that our views of what is desirable programming may be no better, more perceptive, or wiser than those of our licensees and the general public which they serve. In fact, it has been argued that our decisionmaking in such matters may even place the Commission between the licensee and the public he serves, to some extent insulating the licensee from his community and leading to the result that the licensee responds to the programming preferences of the Commission rather than to those of the local audience.¹²⁰ In the past we have tried to assure that radio broadcasters meet the demands of their service area by imposing a panoply of programming

¹⁰⁰ See Paragraph 14, *supra*.

¹⁰¹ Public Notice No. 20353, released August 14, 1979.

¹⁰² 16th Annual Report of the Federal Communications Commission, page 102.

¹⁰³ 27th Annual Report of the Federal Communications Commission, page 58.

¹⁰⁴ At the same time, another major alternative information source, newspapers, has declined in number. While there were 1,949 daily and 526 Sunday newspapers in 1927, as of March 30, 1978, there were 1,753 daily and 668 Sunday newspapers. See Note 19, *supra*, and Bureau of the Census, *Statistical Abstract of the United States: 1978 (99th Edition)*, Washington, D.C. 1978, page 597. Thus, newspapers are presently as scarce in relation to radio stations as radio stations were in relation to newspapers in 1927. In 1927, there were approximately 3.5 newspapers (daily and Sunday) to each broadcast radio station while now the figures are almost exactly reversed.

¹⁰⁵ See, *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979 (1976).

¹⁰⁶ See Goldberg and Couzens, "Peculiar Characteristics": An Analysis of the First Amendment Implications of Broadcast Regulation, *Federal Communications Law Journal*, Vol. 31, No. 1, Winter, 1978.

¹⁰⁰ *Pinellas Broadcasting Company v. Federal Communications Commission*, 230 F. 2d 204, 208 (D.C. Cir. 1956), cert. denied 76 S. Ct. 650 (1956).

¹⁰¹ *Greater Boston Television Corp. v. Federal Communications Commission*, 444 F. 2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971).

¹⁰² *Federal Communications Commission v. Patsville Broadcasting Co.*, *supra*, Note 16, page 138; also see, *Columbia Broadcasting System, Inc. v. Democratic National Committee*, 412 U.S. 94, 102 (1973).

¹⁰³ See Note 37, *Supra*.

¹⁰⁴ See Note 89, *supra*.

requirements.^{120A} Given the circumstances described above and the data and analysis provided below, we believe that the public interest is best served by reducing our involvement in programming decisions in broadcast radio and substituting the public will through the workings of marketplace forces.

61. As the foregoing history shows, we realize that the rule changes proposed here concern basic matters of Commission law and policy. We also recognize that we have an obligation to explain and justify any proposed departures from present rules and policies.¹²¹ There is a considerable body of evidence and theory that strongly suggests that the proposed changes will serve the public interest—that the discipline imposed by market forces upon licensees will result in greater responsiveness to consumer preferences than regulatory guidelines can provide.

62. We are mindful of the seriousness of the proposed undertaking, but we also are aware that existing policies and rules are but means to attain public interest objectives and are not immutable. As noted above, when circumstances change, the effectiveness of these policies and rules may also change. In this proceeding we are reassessing some of our rules and policies in light of major technological and social changes.

63. In the next subsection of this Notice we present evidence of structural changes in the radio industry and American society that prompt our re-evaluation of Commission rules and policies. We then provide an economic policy framework in which to analyze both the existing rules and proposed changes. Finally we apply that analytical framework to the radio market as it exists today, and conclude that, on balance, the available empirical evidence supports the proposed policy changes. Public comment is solicited on the soundness of the theory as well as the validity of the facts and assumptions presented.

B. Structural Changes in Radio Markets Growth in the number of stations

64. Technological advances and increased demand have resulted in substantially greater use of the AM and FM radio spectrum. As noted above, in 1934 there were 583 AM stations and no FM stations on the air. Today there are 8,654 broadcast radio stations, 4,547 AM

and 4,107 FM.¹²² Table 1 shows the dramatic growth in radio stations in operation. This growth represents both an extension of radio service into previously unserved rural areas and a substantial increase in the number of stations in existing urban markets. Table 2 shows the increase in the number of radio stations over time for a sample of urban markets.¹²³ Table 3 shows the number of stations currently in operation in markets with eight or more stations. It should be noted that 17 markets have 30 or more radio stations; 46 have 20 or more; and 137 have 10 or more.

65. As Table 1 indicates, the growth in the number of radio stations in recent years has been most dramatic in the FM band. Technological improvements in transmission and reception and the development of FM stereo have been instrumental in this growth. FM initially suffered two disadvantages—there were relatively few radio receivers with FM capability, and for a given transmitter power FM signals cannot be transmitted as far as AM signals. The advent of television, however, has partially changed the role of radio. Instead of being a "common denominator medium" reaching for a broad audience, radio, especially in the larger markets, has increasingly become a specialty medium reaching for a narrower audience. In this newer role, FM is no longer at a disadvantage with AM. In fact, FM can exploit its own technical advantages over AM, such as superior sound quality.¹²⁴

66. There is considerable evidence that FM radio has now attained competitive parity with AM. The October/November, 1978 Arbitron sweep data show, at least in the approximately 100 largest markets, many FM stations are equal competitors with AM stations. The fall 1978 and earlier Arbitron data have been available for analysis to many parties and a consensus has been reached that there is a strong trend toward FM parity. An article in the February 26, 1979, *Television/Radio Age* magazine

¹²² See paragraph 56, *supra*.

¹²³ The sample was chosen by listing all markets in descending order by size (defining size as the number of stations in the markets), randomly choosing one of the 15 largest markets, and then choosing every subsequent fifteenth market. Where there was more than one market with the same number of stations, the particular market used in the sample was randomly selected.

¹²⁴ FM also used other methods to gain competitive parity with AM, such as reduced commercial time. To the extent that FM success was a function of this strategy, it suggests that stations might rationally choose to reduce commercial minutes to gain audience and, in the long run, profits. This will be discussed in greater detail below.

presents considerable Arbitron data and reports that "more than half of the leading metro stations in the fall [1978] Arbitron Radio sweep were FM outlets * * *."¹²⁵ An article in the January 22, 1979, *Broadcasting* magazine provides both compilations of Arbitron data and anecdotal evidence in support of the contention of FM parity.^{125A} That article indicates that in each of the top 50 markets at least 4 of the top 10 stations are FM. Thus, in Washington, D.C., 8 out of the top 10 stations are FM; in Dallas and Philadelphia, 7 out of the top 10 are FM; and the respective numbers are 6 in Pittsburgh, and 5 in New York, Chicago, Los Angeles and Detroit. In addition to the rating data, the *Broadcasting* article provided anecdotal information on the prices of recent FM stations sales. For example, contingent on FCC approval, the buyers of KBPI (FM) in Denver reportedly will pay \$6.7 million.

67. Another indication of FM's improving status is that, while the number of independent FM stations reporting data to the FCC increased less than 5% (from 713 to 741) between 1976 and 1977, during the same period their combined reported profits more than doubled (from \$4.3 million to \$9.4 million). Similarly, the number of reporting FM stations associated with AM stations increased from 562 to 586 while their reported profits rose from \$16.9 million to \$32.2 million.¹²⁶ These data provide strong evidence that FM radio is now a viable and profitable competitive force.

68. The growth of a viable FM presence has important policy implications. The data in Table 1 listing the number of stations on the air might be meaningless, if, for example, all or most of the new stations were marginal and provided little actual or potential competition to powerful AM stations. In that case, the latter could simply disregard the fringe stations and be slow to adapt to changing conditions. On the other hand, if the new stations can and do capture significant audience shares from existing stations, then the older dominant stations must be responsive to the challenge of competition. If successful, innovative stations with experimental formats would place strong competitive pressures on existing stations, and would affect market conduct and performance.

¹²⁵ "FM stations comprise more than half of leaders, multi-market analysis of fall Arbitron shows," pp. R-2—R-32. Leading stations were defined by *Television/Radio Age* to include the top 10 stations in the top 10 markets and the top five stations in the remaining 71 measured markets.

^{125A} "FM: The great leaps forward," pp. 32-49.

¹²⁶ FCC, "AM and FM Broadcast Financial Data, 1977," December 11, 1978.

^{120A} See, for instance, the *En Banc Programming Inquiry* report, *supra*, pages 2311, 2312.

¹²¹ See, *Greater Boston Television Corp. v. F.C.C.*, 444 F. 2d 841, 852 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971).

69. The *Broadcasting* article of January 22, 1979 provides strong evidence that just such dynamic competitive forces are at work in large radio markets. The most obvious recent example is the dramatic growth in audience for those stations that switched to disco formats. Thus, for example, when WKTU(FM) in New York switched from soft-rock to disco, its share rose from 1.4 in the July-August Arbitron book to 11.3 in the October-November Arbitron book.¹²⁷

70. In conclusion, the evidence cited above shows that the dramatic growth in the number of radio stations, particularly FM, has not simply represented an increase in the number of fringe or marginal stations in urban areas, but rather has increased the number of strong, viable competitors in these markets. This kind of competition tends to force stations, in their own self interest, to be responsive to shifts in consumer tastes or else lose their audience to more responsive stations.

Changed role of radio among informational media

71. Concurrent with the increased competition in urban radio markets, television has developed as a competing entertainment and informational medium that adds a visual dimension to the aural dimension offered by radio. The public prefers certain services, such as dramatizations and on-the-spot news and sports coverage, to have both audio and visual dimensions. Thus, it is not surprising that television has to varying degrees replaced radio in the provision of these services. For example, Roper polls show that television has now become the primary source of news and information about our society and current problems.¹²⁸ In responding to a question about where they get most of their news, 67% of those interviewed identified television, whereas 49% identified newspapers as a primary news source, and only 20% identified radio.¹²⁹ According to a 1977 survey of "key decision makers in politics, business and professions" by *U.S. News and World Report*, only the White House ranked above television in "the amount of influence it has on decisions affecting the nation as a whole."¹³⁰

72. Existing technology, however, also places some restrictions on the role of

television. Even in large markets, the number of television assignments allowed by current rules is far less than the number of radio stations in those same markets. As a result, over-the-air television transmission is limited. Also, television has substantially greater fixed production costs than does radio, and therefore television operators have a larger tendency than do radio operators to seek broad, "common-denominator" programming (both entertainment and informational) in order to spread these costs over large audiences. Because of the resulting economics of television, it does not lend itself to providing programming for specialty tastes as easily as radio.¹³¹

73. There has proved to be considerable demand for "mass audience" programming and also for commercial time, and therefore television has been a great economic success. Large national audiences have attracted national advertisers. There is a substantial amount of local and national advertising on television, but demand for television commercial time is growing faster than the available supply of commercial time due to the small number of stations. Therefore, the cost to advertisers of television time is increasing, and for many small and/or local advertisers television, quite simply, may not be a cost effective medium. In particular, as long as economic factors dictate that television programming must cater to general audiences, television may not be the medium of choice for advertisers seeking narrowly defined target audiences. Hence small, local, and specialty advertisers often may seek alternate advertising media. Both because of lower costs and more localized or specialized audiences, radio is one of those media. This, in turn, suggests that individual radio stations may prosper by selecting an audience that is either not served at all by existing stations or not completely satisfied with existing stations.

Specialization in radio

74. A fairly large body of data shows that radio has become increasingly specialized as a medium. Unlike television, radio stations specialized in entertainment (or informational) formats, choosing one to the total

exclusion of others.¹³² Additionally, however, radio stations also specialize by the segment of the population they try to serve. Such specialization can be seen in the data collected by the Standard Rate and Data Service, Inc. (SRDS). SRDS includes in its monthly "Spot Radio Rates and Data" book, which is used by advertisers and advertising agencies, information on Black and Spanish population by locality, and the number of hours of regularly scheduled Black and Spanish (and other foreign language) programming by station. Tables 4 through 7 summarize the SRDS data on minority programming.

75. Table 4 indicates that 416 radio stations in 239 markets provide some regularly scheduled Black-oriented programming.¹³³ One hundred and thirty-nine of these stations provide full-time Black-oriented programming. In 83 markets there are two or more stations providing regularly scheduled Black-oriented programming; in 11 markets there are 5 or more stations. In one market, Atlanta, there are 9 stations providing some regularly scheduled Black-oriented programming.

76. Table 5 shows that there is at least one station with full time Black-oriented programming in 11 of the 12 markets with more than 31 stations; 14 of the 19 markets with 23 to 31 stations; 15 of the 31 markets with 16 to 22 stations; 20 of the 74 markets with 10 to 16 stations, and 7 of the 36 markets with 8 to 10 stations. There are also 46 markets with 8 or more stations that have some regularly scheduled Black-oriented programming. Many of the markets without any regularly scheduled Black-oriented programming are in the Northwest or Rocky Mountain regions or other areas with very small Black populations.

77. Table 6 indicates that 270 stations in 173 markets provide some regularly scheduled Spanish language programming. Forty-four stations provide full time Spanish language programming.¹³⁴ In 55 markets, 2 or more stations provide some regularly scheduled Spanish language programming; in 7 markets 5 or more stations provide Spanish language programming.

¹²⁷ While there is a fairly high degree of imprecision in defining formal types, *Broadcasting Yearbook*, 1979, lists over twenty major radio formal types.

¹²⁸ SRDS leaves it to the discretion of the individual station to determine what constitutes Black-oriented programming.

¹²⁹ This may slightly overstate the total, as several very powerful stations that cover both the Los Angeles and San Diego markets were counted in each market.

¹²⁷ *Broadcasting*, January 22, 1979, p. 32.

¹²⁸ *Changing Public Attitudes Toward Television and Other Mass Media, 1959-1978: A Report by the Roper Organization, Inc.* (Television Information, 1979), pp. 2-3.

¹²⁹ In this Roper poll, respondents were able to list more than one primary news source.

¹³⁰ Quoted in Marvin Barrett, *Rich News, Poor News* (New York: Thomas Crowell Company, 1978), p. 7.

¹³¹ Radio programming in small markets may tend to be less specialized than in large markets, but more specialized than television. Radio does not have to contend with the large fixed costs facing television, and therefore there exists less pressure to seek general audiences. The limited size of the potential audience and the relatively homogeneous population found in small markets, however, will tend to limit the amount of specialization.

78. Table 7 shows the very wide diversity of other regularly scheduled foreign language and ethnic programming. Programming exists in 63 foreign languages or dialects.

79. The SRDS data used in Tables 4 through 7 provides a very conservative estimate of foreign language, ethnic, and Black-oriented programming. SRDS data are updated monthly on the basis of data collection forms sent out to all stations. Only those stations that return completed forms and pay a fee to be listed are included in the Black-oriented and foreign language programming listings. A comparison with similar, but less detailed, data presented in *Broadcasting Yearbook* in its Format and Special Programming sections (summarized in Table 8) suggests that a considerable amount of foreign language and Black-oriented programming goes unreported by SRDS.¹³⁵ We have chosen to rely upon the more conservative SRDS estimates in order to be sure that we do not overstate any evidence in support of the hypothesis that radio markets will respond to foreign language, ethnic, or Black-oriented programming demands on their own.

Increased social diversity and the changing nature of community

80. The technological developments in broadcasting and the increasing specialization of radio have occurred during a period of considerable social and political change. The old melting-pot theory of American society has been challenged in the 1960's and 1970's by a growing awareness of our diversity. Increased emphasis has been placed on ethnic, racial, and sexual identities. Geographic localities may have heterogeneous populations. We are now more sensitive to the fact that urban areas contain several smaller communities defined less by geographic proximity than by other common factors. Ethnically, racially, and sexually defined communities have begun to develop their own social institutions—such as community centers, health clinics, and literature—and are also using their identities to develop political and economic strength. The evolution of new academic disciplines such as Black and women's studies also reflects this new awareness.

81. The growing awareness of diversity includes awareness that

communities of common interests need not have geographic bounds. For example, Blacks in Chicago might identify more closely with and have tastes and needs more akin to other Blacks in Philadelphia than to Ukrainians in Chicago.

82. Traditional institutions have responded in various ways to the new concept of community and the forces behind it. Some cannot adapt quickly to changes as others can. For example, television, structurally dependent on large, heterogeneous audiences, may have greater difficulty than radio responding efficiently to the specific interests of particular ethnic, racial, or sexual groups. Television licensees have little economic incentive to adapt.

83. The economics of radio, however, allowed that medium to be far more sensitive to the diversity within a community and the attendant specialized community needs. Increased competition in large urban markets has forced stations to choose programming strategies very carefully. Some stations seem to have taken a traditional approach, seeking to attract wide audiences and general advertisers with middle-of-the-road programming.

84. The fragmentation of markets among many competing stations, however, has apparently made an alternative strategy—specialized programming to attract a narrow audience of interest to specialized advertisers—increasingly attractive. As the number of signals increases, the expected size of the audience for any one station falls. In turn, this means that the expected gains from seeking a homogeneous audience through specialized programming rise relative to the expected gains from seeking a diverse audience through middle of the road programming.

85. Although advertisers generally prefer larger audiences, they also recognize the benefits of seeking a homogeneous audience. As the expected audience size falls, the advantages of having a specialized audience increase. Radio has become increasingly profitable while this trend toward specialization has developed. This would suggest that both audiences and advertisers are pleased with the results.

Specialization in informational programming

86. The trend toward specialized formats has also had an impact on informational programming. As radio stations cater to narrow, well-defined audiences rather than broad audiences, it becomes economically feasible for them to expend resources on special news and public service programming

that is of interest to its specialized audience, but would not be of interest to a broader audience. The growth of Black-oriented stations in many radio markets has created sufficient demand to support two different Black news and information networks in the U.S. today, the National Black Network and the mutual Black Network. Each network has between 80 and 90 affiliates and offers a five-minute newscast hourly, two to three sportcasts daily, and various public affairs programs during the week.¹³⁶

87. Similarly, Spanish language formats generally include Spanish language informational programming. There is one Spanish language information network, the Spanish Information Service Network, a subsidiary of the Texas Informational Network. The Spanish Information Service has 22 affiliates in Texas, and broadcasts hourly news, twice-a-day "sportcasts," and a weekly 15-minute public affairs program.

88. In addition to the development of specialty news networks, the trend toward specialized radio formats has spawned a large number of all-news or news-and-informational radio stations. For example, *Broadcasting Yearbook* for 1979 lists 118 all-news stations.¹³⁷

89. It should be noted that the networks operating today bear no resemblance to the radio networks of the 1920's that helped precipitate the initial government intervention into radio markets. Those early networks owned or controlled most radio stations and provided the bulk of the programming. As noted above,^{137A} structurally radio in the 1920's was tending toward a concentration of voices. Today's networks primarily provide specialized programming for only a portion of the day. The result has been to increase diversity rather than uniformity.

¹³⁶ The National Black Network offers five minutes of news every hour on the hour for 18 hours daily, seven days a week, and two five minute sportcasts daily, six days a week. In addition, the network offers several news/public affairs programs weekly, such as "Black Issues in the Black Press" (30-minute news commentary), "Action Woman Show" (30 minutes on the contributions of outstanding women to Black America), and "One Black Man's Opinion" (five 2½ minute editorials on the news).

The Mutual Black Network, a subsidiary of the Mutual Broadcasting System, offers five minutes of news ten minutes before the hour 16 times daily, seven days a week and three five-minute sportcasts daily. It also offers daily public affairs programming. This includes "Commentary in Black" (10-minute daily editorial on the news), "Message" (2 minute, 20 second weekday comment on a public issue), and a forthcoming "Dear Dr. Mitchell" (3 minutes, 30 second daily health program).

¹³⁷ This will be discussed in greater detail in paragraph 176, *et seq.*, *infra*.

^{137A} See paragraphs 8 and 9, *supra*.

¹³⁵ For example, the 1979 *Broadcasting Yearbook* reports 793 stations providing Black-oriented programming vs. the 416 stations according to SRDS. As a particular example, *Broadcasting Yearbook* lists KYYX (FM) and KHNC (FM) Seattle as providing Black programming, but SRDS does not list either station. Hence our Tables 4 and 5 do not include Seattle as a market with some Black-oriented programming.

Noncommercial radio

90. A final structural change that deserves notice is the growth of noncommercial radio. Table 3 indicates that virtually all urban markets have one or more such stations. These stations generally provide more nonentertainment programming than do commercial stations. We shall look in greater detail at the nonentertainment programming provided by noncommercial stations that are affiliated with National Public Radio below.^{137b}

91. In sum, there have been three major, ongoing structural changes in radio: (1) Competition has increased substantially, especially in the larger markets, with many markets enjoying the benefits of a large number of viable, competing stations; (2) radio's role among the various media has shifted from being the major mass medium to being more of a secondary and often specialized medium; and (3) the concept of community has changed in recognition of the diversity of American society, and radio has been responsive to this change.

C. The Economic Policy Model

92. The structural changes outlined above have prompted this re-evaluation of Commission rules and policies. It is necessary to perform such a re-evaluation within an analytical framework that appropriately takes into account the Commission's public interest objectives. Consumer well-being is the major yardstick of this framework.¹³⁸

93. There are two fundamental criteria of good performance in a market: (1) The goods or services supplied should closely correspond to the goods and services that the public wants; and (2) these goods and services should be provided at the lowest possible cost (consistent with the producers being able to remain in business over the long term).

94. The American public is very diverse and so are its wants. Each individual has his own set of tastes and preferences. Not only are many different goods and services desired, but in addition there is a considerable diversity in the *intensity* with which people want these various products. Some consumers value a particular product more highly than others and as a consequence are willing to pay more for the item. If there is no price tag on the item, there is no way to take into account the intensity of demand felt by individual consumers.

^{137b} See paragraphs 157 and 158, *infra*.

¹³⁸ See paragraph 52, *supra*.

95. When consumer wants are diverse, they are difficult to measure. Government regulators lack the wherewithal to gather the information necessary to ascertain consumer preferences accurately. At best, centralized regulators can construct an aggregate picture that reflects overall tastes but probably fails to recognize local differences. Competitive markets, on the other hand, are particularly effective at determining varied wants (both of kind and of intensity). Consumers with the most intense demand for a scarce commodity will outbid those with less desire for the good.

96. For any given item, say apples, there is a group of consumers who will value apples, but the degree to which they value apples differs.¹³⁹ At a low price for apples compared to other items, many consumers will buy apples. If the price rises relative to the prices of other items, fewer and fewer consumers will continue to buy apples. The consumers who cease buying apples will be those who value apples less than the price. Thus, the pricing mechanism will ensure that the consumers who value apples most get them when they are scarce. Moreover, if there are no barriers preventing persons from becoming apple producers and if apple producers are able to earn profits equivalent to the return from other activities, they will serve the consumers with intense demand even if those consumers are very few in number.

97. Producers (providers) of goods and services must be responsive to consumers' desires in order to compete successfully with rival producers.¹⁴⁰ Consumers, by their choice of purchases, determine which producers (providers) will succeed. Moreover, not only does the competition among producers for consumers lead to the production of the goods and services that consumers want most, the same competitive process forces producers continually to seek less costly ways of providing those goods and services. As a result, parties operating freely in a competitive market environment will determine and fulfill consumer wants, and do so efficiently. That is, for any given distribution of income and wealth among consumers, competitive markets will produce at lowest cost those goods and services that consumers value the most. Therefore, in the absence of strong countervailing reasons, it is good public

¹³⁹ There will be some consumers who will not acquire apples even if they are given away, but this group is likely to be quite small.

¹⁴⁰ If other firms could fairly easily become producers, they serve almost the same competitive spur as actual rival producers in a market.

policy to encourage competition, to pursue policies that ease entry and increase the number of competitors, and wherever possible to allow market forces to operate freely.

Market failure in general

98. There are situations, however, in which markets may fail, that is, in which a market may not respond fully to consumer wants. In particular, markets may not satisfy consumer preferences at least cost if: (1) They have noncompetitive structures; (2) the good or service, once produced, can be made available to additional consumers without cost (labeled by economists a "public good"); or (3) there are relevant social costs or benefits from the market activity that the market does not take into account. In these situations, regulatory intervention in the market may be warranted, if the benefits from that intervention outweigh the costs.

a. Noncompetitive markets

99. Noncompetitive markets, with few producers, and with barriers that prevent other possible producers from coming in to challenge the existing producers, are less likely to be responsive to consumer preferences than competitive markets. Consumers will have fewer alternate sources of supply to turn to if their wants are not met, and therefore suppliers can set prices above costs of production. Furthermore, since the consequences of failing to produce at lowest cost are not as drastic as for competitive firms, the few producers will be likely to waste resources using less efficient production techniques.

Public goods

100. "Public goods" are those that, once produced, can be made available to additional consumers without having to use any additional resources and without diminishing the supply available to the initial consumers.¹⁴¹ It can be said that the consumers of public goods are "jointly supplied." An example of a public good is national defense. Once a given expenditure has been made for national defense, the protection accorded covers all. New citizens receive the benefits of protection without diminishing the quantity accorded to other citizens.

101. Public goods are also unique in that additional consumers either cannot be excluded from enjoying the good or service, or can be excluded only at

¹⁴¹ The classic reference in the modern literature is P.A. Samuelson, "The Pure Theory of Public Expenditure," *Review of Economics and Statistics* 36 (November 1954), 387-89.

prohibitive expense to the initial consumers.

102. Many goods are not "pure" public goods but to some extent can be jointly supplied to consumers. In other cases, it may be very difficult to exclude consumers from enjoying the good or service. For example, a large public park can be enjoyed by many consumers, although a group on a picnic may find the noise from a nearby volleyball game slightly bothersome—this alters the "joint supply" feature mildly. The park could be privately owned and operated by an entrepreneur who was able to erect a fence and charge a fee to recover operating and maintenance fees. Although the benefits could be restricted to those willing to pay the entry fee, society may be unwilling to abide by that sort of exclusion. This is an example of what economists call a "quasi-public good."

103. Markets implicitly ask consumers how much they are willing to pay for a good or service. If a consumer is unwilling to pay the price necessary to induce suppliers to provide the item, he will not get the good. For a public good, however, the consumption of that good or service does not reduce its availability to others and, therefore, if an individual consumer can induce others to pay for the initial production of the good, he can enjoy it for free. In effect, he gets a "free ride." If the rational consumer were asked how much he would be willing to pay for a public good, he would say zero and still enjoy the good if others were willing to pay the costs of producing the item. The rub is that there must be enough people willing to cover the (fixed) costs of production, in order to get the good produced initially.

104. Even if it were possible to make all consumers contribute to the cost of a quasi-public good, because adding more consumers does not add to the cost of making that good available, making all users contribute equally results in fewer users than could be allowed. For example, a large museum could be maintained profitably by a private owner charging admission fees to cover the operating and acquisition costs. But this will deny admission to consumers interested in the collection who would be willing to pay the costs of wear and tear they impose on the museum but not the full admittance fee that also covers the costs of the exhibits.¹⁴³

105. The private market for this quasi-public good therefore denies the good to some consumers, even though they could "consume" it without diminishing

its availability to other consumers or requiring additional resource expenditure.

c. Social benefits or costs not accounted for by the market

106. The third set of circumstances that can lead to market performance inconsistent with the public well-being involves cases where the producers and consumers of a good or service are not the only parties affected by the production or consumption of that item.

107. For most goods and services in our economy, the costs of producing a particular good or service and the benefits from consuming that item are easy to identify, and are received by the persons who produce or buy the item. The costs are the total value of the scarce resources (materials, labor, capital) used to produce the item. These are costs to society because these resources otherwise could have been used to produce other goods or services. The benefits derived are the value of the well-being that the consumer attains from purchasing (consuming) the item. The producer of the item takes into account his costs and the consumer his benefits when their decisions are made to supply or purchase the item at a particular price. The market mechanism incorporates all this information and a price is set equal to the cost of producing an additional unit of the good.

108. There may exist situations, however, in which others besides the producer or consumer of an item directly benefit or suffer from the production or consumption of an item. For example, if the use of an automobile creates air pollution, then others who breathe the polluted air will suffer. The total costs to society of using that automobile are greater than the simple sum of the costs of producing the car and the gasoline it burns.

109. Because the market prices of the automobile and the gasoline do not take into account the costs to society of correcting for the pollution, those pollution costs remain "external" to the market and the market price does not include all the social costs of operating the automobile. If the pollution costs were "internalized" into the market, then the price of operating automobiles would increase, and the number in use would fall. When the market mechanism does not take into account the "external" costs, more automobiles are used than is optimal. The failure to take into account such "externalities" therefore results in market solutions that are not socially optimal.

Government response to market failures

110. In each of these circumstances—noncompetitive market structure, provision of public or quasi-public goods, or the existence of externalities—market failure may warrant corrective government action. Noncompetitive market structures might be indirectly policed (e.g., antitrust surveillance), or certain market activities might be prohibited. In the extreme (e.g., a natural monopoly such as electric power transmission or a subway) the government may own or regulate production of this good. In the case of externalities, direct regulation (e.g., mandatory pollution control devices) or compensatory taxes or subsidies (e.g., tax credits for energy conserving devices) may be implemented.

111. Each of these forms of government actions, however, has costs associated with it—the direct cost of government enforcement, the costs imposed on the regulated parties,¹⁴³ and the indirect costs imposed on consumers if regulators fail to gauge accurately (or decide to override) consumer wants. Ultimately these costs fall upon the public both as taxpayers and as consumers. It is therefore appropriate to compare these costs to the benefits of government action before undertaking such action. Government intervention should be considered only on a case-by-case basis.

112. Government remedies for the provision of public and quasi-public goods have varied, but have generally involved either direct supply of public goods by the government (e.g., national defense, police protection, fireworks displays, dams), or intervention in private markets for quasi-public goods (grants to museums and research foundations). The difficulty lies in determining whether or not a public good should be produced, and if so how much. "How much" national defense is optimal? Presumably it is appropriate to keep on expending resources as long as the additional benefits from the increased production exceed the additional costs. The "additional benefit" is merely the sum of all consumers' demand (or willingness to pay) for the public good. More intense demand by consumers for a public good increases the socially optimal level of its production.¹⁴⁴

113. The actual social accounting of consumer preferences is never carried

¹⁴³ Some of these costs may include efforts by the regulated parties to thwart, bend, or otherwise evade the government action.

¹⁴⁴ For example, other things being equal, the optimal level of national defense would be higher for a "hawkish" than a "dovish" population.

¹⁴² We are assuming, of course, that the museum will remain uncrowded.

out in practice, since consumers would have the incentive to mask their preferences for the public good, in order to exploit the "free ride" when others come forward and pay the costs. Instead, the government must rely on the political process in which citizens vote for candidates whose preferences agree as nearly as possible with their own preferences about which public goods should be produced. Voters implicitly compare the benefits from the public goods to their expected share of the tax burden necessary to produce those goods.

114. Clearly government provision of public goods is subject to at least as many pitfalls as other forms of intervention in the market, and the decision to supplant the private market for quasi-public goods (e.g., education, libraries, public health) has had massive consequences for the economy.

Other reasons for government intervention

115. There are certain social, political, and moral goals in a society that are largely independent of market considerations. Thus, when markets respond efficiently to consumer wants, some persons may nonetheless judge that those wants are "undesirable" and should not be satisfied. As an example of "undesirable wants," consider that there is a strong demand by some consumers for pornographic literature, and surely a market exists for such products. Others, however, have deemed those wants undesirable and have successfully sought various restrictions on the distribution of this literature. One should note that this example represents a moral judgment that markets do not address. It is not a situation of market failure, but of a noneconomic social decision.

116. Further, some consumers, though they have strong wants, have insufficient income and wealth to register their wants in the marketplace. Society may decide, however, that those people's basic needs should be satisfied. The usual means of providing for those with insufficient income and wealth has been the various income redistribution programs of the government that enable the poor to register at least their basic needs for food, clothing and shelter in the marketplace.

Policy consequence of the economic model¹

117. Because it is always costly, government intervention to correct market failure should occur only to attain otherwise unattainable public interest objectives. It is therefore necessary for the government agency

involved to articulate the public interest objectives that underlie any particular law, rule, or policy. Since government intervention has costs associated with it, it is appropriate to show why, absent that government action, the marketplace is unlikely to attain a public interest objective. A distinction should be made between potential market failure to attain the objective and actual or proven market failure. Policy decisions based on the former can be risky, in that once government intervention occurs it is impossible to show conclusively how the market would have operated absent the intervention. Therefore it is impossible to compare unambiguously the regulated result to a market result.

118. It is also appropriate to determine how far the market would stray from the public interest objective. If the market would fall just short of the goal, then the benefits from government intervention may be minimal while being costly. In that case the market may offer the better alternative. If, however, the market will be far short of the goal, then government intervention will likely be preferable. In short, both the costs and the benefits of government intervention should be considered.

119. In addition, there sometimes exist situations in which government action directed at one public interest objective may have an adverse effect on other objectives. In these instances, the positive and negative consequences must be weighed, and some balance struck among the various public interest objectives before any government action is undertaken.

120. Finally, it should be noted that government intervention generally occurs in response to market conditions at a point in time. However, market conditions often change rapidly. So do public interest objectives. Government regulations and other governmental activities should therefore be reviewed periodically to check their current relevance.

Applying the economic policy model to radio markets

a. The scarcity theory

121. Before analyzing the various unique features of radio markets, it is appropriate to consider the key assumption about market structure that has become the basis for most Commission regulatory activity—the "scarcity" theory. This theory was first developed in the 1920's when broadcasting was in its infancy and suffering from poor spectrum management and from monopolistic control of most radio outlets. Analysts in that period blamed the

monopolization on an inherent technological scarcity that would of necessity yield a monopolistic or oligopolistic structure that could not respond to public needs. In order to reduce technological interference to acceptable levels, it was assumed that the number of radio stations would have to be limited. In return for this monopoly position licensees, rather than being subject to traditional rate of return regulation like public utilities, would be required to provide certain unprofitable programming services that were construed to be in the public interest.

122. Developments since the 1920's render the scarcity theory overly simplified. In turn, the policies that have followed from it suffer both from the oversimplification and from a number of highly questionable assumptions. As will be shown below, some of the supposedly unprofitable programming services that were to be part of the *quid pro quo* for use of a limited resource are indeed profitable and would be supplied by licensees anyway. Of greater concern, some of the required programming is not favored by the listening public and therefore its provision may reduce consumer well-being. Given this, the question then becomes whether the benefits of such programming exceed the cost of regulations requiring it.

123. More fundamentally, the concept of scarcity is more complex than the simple scarcity theory suggests. Any good or service is scarce if, when offered at zero price, the total amount people would take exceeds the total amount available. As can be seen, virtually all goods and services in the economy are scarce. For each scarce good or service, some method must be devised to determine its allocation among would-be consumers.¹⁴⁶ Typically allocation takes place according to some pricing mechanism (i.e., people bid for scarce goods or services in terms of how much they are willing to pay for the items), or by government fiat (e.g., quotas or other rationing devices are imposed), or by some combination of the two (e.g., rationing tickets are provided but can be bought and sold).

124. The misconception of scarcity of radio spectrum arose in part from confusion between two aspects of spectrum use that interact to determine the total number of stations possible. One is the problem of interference

¹⁴⁶Some things, such as air, are important because they are needed for survival, but they are not scarce. There is enough available for all to enjoy at zero price. It need not be allocated. This may not always be the case. Consider how drinkable water always has been scarce in some places.

among radio users. The second is the total quantity of spectrum allocated to radio.

125. Government intervention is needed to prevent interference among radio users. To do this the government has to determine such factors as the amount of frequency per channel, allowable power limits, and geographic spacing of stations. These do not necessarily remain constant over time, and the Commission has revisited these issues periodically.¹⁴⁶ Changes in these parameters change the total number of stations that can be allowed in any one geographic area even when the total amount of spectrum allocated to the broadcast radio service is constant.¹⁴⁷

126. Radio spectrum has also been seen as scarce because additional spectrum space can be made available only with difficulty and at some expense. Radio listeners would have to purchase new receivers to take advantage of the new spectrum, and previous users of these frequencies would have to move to other parts of the spectrum. Hence adherents of the scarcity theory talk of technological scarcity. Such analysis, however, only looks at the supply of radio frequencies, not the demand for them. Currently, in many small radio markets not all allocations are taken.^{147a} Radio frequencies are applied for only when the would-be broadcaster thinks he can make a profit selling advertising time and supplying programming. Goods and services will not be produced, even if such production is technologically possible unless there is sufficient demand to cover the costs (including a return to capital investment) of supplying the item. Thus, in many small markets, despite the fixed amount of radio spectrum available, there is no scarcity of spectrum space. The problem

¹⁴⁶ See, for example: *Further Notice of Proposed Rule Making in the matter of Clear Channel Broadcasting in the AM Broadcast Band*, Docket 20642, 70 F.C.C. 2d 1077 (1979); *Notice of Inquiry in the matter of 9 kHz Channel Spacings for AM Broadcasting*, adopted June 17, 1979.

¹⁴⁷ It should be noted that the total amount of spectrum allocated to the radio broadcast spectrum has changed. In 1940, the FM band was established. Currently, the United States position at the 1979 World Administrative Radio Conference includes a proposal that the AM band be expanded, permitting hundreds of additional outlets.

^{147a} As of June 5, 1979, there were 386 vacant FM assignments for which no applications were pending. The FM Table of Assignments was not designed to totally saturate the spectrum, but rather was designed to allow for the possibility of dropping-in a limited number of additional stations in the future in response to growth over time. Additional FM stations are therefore technologically, if not economically, feasible. There is no table of assignments for AM radio but it would be technologically possible to drop-in a limited number of additional stations.

is limited demand for advertising that in turn limits the amount of programming that can be provided.

127. In the long run, economic scarcity tends to induce changes in the amount of spectrum available for radio. It is possible to increase the number of radio outlets by increasing the amount of spectrum space allocated to radio.¹⁴⁸ The number of outlets can also be increased by changing how the radio spectrum is managed. By installing improved equipment the parameters such as frequency per channel, power limits, and geographic spacing may be able to be reduced without increasing interference.¹⁴⁹

128. The willingness to adopt technological advances that will increase the number of stations depends on economic considerations. At some point after demand exceeds supply, the costs associated with technological changes like those listed above may become smaller than the benefits from the increased number of radio stations. In this regard, radio is analogous to other goods and services that, at least in the reasonably short run, are fixed in supply. Consider land or mineral ores. Over time, as demand increases, more and more previously unusable land is made usable through various technological advances. To take the most extreme case, Holland reclaimed the sea: drained large areas, removed the salt, and made it usable for farming. Similarly, as the demand for metallic ores increases and supply falls, new techniques are developed for recovering lesser grades of ore.

129. The limits on spectrum use, as on other goods, have been primarily economic rather than imposed by some immutable technology. It is appropriate, therefore, that broadcast radio be treated the same way as land, mineral ore—or newspapers—and that regulation be limited to the kinds of situations previously set out in which the market is perceived to work imperfectly.

b. Radio as a quasi-public good

130. Radio markets possess both the major characteristics of public goods, nonexcludability and joint supply. Broadcast signals can be received by anyone possessing a receiver without payment to the signal originator. Only by use of a complex and expensive scrambling and revenue collection system could radio broadcasters charge directly for their programs, and that system would probably not be viable since the benefits from the programming

might not be as great as the costs of the system. Joint supply, or the failure of consumption by one person to detract from availability to others, is also clearly a feature of radio broadcasting.

131. The expected failure of a private radio broadcasting market, as predicted by the theory of public goods, would seem to dictate direct government provision of the service. As with national defense, it would appear optimal for the government to supply the radio broadcasts that satisfy the perceived collective wants of society. This would require the government to estimate and weigh consumer preferences, both between specific program types and between radio and other commodities.

132. The willingness of advertisers to support programming in order to sell their messages, however, presents the government with the alternative of relying primarily on private enterprise to supply this public good. Congress and this Commission have enthusiastically endorsed this alternative (particularly with the addition of public broadcasting to supplement commercial broadcasting) as it is consistent with the First Amendment provisions on Free Speech and decentralizes access and control over information and ideas in society.¹⁵⁰ Moreover, private broadcasting to a great degree can allow consumers considerable choice over programming (to the extent advertisers must attract listeners), and eliminates the basic inefficiencies inherent in direct government ownership or control over an industry.¹⁵¹

133. The question that naturally arises in this reevaluation of our regulation of radio broadcast markets is to what extent does the advertiser supported medium satisfy listener demand. Our review of structural changes in radio markets, as well as the ensuing discussion of behavior in the industry, leads us to believe that consumers have

¹⁵⁰ Despite public funding for public broadcasting, great efforts are being made to prevent governmental involvement in programming decisions in deference to the First Amendment.

¹⁵¹ *A Public Trust: The Report of the Carnegie Commission on the Future of Public Broadcasting*, (New York: Bantam Books, 1979), pp. 93-148. Government ownership of industry results in many of the same problems as does monopolization: Lack of competition means laxity in the use of resources, and slows the adoption of technological innovations. The ability (and frequent willingness) of the government to subsidize government-owned industries may hold down prices that consumers pay for a while, but the slow adoption of technological improvements ultimately requires either growing subsidies or higher prices. For a more lengthy discussion of the inefficiencies, see Charles Wolf, Jr., "A Theory of Nonmarket Failure Framework for Implementation Analysis," *Journal of Law and Economics*, vol. xxii, No. 1, April 1979, p. 107-130.

¹⁴⁸ See note 147, *supra*.

¹⁴⁹ See note 146, *supra*.

a great deal of control over radio programming. Competition among stations makes them very attentive to consumer demand in order to increase their audience share. These forces place a natural limit on the proportion of time devoted to advertising as well as inducing stations to broadcast certain types of programming. To that extent we can remove many regulatory constraints and devote government resources to supplementing private broadcasting by continued support to noncommercial radio.

Behavior of the advertiser supported industry

134. Advertisers are interested in selling their products. To the extent that fulfilling consumers' broadcasting wants is consistent with that goal, they will fulfill consumer wants. There is considerable overlap of interest. Advertisers do seek large audiences and therefore will provide programming that is broadly popular. Advertisers, however, primarily seek to reach those particular audiences most likely to purchase their products. Therefore, advertisers may be more responsive to the broadcast wants of certain groups—the more affluent and the young adult, for example. Others may be less well served.

135. An alternate way to view radio markets is to consider the audience the product, and the advertiser the purchaser. That is, the advertiser is purchasing eardrums. Programming is the medium used to attract these eardrums. In general, the more eardrums attracted for a given amount of money, the better off the advertiser. Not all eardrums are equally valued by the advertiser, however. The most highly valued eardrums are those of individuals who will buy his advertised product. Higher income and young adult eardrums may be generally preferred by advertisers and therefore may become the target of advertisers. Programming would then be addressed to these groups. The more specialized the product being advertised, the more specialized the programming will be.

136. Although certain audiences may be preferred to others, it may well be that some of the nonfavored audiences (for example, low income groups) will fare as well or better in a commercially sponsored radio market than in a traditional direct payment market. While advertisers may not particularly seek low income audiences, it is also true that in traditional markets individuals with low incomes will have fewer dollars to "vote" with in making

their consumer choices.^{151A} Hence, these individuals may not be harmed by advertisers' preferences.¹⁵² Certain demographic groups, however, particularly the elderly, may not be valued highly by advertisers and thereby may have less impact on programming than they would under a traditional market arrangement.

137. Of even greater concern, however, is the fact that, by providing programming at a zero price, the market is unable to measure the intensity of demand for particular programming. The market chooses programming that will attract the targeted audiences at zero price. Under the present system, there is no way to distinguish between programming that consumers would be willing to pay for, if necessary, and that which consumers would take for free, but not pay for. Clearly, consumers are better off if they receive programs with a high value rather than ones with a low or zero value to them.

138. It is difficult to determine the consequences of zero prices on policy making. For example, it is sometimes argued that minority tastes are not met by the broadcast media because zero pricing recognizes market size, but not intensity of demand. Without considerable information on individual consumers' demand (which is expensive to collect) it is impossible to measure demand intensity. How would one determine whether the intensity of demand for the first sports talk program was greater than that for the third rock program? It has been suggested that listener complaints—especially if organized—are a measure of demand intensity. Unfortunately, such complaints may represent only one segment of the population (and likely the better educated one) and therefore may not be representative of overall consumer wants.

139. It seems likely, however, that the more stations there are providing programming, the more likely minority tastes will be served adequately. As the number of stations in a market increases, the expected market share (and the expected audience size) of each station will fall. With smaller expected audiences, it may become more attractive for individual stations to seek

^{151A} In fact, there is considerable empirical evidence that low income individuals tend more than higher income individuals to buy brand name products and therefore advertisers are likely to try to appeal to that group which is most highly responsive to advertised products.

¹⁵² This impression, however, does not take into account that such groups may have a high intensity of demand for certain types of programming. In other words, they might be willing to pay more than others and more than might be expected if the programming were provided by a direct pay system.

small, specialized audiences with strongly held, but not widely shared, tastes. Consider for example a market in which the number of stations doubled in a decade from five to ten. Suppose that throughout the decade in that market 10% of the population had a strong preference for a certain type of programming that nobody else liked, but that minority audience would listen to other programming if the preferred programming were unavailable. Initially, it would have been unlikely that any of the five stations would have catered to that minority audience, since expected market share with other programming would be 20%. But at the end of the decade when there were ten stations, there might well be a station that would provide that minority programming in order to gain a 10% audience share. In general, the more competitors there are in a radio market, the more responsive that market will be to strong, but limited, minority tastes.

140. A number of economists have tried to model more formally the workings of broadcast markets. As a result literature exists that addresses the issue of performance in these markets in terms of their ability to satisfy consumer wants (provide consumer well-being).¹⁵³ As is often the case, the models raise important new questions as well as answering old ones. In particular, these models very clearly demonstrate the vast body of information needed for a regulator to be able to intervene in the market with confidence that such intervention will be beneficial.

141. The earliest economic models of broadcast markets, in order to avoid difficult data collection problems, relied on simplistic (even heroic) assumptions that made the analysis manageable, but reduced the applicability of any policy implications. Thus, when Steiner made the first attempt to model radio markets, he assumed that each listener had one preferred program type and that if that program type were not available the listener would tune out entirely. The

¹⁵³ For example, Steiner, Peter O., "Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting," *Quarterly Journal of Economics*, LXVI (May 1952), 194-223; Wiles, Peter, "Pilkington and the Theory of Value," *Economic Journal*, LXXIII (June 1963), 183-200; Rothenberg, Jerome, "Consumer Sovereignty and the Economics of TV Programming," *Studies in Public Communication*, IV (Fall 1962), 45-54; Spence, Michael and Bruce Owen, "Television Programming, Monopolistic Competition, and Welfare," *Quarterly Journal of Economics*, XCI (Feb. 1977), 103-128; Beebe, Jack H., "Institutional Structure and Program Choices in Television Markets," *Quarterly Journal of Economics*, XCI (Feb. 1977), 15-37. Although several of these models directly address policy issues relating to television, they are all sufficiently general to apply to radio broadcasting as well.

listener had no second choice that provided some, though less, satisfaction. Hence, any listener whose minority tastes were not met would receive no satisfaction whatsoever. Also, Steiner attached equal weight to each listener; no one listener had greater intensity of demand for radio than any other. In this simplified world, consumer well-being could be unambiguously measured by the size of the audience. A monopolist, or an omniscient regulator, need not know anything more than the program type preferred by each listener to be able to provide maximum consumer well-being. In fact, however, listeners seem to have an hierarchy of preferences, and therefore simple audience maximization will not result in maximum consumer well-being.

142. Economists were not satisfied with the analytical capabilities of the Steiner model and several constructed new models that allowed for greater variety and complexity of consumer tastes. As the literature evolved it showed an increasing awareness of the many factors that affect broadcast markets and an increasing comprehension of how, and how well, those markets, with or without regulatory intervention, will satisfy consumer wants. Among the important considerations that must be taken into account:

—Are different programs within particular program types indistinguishable to listeners? That is, do listeners prefer some programs within a program type over others so that the programs are not perfect substitutes for one another, or are they indifferent, suggesting all programming within a given program type is perfectly substitutable? If these programs are distinguishable, then the broadcast of additional programs of a given type can increase consumer well-being, it does not simply represent duplication or imitation. Now it becomes very difficult and requires considerable information to compare the satisfaction from a third rock program to that from the first sports talk show.

—Do listeners have a second choice program, third choice program, and so on, if their higher choice programs are not available?

—Do listeners have an hierarchy of choices? If so, what are its characteristics? For example, are most first choices highly specialized and therefore unlikely to be met by mass audience "common denominator" programming? Does common denominator programming represent lower choice programming for most people? Do the lower choice programs provide listeners almost as much satisfaction as their higher choices, or not nearly so much? Without this information it is impossible to evaluate how well individual markets are satisfying consumer wants.

—How skewed is the distribution of tastes among the listening population? For example, if there is a listening audience of 100 people,

one would expect different programming (and consumer well-being demands different programming) if 80 people prefer rock, 15 beautiful music, and 5 all-news as opposed to 40 preferring rock, 32 beautiful music, and 28 all-news. The latter distribution of preferences would (and should, if all rock stations are not perfect substitutes) provide more program types.

—What technological constraints are there on the number of stations in the market?

—Are there differentials in the costs of producing different radio programs?

—What are the values of advertising revenues?¹⁵⁴

Using either assumed values or actual empirical data for the variables outlined above, it is possible to analyze how well radio markets will satisfy consumer wants.

143. Recent papers by Beebe and by Spence and Owen have provided quite general frameworks free of the restrictive assumptions used by earlier modelers for analyzing radio markets under many alternate demand and cost conditions. These models provide considerable insight into advertiser-supported broadcast markets that can aid us in policymaking.

144. Beebe, Spence and Owen agree that advertiser-supported broadcast markets will not respond perfectly to consumer wants, primarily due to the failure to ascertain intensity of demand. Programming may not be offered even where there are no technological constraints on capacity and the marginal benefits of the programming would exceed the marginal costs. This is because total revenues for those programs would not cover total costs. Most likely to be omitted are (1) programming for which there is a small audience that highly values the programming (but cannot register that preference due to the lack of a pricing mechanism) and (2) high-cost programming.¹⁵⁵ There will be a tendency toward program duplication and imitation (if one defines provision of more than one program within a program type as representing duplication or imitation). Without specific information on relative demand intensities, however, it is impossible to judge whether the "duplicative" programming would provide less

¹⁵⁴ The last two considerations will affect the number of stations and type of programs that can be supported *economically* in a market. In the case of small markets especially, the constraint on the number of stations is likely to be economic not technological, see Note 158, *infra*.

¹⁵⁵ It is noteworthy that some of this type of programming, which predictably would be under supplied by the advertiser-supported market, is presently being provided by National Public Radio stations and noncommercial listener-supported stations. This is perfectly consistent with the efficient satisfaction of consumer wants.

consumer well-being than the by-passed minority programming. It can only be stated that programming that provides less consumer satisfaction *might* be offered under the advertiser-supported system.

145. Beebe, Spence and Owen agree, however, that as the number of stations increases the radio market will cater increasingly to less well represented consumer tastes, so long as the demand for that programming is sufficient to cover its costs.¹⁵⁶ It can be stated unequivocally that an increase in the number of stations never leads to a decrease in program offerings or listener satisfaction.

146. One very important policy implication of the discussion above is how little an isolated piece of information tells us about a radio market. The fact that a market has no classical music programming but three beautiful music stations, for example, does not necessarily imply an imperfect market. To determine how well that market is functioning requires information on:

—How many people want classical music programming and how many want beautiful music as their first choice of programming?

—How strongly do each of these individuals want these first choices?

—Given the intensity with which the individuals want their first choice programming, how often would each individual *actually* listen if the format were available?

—What are their second choices?

—How strongly do they value their second choices?

—What are the relative costs of programming the two formats?

147. Without the answers to all these questions it is not possible to compare the consumer well-being from the "market" outcome (no classical music stations, three beautiful music stations), with the consumer well-being that would result if governmental intervention induced one or more stations to switch to classical music.

148. Such information will not be available to the Commission staff and is most unlikely to be provided in a Commission hearing room. Yet without such information it is impossible to predict whether or not any government action intended to influence programming in a marketplace will

¹⁵⁶ It is impossible to generalize about how many stations are necessary for given amounts of minority programming to be provided. This will depend on the specific consumer preferences and cost conditions that exist in particular markets. The tendency toward provision of more minority programming as the number of stations increases, however, is unambiguous.

improve consumer well-being, even in an unambiguously imperfect market.¹⁵⁷

149. It can be safely stated, however, that increasing the number of economically viable stations in a market will improve consumer well-being. This suggests that Commission involvement in radio markets ought to be limited, as much as possible, to easing entry into the industry.¹⁵⁸

150. The structural and social changes discussed earlier are consistent with the predictions of the economic models of radio markets. A trend toward program specialization has followed the substantial increase in the number of radio stations. Data at such an aggregate level cannot be used to verify that individual markets are or are not providing optimal amounts of minority interest programming, but they do strongly support the generalization that increasing the number of competitors will improve the satisfaction of minority consumer wants.

Failure to provide sufficient informational programming

151. Perhaps the Commission's deepest concern during the last half century of broadcast regulation has been that the broadcast market might not provide sufficient informational programming (particularly news and public affairs programming).¹⁵⁹

152. A well-informed citizenry is necessary for the smooth functioning of the democratic process. Not only does an individual citizen benefit from the information he has received from broadcast programming, but so do other citizens in the community. Thus, there are social benefits as well as private benefits from informational broadcasting.¹⁶⁰

¹⁵⁷ There may be Commission actions aimed at public interest objectives unrelated to consumer choice. These are not considered here.

¹⁵⁸ The economics literature suggests that in small markets there may be less than optimal amounts of minority interest programming. This is due as much to economic conditions that exist in small markets for all goods and services, as to technological conditions unique to broadcasting. Consider, for example, restaurants, movie theatres, or furniture stores in small markets. In each of these cases only a small number of establishments can be economically supported by the small population, and they will tend to provide "common denominator" products. There will not be sufficient demand to support foreign restaurants, or art films, or Scandinavian modern furniture stores. Foregoing some of these special, minority consumer taste items is one cost of living in a small community. The same phenomenon holds in radio broadcasting. In fact, to the extent that listeners in small markets can receive distant signals they may be better served by radio than by markets for other goods and services.

¹⁵⁹ Public affairs programming may include in-depth interviews, political debates, and documentaries. See 47 CFR 73.1810(d)(1)(iv).

¹⁶⁰ This argument is analogous to one made in support of public education.

153. In a free market situation, when the radio station manager makes his decisions about what programming to air, he considers only those listeners who benefit directly from the programming. The commercial sponsor, and hence the station manager, probably has little interest in any secondary benefits accruing to other citizens from any informational programming. In entertainment programming, there will be fewer secondary social benefits to other citizens; the benefits accruing directly to the audience come closer to representing benefits to society.¹⁶¹ Therefore, if decisions about programming are determined simply on the basis of the potential listeners without taking into account the social benefits of that programming to nonlisteners, too little informational programming might be provided.

154. The fact that there are benefits to society from informational programming however, does not automatically suggest, let alone prove, that market failure would occur if the market were allowed to operate freely. The unregulated market place might still provide a substantial amount of informational programming. Furthermore, even if there are benefits from informational programs that the market fails to take into account, and the market thus provides too few of those programs, it is important to determine how great the resultant market distortion would be.

155. It is possible, for example, that some or many citizens recognize the benefits to society at large of being well-informed and therefore listen to informational programming out of a sense of civic duty. Whatever the motives, however, the private demand for informational programming may be very close to the private plus social demand. In that case any market failure might prove to be minimal, and the amount of informational programming that the government should require might not differ much from the amount the market would produce. Requiring still more additional informational programming might make matters worse

¹⁶¹ Entertainment programming does in fact inform the public through its ability to create, reinforce, or weaken stereotypes, values, and other public perceptions. The resulting social benefits or costs are likely to be less direct, however, than those from informational programming about newsworthy topics of great immediacy. In any case, the Commission has always believed that First Amendment considerations preclude any direct regulation of program content. Although the Commission can encourage certain generic types of programming—for example, news or public affairs—it is not clear how the Commission could define what constitutes socially beneficial or nonbeneficial entertainment programming.

by forcing the use of radio resources to produce too much informational programming at the expense of more highly valued (by listeners) entertainment programming.¹⁶²

156. The Government presently employs two principal nonmarket mechanisms to try to increase informational programming: (1) It sets aside a large share of the radio spectrum for noncommercial use, and partially subsidizes noncommercial station programming costs from the general treasury; and, (2) for all commercial radio stations, it suggests certain minimum quantitative programming guidelines for news and public affairs.¹⁶³ At present, no matter how many stations are operating in a particular radio market, and no matter what the aggregate level of informational programming in the market, the licensing process for each station depends in part on these minimum guidelines.¹⁶⁴

157. Reserving valuable frequencies for noncommercial use is in effect a subsidy for the type of programming presented on those noncommercial stations.¹⁶⁵ That subsidy "in kind" is supplemented by the tax revenues provided for noncommercial programming. Noncommercial radio stations have varied purposes and formats, but many of them have strong inclinations toward informational programming. Currently 215 noncommercial stations belong to National Public Radio (NPR), which provides a heavy diet of regularly scheduled news and public affairs programming.

158. In fiscal year 1978, NPR provided 1,978.5 hours of informational

¹⁶² Consider, for example, public affairs programming that is provided by a station at 3:00 a.m. The programming helps the licensee meet current Commission processing guidelines, but probably is aired at 3:00 a.m. precisely because few listeners are interested in the programming and the licensee prefers not to sacrifice more valuable air time. The social value of such programming is dubious given that so few will hear it.

¹⁶³ See 47 CFR 0.281(a)(9).

¹⁶⁴ There are other Commission rules and policies that less directly affect the quantity of informational programming. For example, the Commission's EEO, minority ownership, and ascertainment rules, although primarily concerned with the diversity of voices in radio, may indirectly encourage greater informational programming. These rules and policies will be addressed in the section on "Failure to Provide Many Voices" below. Also, in petition to deny or comparative renewal proceedings that are brought on grounds unrelated to informational programming, the Commission allows the licensee to introduce into the record evidence about its informational programming as an attenuating factor in some circumstances.

¹⁶⁵ Providing commercial frequencies without charge is also a subsidy for entertainment programming.

programming.¹⁶⁶ That represents 5.7 hours of informational programming daily. NPR's major informational programming vehicle, "All Things Considered," is provided for 90 minutes each weekday and 60 minutes each Saturday and Sunday. In fiscal 1978, NPR provided 488 program hours of "All Things Considered," 60 of which were news format, the remainder public affairs. In a survey of NPR members on program usage during the fourth quarter (July through September) of fiscal 1978, 158 of the 164 respondents (96%) indicated that they broadcast "All Things Considered" during midweek; 138 of the 164 (84%) on weekends.¹⁶⁷ The other regularly scheduled NPR news and public affairs programming was broadcast by between 40 and 91% of the respondents, typically by over 70%.

159. The subsidization of public radio by the government is a direct and fairly efficient means of assuring that certain types of programming are available. The cost to society as a whole of the subsidies to National Public Radio is the value of the alternative uses of the frequency spectrum space that are given up and the alternative uses of the programming subsidy money.

160. The second nonmarket mechanism for increasing informational programming—imposition of certain minimum quantitative programming guidelines for news and public affairs—represents direct intervention into the marketplace. Because some station managers will have profit incentives to provide entertainment programming that may be more profitable than informational programming, they may try to minimize the impact of the regulation on profits by scheduling informational programming during nonpeak hours or by not scheduling the required amount of such programming. As a result, scarce resources may be spent on programming that is hardly listened to while preferred format goes unbroadcast and unheard. If this situation occurs, the goals of informing citizens would not be met and listeners would not receive the programming they prefer. There would be few social benefits and substantial costs.

161. At the same time, in response to complaints, the Commission may devote resources to policing individual stations. In a society where governmental control over information is viewed as undesirable, there are also less perceptible legal costs to stations

involved in interpreting conformance to Commission guidelines.

162. Since these quantitative programming guidelines impose costs on the Commission, radio stations, and the public alike, it is essential that we determine whether or not they actually achieve their public interest objectives.

163. In order to evaluate a regulation, it is necessary to articulate the exact public interest objective that the regulation was designed to achieve. For example, is the goal of existing informational programming regulations to increase the overall level of citizen awareness? Is it sufficient to increase the awareness of already relatively well-informed individuals? Or should greater weight be given to capturing that audience that does not receive any information from television or the print media?¹⁶⁸

164. If radio is to remain a basic source of information and if a particular target audience is sought, then some strategies may be preferable to others, depending on audience traits. Consider news programming, for example. Do members of that target audience (a) shift from station to station in search of news? (b) shift from station to station to avoid news? (c) choose a station for reasons other than news programming and then just passively accept whatever news programming is provided by that station? (d) choose a station for reasons other than news programming and then actively and attentively listen to the news programming provided by that station? (e) have a favored program format, and choose among the various stations providing that format primarily on the basis of the news programming offered by the competing stations?

165. If (a) holds true, then government regulations requiring each and every station to provide news coverage would not increase consumer well-being. The only need would be some assurance that the overall market—rather than each individual station—provide adequate news coverage. The available data suggest that both in large markets, which generally have all-news stations and specialty news network affiliates, and in small markets, where most stations have very extensive news coverage, market forces already seem to be providing this.¹⁶⁹

166. If (b) holds true, then no government regulation could be effective since the audience would not choose to listen to such programming anyway.

167. If (c) holds true, then minimum programming guidelines might increase public awareness, though it is not clear how much better informed these passive listeners will become since they may not analyze or use the news they do hear. Also, if the audience prefers the entertainment programming, the licensees might schedule the additional news programming during nonpeak hours.

168. If (d) holds true, then minimum programming guidelines might increase public awareness, if the radio stations otherwise would have provided less than the guideline level of programming. Again, any news programming motivated by the need to meet the guidelines rather than by actual consumer demand might well be broadcast during nonpeak hours when there are fewer listeners. Nonetheless, the more attentive the audience, the greater the potential social benefits from the regulation.

169. If (e) holds true, then those stations that are most responsive to listener wants with respect to news programming will gain audience at the expense of less responsive competitors. Minimum processing guidelines on all stations might increase the total amount of information provided in the market if the listeners would not otherwise demand that much programming. In that case, the alert station might try to schedule the unwanted programming during the least popular hours. Hence, audiences may only become minimally better informed.

170. A study performed by Frank Magid Associates for the Associated Press, entitled "Radio News Listening Attitudes,"¹⁷⁰ sheds some light on audience traits. The study covered the entire radio audience, not just a target audience. Table 9 summarizes the responses to a question on attitudes toward radio news. Respondents were asked to choose among four attitudes. 30% of the respondents indicated "News on the radio is important—I especially tune to a particular station to hear the news." This corresponds to our categories (a) and (e). 56.4% of the respondents selected, "When news comes on the radio, I pay attention to the news content." This would seem to correspond with our category (d), and perhaps partially with category (e). 10.1% indicated, "Radio news doesn't matter much to me—I pay little attention to the news or news content." This corresponds to our category (c). 3.2% chose "I dislike it when the news comes on the radio—I usually turn off the radio or switch stations when news comes

¹⁶⁶ *National Public Radio Annual Report, Fiscal 1978*, "Original Program Hours Produced or Acquired by Source," p. 55.

¹⁶⁷ *National Public Radio Annual Report, Fiscal 1978*, "Station Usage on NPR Programming, July-September 1978," p. 1-4.

¹⁶⁸ Should, indeed, radio be expected to fill this role if, as the Roper polls cited earlier suggest, the vast majority of citizens consider radio only a secondary source of news and public affairs information?

¹⁶⁹ See paragraphs 174 *et. seq.*, *infra*.

¹⁷⁰ AP Research, 1979, 55 pp.

on." This corresponds to our category (b).

171. The Magid Study thus suggests that most radio listeners fit into our categories (a), (d) and (e). The effectiveness of minimum programming guidelines in increasing citizen awareness, then, will depend on (1) whether the guidelines require more news programming than would otherwise be forthcoming in the market, (that is whether the regulations are affecting programming decisions) and (2) the time of the day that additional news programming is broadcast (peak demand time or nonpeak time).

172. It may be possible to discern whether or not the existing regulations are in fact affecting programming decisions or whether market forces are the controlling factor. If most stations are providing more informational programming than is stipulated by the processing guidelines, that might suggest that market forces, not the guidelines, are the controlling factor.

173. There could be an additional regulatory factor operating, however. Licensees might choose to provide more informational programming than suggested by the guidelines in order to provide an "insurance policy" against comparative challenges or Petitions to Deny. Fortunately, it may be possible to separate these two motivations. Licensees programming for "insurance" rather than in response to audience demand are likely to schedule that additional programming during graveyard hours rather than risk losing audience during peak hours.

174. Some relevant data on the distribution of programming over the broadcast day are available on license renewal forms. All stations must provide data on the amount of nonentertainment programming provided during a composite week. These data are divided into three categories: "News," "public affairs," and "other." The "other" category is very broad, including such disparate areas as instructional, agricultural, and religious programming. With the data aggregated, we cannot distinguish among these elements in the "other" category. Unfortunately, we cannot expect that each of these elements has been equally affected by the minimum processing guidelines. For example, the amount of religious programming provided by a station is very unlikely to be affected by the existence of the guidelines. Other elements, however, such as instructional or agricultural programming, are more likely to be affected. We have therefore

limited our analysis to the data on news and public affairs programming.¹⁷¹

175. Our concern is two-fold: (1) How much news and public affairs programming is being provided under the current regulatory scheme and how does this compare to the guidelines? and (2) during what time of the broadcast day is this programming being aired? Tables 10 A and B, 11 A and B, and 12 A and B present aggregate data, by market size, on the percentage of news and public affairs programming broadcast. Several generalizations stand out.

(1) In markets with eight or more stations, more than 75% of the stations broadcast more than 6% news and public affairs programming (6% is the current Commission guideline for news, public affairs, and "other" programming for FM stations).

(2) In markets with seven or fewer stations, over 96% of the stations broadcast more than 6% news and public affairs programming. More than 80% of these stations broadcast in excess of 10% news and public affairs programming.

(3) As market size increases, the percentage of stations providing 10 to 25 percent news (or news and public affairs) programming decreases, while the percentage providing more than 50% news programming increases. This suggests that in markets with one or more stations providing listeners a steady diet of news programming, demand for such programming from other stations falls. These other stations can offer specialized programming formats because listeners can always switch to a news format station when they want news.

(4) Excluding one and two station markets, the amount of public affairs programming provided falls greatly as market size falls, suggesting that this programming appeals to a minority audience, and such audiences can best be accommodated in large markets where individual stations seek small niches to serve.¹⁷²

176. If these market forces are indeed present, it is useful to know how fully radio markets are served by news and public affairs-oriented stations. Table 13 provides data on the number of such stations in each large market.

177. The data indicate that virtually all markets with 16 or more stations are served by one or more news-oriented stations. This blanket news coverage by

¹⁷¹ The data come from the latest renewal applications of each licensee. Since the renewal process is staggered, the data cover a three year time period, 1976-1978.

¹⁷² Stations in very small markets may provide more local public affairs programming in an attempt to compete with distant signals.

a single station is less frequent in smaller markets. When market size decreases to 11 stations, it is more likely than not that such markets will *not* have a news-oriented station. However, as market size falls, stations become increasingly likely to have 10 to 25% news programming (See Tables 11 A and B).

178. The existence of many news-oriented commercial stations and of specialty radio news networks suggest that radio news programming may be profitable in large markets. If news programming is as profitable as entertainment formats, one can expect it to be provided even in the absence of Commission regulation.

179. Similarly, news programming greatly exceeds Commission guidelines in small markets, strongly suggesting that news is being provided in response to market forces, rather than to regulatory pressures, in these markets as well.

180. Profitability data by program format are not directly available. The station logs submitted with license renewal applications, however, provide data on both commercial minutes and informational programming over the broadcast day. Presumably those broadcast hours with the most commercial minutes will be the most profitable (unless the programming during those hours is more expensive, or the rates per commercial minute are lower). If news and/or public affairs programming is equally frequent or more frequent during the peak advertising hours than during nonpeak hours, this would suggest that news and/or public affairs programming is at least as profitable as entertainment programming.

181. Tables 14 A, B, and C; 15 A, B, and C; and 16 A, B, and C summarize such data for 208 stations in a sample of large and small markets in Georgia and Alabama, the most recent license renewal group.¹⁷³ Table 14 indicates that prime commercial time for radio is drive time: 6 to 10 a.m. and 3 to 7 p.m., Monday through Friday.¹⁷⁴ Tables 15 A, B, and C show that although news programming is not distributed across the broadcast day exactly as commercial minutes are, there is more news programming during drive time than during non-drive time.¹⁷⁵ This is

¹⁷³ The sampling technique is described in the notes to each table.

¹⁷⁴ Data in Tables 14B and 14C indicate that commercial messages are less skewed toward drive time, especially afternoon drive time, in small markets than in large markets.

¹⁷⁵ The data in Tables 15A and 15B indicate especially high levels of news programming on

Footnotes continued on next page

strong inferential evidence that news programming is profitable and would be substantially maintained absent Commission guidelines.

182. Tables 16 A, B, and C suggest that public affairs programming is most common on Sunday mornings. This is a time period with few commercial messages.¹⁷⁶ With few exceptions, public affairs programming is minimal during other periods of the broadcast week.¹⁷⁷ It seems quite likely that, absent Commission regulations, many stations might not provide as much public affairs programming.

183. In sum, data on present programming and on consumer wants and habits suggest that absent regulation most stations would continue to provide news programming. It also is likely that in large markets a reduction in informational programming offered by some stations would not result in a lack of availability of such programming for the overall market.

184. If the fundamental criterion for meeting the public interest is responding to consumer wants, then the most important objective with respect to nonentertainment programming is to assure that when there is a significant demand for a particular type of programming a reasonable amount is available to those who want it. This suggests that the Commission might be concerned with the provision of such programming on a marketwide basis rather than on an individual station basis. The evidence that we have presented strongly suggests that on a marketwide basis there will be a significant amount of news programming in both large and small markets. There is no evidence of similar consumer demand for public affairs programming.

185. Local informational programming represents a subset of informational programming that may provide large social benefits and that deserves special attention. Within the print media, national and international news is covered by both newspapers and magazines, but local news coverage is generally limited to newspapers, often to

only a single newspaper. Thus, citizens may be more dependent on the broadcast media for provision of local news than of national or international news.

186. News programming, however, is generally expensive to produce and therefore, purely on cost grounds, broadcast stations might have an incentive to pursue "blanket coverage" strategies that spread the fixed costs of program production over a larger audience, but may not foster local news coverage. Thus, one might expect a heavy reliance on network news production that emphasizes national and international news. The existence of scale production economies encourages local specialty stations to join with other geographically diverse stations with similar audiences to create specialty news networks. Because the audiences sought are geographically diverse, however, the news coverage will tend to be national or international, rather than local, in scope.

187. Nonetheless, there do exist strong countervailing market forces on the demand side that favor local news programming, especially in radio. In fact, almost 75% of all radio advertising is local advertising.^{177A} As outlined earlier, many advertisers—particularly of local services—either may not be able to afford television or seek target audiences that can be reached efficiently only via radio. Many of these advertisers—for example, savings and loan associations—want to be closely identified with their local communities and therefore prefer to sponsor (and be associated with) local programming. Such programming is frequently of a news rather than an entertainment format. This is probably due to demand considerations. Audiences recognize the need for local news (that is, it is distinguishable from, not just a substitute for, national news), but there is no analogous demand for local entertainment (although local "personalities" often compete as announcers presenting the works of national recording stars).

188. The Magid study reveals substantial listener awareness of local news programming. Table 17 shows the relative importance of local news programming to listeners choosing among stations. Among listeners who prefer one of the four most popular formats (preferred by 75.2% of all respondents), good local news coverage was cited by 185 of 760 respondents

(24.3%) as a reason that "best describes why (the particular station) is your overall favorite station."

189. Given that overall radio news programming appears to be profitable and that local news appears to be more important to radio listeners than network news (see Table 17), it seems likely that, absent Commission regulation, there would continue to be a substantial amount of local news programming. There is no similar evidence, however, for local public affairs programming.

190. Some of the mandatory community ascertainment requirements imposed by the Commission may also encourage local programming. Each station, after meeting with community leaders, must provide the Commission with a list of up to ten problems facing the community and examples of programming broadcast by that station in the past year that addressed those problems. Although some of the relevant programming would presumably fit the "local information" category, it is not certain whether all, some, or any of the programming was aired as a result of the regulation or would have been forthcoming anyway. Radio stations already seeking a particular specialized community will be sensitive to the informational needs of that community and may not require Commission oversight (and the attendant costs) to respond to those community needs. Similarly, those stations seeking a general audience will provide general informational programming, even in the absence of any specific regulation.

Failure to provide many voices

191. The Commission's concern with informational programming is not limited to its nature and amount. The concern also relates to the diversity of the programming provided. A possible corollary to the "well-informed citizen" argument has been advanced as follows: Society as a whole benefits when its citizens have access to many points of view (or diversity of opinion or "voices") on both problem-oriented and issue-oriented matters of public interest, and the unregulated market may not take into account those social benefits. Similarly, there may be social costs if certain voices are excluded and those costs also may not be taken into account in the market. Nonetheless, as in the case of quantity of informational programming, though potential market failure may exist here, it is not clear how significant it is or whether government regulation can improve the situation.

192. While attempting to avoid direct First Amendment issues, the

Footnotes continued from last page Tuesday. This is the result of our sampling technique. For each station in the sample we chose one day from the composite log. Tuesday happened to be the day randomly assigned to the only all-news station in the sample. Since there were only a small number of stations operating during the graveyard shift, this station's programming made the averages for those hours particularly high.

¹⁷⁶ However, the lack of commercial messages may represent purposeful avoidance on stations that provide Sunday morning religious programming out of a moral rather than economic motivation.

¹⁷⁷ In very small markets, public affairs programming is generally more frequently broadcast, and more evenly distributed through the broadcast week. See Table 16C.

^{177A} See Christopher H. Sterling and Timothy R. Haight, *The Mass Media: Aspen Institute Guide to Communication Industry Trends* (Praeger Publishers, New York, 1978), Table 303-B, page 129.

Commission has enunciated a number of rules and policies that touch, sometimes only tangentially, on the possible problem:

(1) The first part of the Fairness Doctrine as administered by the Commission requires all stations to provide some coverage of controversial issues of public importance.

(2) The second part of the Fairness Doctrine requires that, when a station covers controversial issues of public importance, it must provide diversity by presenting contrasting viewpoints.¹⁷⁸

(3) Current quantitative processing guidelines for informational programming require *all* stations to meet minimum requirements or else justify the failure to do so.

(4) Each station must meet certain community ascertainment requirements in order to learn about problems of importance to the community.

(5) EEO requirements and minority ownership policies have been set, with the intention in part of making all stations aware of and sensitive to minority needs and points of view.

193. These regulations and policies have varying degrees of effectiveness in pursuit of the public interest objective of providing many voices. A better key to attaining many voices, however, is a structural one—maximizing the number of stations in a market.

194. The second part of the Fairness Doctrine assures that contrasting views will be aired when controversial issues of public importance are presented. Listeners are more likely to get complete, nondistorted information, and unpopular opinions are more likely to be aired. Part 2 of the Fairness Doctrine reduces the substantial search costs that consumers bear in seeking out different sources in order to get different points of view on issues. As the number of stations in a market increases, however, the opportunity easily to receive different points of view increases, even without Part 2 of the Fairness Doctrine.

195. The first part of the Fairness Doctrine, requiring all stations to provide coverage of controversial issues of importance to the community, has been found by the Commission to have been violated in only one small market where an individual licensee refused to deal with a certain issue altogether.

196. Although the Fairness Doctrine requires stations to provide coverage of

controversial issues of interest to the community, we have never defined the term "community" as it applies to fairness issues. In other contexts, however, we have defined "community" to include the entire service area of a particular station (which would in most instances include more than the city of license).

197. While we have accorded broadcasters broad discretion in choosing the issues to be covered, we suspect that our broad definition of "community" may have encouraged broadcasters to select fairness issues of broad appeal to the entire community, rather than more narrow issues that might be more important to the more limited audience that actually listens to the station. Thus, some stations may have avoided specialty news coverage (for example, Black or Spanish language news) and the result may have been redundant coverage of general news (that was already covered by other stations) at the expense of unique specialty news coverage. Yet the specialty audience is far more likely to be attracted to news that it considers relevant, so that the effective dissemination of information may fall. This would be especially troubling if the special audiences are nonusers of the print media.

198. The quantitative programming guidelines also may assure that more voices will be heard than in the absence of these policies. As the data presented in the previous section suggest, however, market forces may dictate the maintenance of most news programming even in the absence of regulation. In any case, it is not obvious that those stations that prefer *not* to provide news and public affairs programming do more than a perfunctory job of providing such programming—"rip-and-read" news and graveyard scheduling of public affairs programming, for example. Thus, the promised additional voice might not be very meaningful. It is also not clear that those stations that are not interested in news and public affairs programming would be offering different points of view. They may depend largely on news services that are already used by other stations.

199. The Commission's ascertainment rules were implemented to encourage programming that is responsive to diverse local problems and needs while avoiding direct Commission involvement in specific licensee program judgments. The intention has been that if station owners and employees follow ascertainment procedures, programming judgments would better reflect local problems and needs than would be the

case if they relied solely on information from their ordinary business and social contacts. Hence, a wider spectrum of community problems might be addressed.

200. Because ascertainment is a procedurally detailed, but indirect, mechanism by which to expand program diversity, it is costly, but its effectiveness cannot be readily discerned. Licensees are required to gather certain demographic data about their communities, talk to community leaders, and provide a list of problems and issues of importance to the community. There are no *specific* programming requirements, however.

201. In large markets, where stations are increasingly following strategies of serving narrow audiences, many if not most stations will naturally air programs of interest to that special community without need of formal ascertainment procedures. Hence, ascertainment may not be necessary to produce programming responses to the important needs of specific groups such as Black, Spanish language and other foreign language speaking Americans, and women.

202. Since the implementation of formal ascertainment procedures in 1971, two important changes have occurred: EEO rules have been widely implemented, and stations have increasingly chosen strategies of seeking narrowly defined audiences. As a result of those developments, diverse community needs—including minority needs—are being better addressed. It appears that the ascertainment requirements that once provided broadcasters necessary guidance now may be superfluous to their task of determining community needs.

203. In addition, any possible benefits from ascertainment requirements must be weighed against the costs. The volume of information filed with the Commission by applicants and licensees, and the additional information that must be kept in local station public inspection files, indicate the substantial burden imposed on the industry by this requirement. The demands on Commission resources are also very high. As a rough indication, since the adoption of the initial Primer in 1971, the cases dealing with ascertainment have been so numerous that just the annotated index of cases covers almost 60 pages.¹⁷⁹ The bulk of these cases deal with purely mechanistic aspects of the formal ascertainment procedures.

¹⁷⁹ Digest, Vol. 2, Second Series, Pike & Fischer Radio Regulation, paragraphs 53: 24(R)(6) and 53: 24 (Y)(1)-(18).

¹⁷⁸ Because at least Part 2 Fairness Doctrine obligations appear to be mandated by Section 315 of the Communications Act, and because there is a great deal of uncertainty as to whether or not Part 1 obligations are required by statute, we do not believe that it would be desirable to undertake a significant change in our current Fairness Doctrine policies in this proceeding.

204. The cases reflect a substantial expenditure of resources in preparing and acting on petitions to deny, motions to request or enlarge issues, and adjudicatory decisions. Unreported are the thousands of letters sent while processing applications, contested and uncontested alike. We recognize that many of these cases reflect legitimate complaints that licensees have not complied with ascertainment criteria.

205. It is not clear, however, how well these formal criteria improve consumer well-being. We are proposing to permit broadcasters to program exclusively for selected audiences since we suspect that licensees' own economic self-interests would encourage them to ascertain for those selected audiences, without our requiring detailed procedures for the *entire* community. We are now seeking comments to determine whether ascertainment procedures are worth the high cost involved.

206. In general the key to providing many voices remains the pursuit of policies that will maximize the number of stations on the air, coupled with the EEO and minority ownership policies (which will be discussed in greater detail below). These provide the greatest opportunity for increasing the number of voices in radio markets by expanding radio ownership and management beyond its present confines. It is clear that the most effective method of encouraging equal employment opportunity and minority ownership goals maybe to greatly expand the number of radio stations on the air and make it easier for minority groups to obtain new radio licenses or to buy existing stations.

Failure to account for distortions due to discrimination

207. If the market works, there should be competitive forces that put pressure on producers to be efficient so that producers can only afford to indulge their personal prejudices at their own peril. If the most qualified person is denied employment or promotion by one employer due to prejudice, then a competitor will take advantage of the situation, employ that qualified person, and reap the rewards in the marketplace. Hence, discrimination should not flourish in a competitive market.

208. If discrimination is systemic, however, fully ingrained in the market so that many if not most decisionmakers share the prejudice—then the discriminator will suffer no competitive disadvantage. The only parties adversely affected *directly* will be those discriminated against. Such

institutionalized discrimination—whether against women, ethnic or racial minorities, or any other group—has not only moral, but also economic, consequences.

209. All markets, those for inputs into production (that is, labor, capital, materials) as well as those for final products, will function efficiently only if they are competitive. For markets to be competitive, participation (entry) should not be restricted (except to establish necessary minimal technical requirements for *all* participants and potential entrants). Discrimination places an artificial restriction on certain potential participants. With fewer individuals allowed to participate in a particular labor market, either those who are eligible will be able to demand higher wages than they otherwise could get or the quality of those hired will be lower than it could be.

210. The public loses from discrimination, because overpaid or lower quality employees can mean reduced public well-being. Either goods and services will be produced at higher cost than necessary, or some goods and services that consumers want and would be willing to pay for do not get produced.

211. More basically, the market system can achieve social well-being only if everyone can participate. Every individual must be free to offer his or her skills or other resources and receive commensurate payment for these in order to purchase goods and services. If any group is systematically discriminated against, the well-being both it and society at large derive from the market system is reduced.

212. In broadcast communications, systemic discrimination can have several consequences. Hiring or promoting on a basis other than skill level will obviously reduce product (in this case, program) quality. In addition, systematic exclusion of certain groups from decision making positions may reduce the likelihood that programming will be sensitive to the wants of those groups. Discrimination, then, may adversely affect program diversity.

213. An argument can be made that discrimination will not affect program diversity because, even if decisionmakers are all from a single homogeneous group and unaware of other community needs, they will still be responsive to diverse interests if they remain alert to market forces. That is, they will respond to audience size and demographics. The market takes as given, however, the distribution of income and wealth, and if past (and present) discrimination has caused certain groups to have little wealth and

income, those groups will have small voices in the market. Therefore, their wants may remain underrepresented in current market allocations. In this case, the market may provide less than the optimal amount of "minority programming."¹⁰⁰

214. To counter the market's inability to respond to systemic discrimination, the government has intervened through the enactment of equal employment opportunity laws. For most of the economy, these laws are administered by the Equal Employment Opportunity Commission. The FCC, however, has special authority to administer its own EEO rules for the broadcast industry.¹⁰¹

215. If the market may provide too little minority programming, the government has a number of potential ways to attempt to remedy the situation. EEO laws deal with present discrimination, but will have limited immediate effect on program content. In order to increase minority programming, the options available are the same as for increasing informational programming: Direct or indirect subsidization of minority programming or direct regulation (imposing minimum guidelines for minority programming). The Commission has chosen the former course. It has instituted policies that favor minority ownership and EEO affirmative action requirements, on the assumption that such measures will result in programming reflecting the needs and interests of minority groups. The effectiveness of this policy in achieving the Commission's public interest objective of diversity will depend in part on the ability and willingness of minority owners (and employees) to provide minority programming.

216. The alternative regulatory approach—imposing guidelines for minority programming—would require the same kind of monitoring costs that have been associated with informational programming guidelines. If there is no public policy argument that *all* stations in a market should provide minority programming, but only that each market should have a reasonable amount of such programming, the imposition of guidelines for each station would be misguided. Furthermore, it would impose the additional cost of government intrusion into programming and ultimately might not even be a true reflection of minority needs since it

¹⁰⁰In the following discussion, "minority programming" is defined to be programming designed to meet the special wants of those groups that have been discriminated against.

¹⁰¹*Nondiscrimination in the Employment Policies and Practices of Broadcast Licensees*, 60 F.C.C. 2d 226 (1976).

would be the broadcaster rather than the minority listener making the choice.

217. EEO rules on nondiscrimination in employment practices have been in effect for ten years now. Our annual employment statistics show that the employment of minorities and women in the broadcast industry has increased.¹⁸² Equally important, the amount of minority programming in radio has increased dramatically.

Commercial practices

218. The Commission has imposed quantitative processing guidelines on the use of broadcast time for commercial messages based on the belief that the public airwaves should not be unduly used to further private commercial interests.¹⁸³ The underlying presumption is that entertainment and informational programming better serve the public interest than do commercial messages.¹⁸⁴ This is, of course, a value judgment. How many commercial minutes represent "too much" is a noneconomic judgment. There are no objective standards on which to base the decision.

219. Existing guidelines therefore cannot be subjected to any objective test. It is worth investigating, however, whether or not, absent the regulation, the market would have yielded more commercial minutes. Theory suggests there are strong limiting forces in the market.

¹⁸² *Id.*

¹⁸³ The processing guidelines are set out above in note 92, *supra*.

¹⁸⁴ Commercial messages clearly provide useful services to listeners. They are an important source of information about goods and services that listeners consume. Without radio advertising, producers of these goods and services would have to use alternate—perhaps less efficient—means of communicating their messages. Although arguably some of these commercial messages are primarily "persuasive" with little informational content, many radio messages provide important price and availability information. For example, savings and loan associations use radio advertisements to inform listeners of the availability of higher interest rates; local retailers inform listeners of special sales, sometimes providing specific price information; rock and classical music stations advertise concerts, efficiently reaching that group of the population most likely to be interested in the concerts. Indeed, the trend in radio toward matching specialty audiences with specialty advertisers represents the exploitation of a highly efficient means of information flow. Listeners of specialized stations know that the commercial messages will provide a certain type of information and if that information (e.g., concert announcements) is important to them, then they can gain valuable information at a low search cost. The information may not be available at a local level in alternate media such as specialty magazines, which tend to be national. Commercial messages also allow producers to inform mass audiences about the introduction of a new good or service. Without access to the media, or with restricted access, it would be more difficult for new entry to take place and markets would become less competitive, raising prices to consumers.

220. Clearly, up to some point stations can increase their revenues if they increase the number of commercial messages broadcast. Advertising rates, however, depend on audience size and characteristics. If audiences prefer programming to commercial messages, they will desert stations that overcommercialize. This may be especially true of higher income audience members (those who may be most coveted by advertisers) who have more entertainment options available. Hence, audience pressure exists to limit commercial messages. At the same time, advertisers prefer that their messages not be lost among the exclusivity or totally avoid overcommercialized stations. Hence, sponsor pressure exists to limit commercial messages.

221. Absent a freely functioning market, it might be impossible to determine exactly how many commercial messages the market would produce. Obviously, different markets would yield different results. Where there are very few broadcast outlets, stations might be able to sue their monopoly power to extract extra revenues from overcommercialization. In these small markets, however, there may be few advertisers. In markets with many stations, the audience will have options if a particular station chooses to schedule many commercial messages, and advertisers can choose less cluttered stations. Hence, in these markets, overcommercialization might not be a threat.

222. Fortunately, some data are available to test this theory. The actual commercial minutes reported by stations in the composite week logs of their license renewal applications can be compared to the Commission's guidelines. If in most or all hours stations in particular markets do not air as many commercial minutes as specified in the guidelines, this would suggest that market forces place a stronger restriction on commercial time than do the Commission's guidelines.

223. Data on stations in Georgia and Alabama are available from composite week logs filed with the license renewal applications. We have collected data from a sample of stations in large and small markets. Table 18 summarizes the information on the incidence of commercial time exceeding the Commission's 18 minute (1080 seconds) per hour guideline. As the table indicates, the frequency with which the guidelines were met or exceeded generally was very low for large markets, increased somewhat for moderate sized markets (with 3 to 8 stations), and was very low again for

small markets.¹⁸⁵ Nonetheless, the overall incidence of "overcommercialization" was quite low, even in the "high incidence" markets.

224. An argument can be made that stations purposely remain below the guideline, rather than at the guideline, in order to provide an "insurance policy" against petitions to deny or comparative challenges. Such behavior may be rational, but stations are unlikely to unduly restrict commercial time as that would prove to be a very costly insurance policy indeed.

225. To try to determine whether this insurance policy behavior is limiting commercial time or whether market forces are responsible, we collected data on the incidence of different amounts of commercial time per hour. Table 19 summarizes the results. Note that 950 seconds is 2 minutes, 10 seconds below the Commission guideline. It is likely that if licensees presently follow the "insurance policy" strategy, but would, absent Commission regulation, exceed the guidelines, they might reduce their commercial time to 950 second an hour which is more than 10% below guidelines, but would not sacrifice more than that for insurance. Hence, a high incidence of commercialization between 950 and 1080 seconds per hour might suggest widespread use of the insurance policy strategy. If most commercialization falls below 950 seconds, then market forces are probably the determining factor. As Table 19 shows, there is very low incidence of commercialization at 950 seconds or more (though it is somewhat more frequent in the small to moderate-sized markets). This suggests that market forces, rather than Commission regulations, are primarily responsible for the present level of commercialization, and that these forces do not allow overcommercialization.

226. There is an additional set of evidence suggesting that market forces will impose restrictions on the amount of commercial messages broadcast. Many if not most FM stations air far fewer commercial messages than do AM stations,¹⁸⁶ and yet (or perhaps partially

¹⁸⁵ Although theory might suggest that licensees in very small markets, with few competitors, might have a greater opportunity to overcommercialize, they generally cannot exploit the situation due to (1) a lack of demand by advertisers for airtime, since these markets are small, and (2) the competition for listeners from distant signals they may have few commercials. In moderate sized markets, there may also be distant signals, but demand for advertising time may be greater and therefore more commercialization will occur.

¹⁸⁶ In news release number 108/79, entitled "Code Claims Radio Stations Carry Fewer Ads Than FCC Endorses." The National Association of Broadcasters presented the results of a study on the

Footnotes continued on next page

as a result) FM is far more viable today than it ever has been previously. Indeed, a growing number of FM stations in large urban markets present (and heavily promote) commercial-free hours or entire evenings of programming. Clearly, these stations believe that consumers do react positively to reduced commercial time.

227. It thus appears that at present the Commission's guidelines are unnecessary in that competitive forces in large markets and the lack of demand in small markets dictate even lower levels of commercialization. It is possible that, in the future, demand for advertising time will grow faster than supply (or than the demand for programming) and the market might then yield more commercial minutes, exceeding present guidelines.¹⁸⁷ In this situation, however, more radio stations could be supported and pressures would build either to expand the amount of spectrum available for broadcast radio or reduce the spacing between AM stations and/or reallocate FM more efficiently. In the interim guidelines should be removed.

Other potential bases for regulation

228. There are several other areas in which radio markets potentially may fail to perform efficiently, and that therefore might necessitate government regulation. These include the failure to provide sufficient controversial programming, the failure to provide accurate consumer information, and the failure to account for owners' nonbroadcast market motivations. These will not be addressed in this Notice because they are not germane to the Commission rules and policies under scrutiny here. Where these potential market failures underlie other Commission rules or policies, however, they will be discussed in future Notices.

Footnotes continued from last page amount of commercial messages broadcast by commercial radio stations. Among the results was the finding that most stations in a sample of 473 AM stations offered between 9 and 18 minutes of commercial messages per hour between 6 a.m. and 7 p.m., on Thursdays and Fridays; most stations in a sample of 304 FM stations had between 3 and 9 minutes of commercial messages per hour during the same time period.

¹⁸⁷ Even if the market were to yield "too much" commercialization, there could be great costs associated with imposing guidelines. If commercial time is restricted, demand will push up the price of that time, and some advertisers will be excluded from the airwaves. Since the fee paid to a station by an advertiser for commercial time is independent of the number of units of the advertised product sold by the advertiser, the costs of advertising per unit sold will be lower for larger, entrenched firms than for small, new entrants. Restrictions on commercial time may, therefore, impose costs more heavily on new competitors than on dominant firms and the degree of competition in these markets might suffer.

229. Similarly, there are other Commission rules and policies, akin to the processing guidelines on commercialization, that are not based on any market failure, but rather are based on non-economic (social or moral) value judgments. These include policies on licensee character, on certain intra-industry conduct such as hypoing and fraudulent billing, and on programming taboos such as obscene language and lotteries. These, too, will be addressed in future Commission Notices.

IV. Options for Elimination of Current Programming, Ascertainment, Commercial, and Related Requirements

230. It is clear that major technological, social, and structural changes in or affecting the broadcast radio industry oblige the Commission to re-evaluate its current regulatory scheme. The available evidence suggests that significant deregulatory steps might be appropriate. As there are a variety of ways to pursue such deregulation, we are setting forth a number of affirmative proposals.^{187A} While we currently have a preference for a certain course of action, which is set forth in the next section, comment is invited on all of the alternatives set forth herein. Parties should feel free to propose alternatives not set forth in this Notice so long as they are limited to the areas under consideration. Parties should also feel free to submit any additional empirical information that will help the Commission evaluate the merits of the attention on the validity of the empirical information set forth above that serves as the underlying justification for many of the options presented here and to submit any additional empirical information that will help the Commission evaluate the merits of the alternatives.

A. Nonentertainment Programming

231. The Commission's current requirements for nonentertainment programming to be aired by radio station licensees are not fixed by a rigid formula, either in terms of a requisite number of hours or percentage of broadcast time. In a delegation of authority to the Broadcast Bureau, however, certain processing guidelines

^{187A} None of the proposals made in any of the areas under discussion pertains to noncommercial radio. Noncommercial licensees face different incentives and perform under a different statutory mandate than commercial licensees, and therefore the analysis performed in this Notice is not directly applicable to noncommercial radio. We shall, however, address the issues of ascertainment and nonentertainment programming as they pertain to noncommercial radio in a separate notice.

are set forth.¹⁸⁸ Should a licensee's programming proposal or profile fall below those guidelines, the application is not automatically dismissed; rather, the Bureau cannot routinely grant the application pursuant to its delegated authority. Instead, it must be brought to the attention of the full Commission.

232. Additionally, we require licensees to present programming to meet needs and problems discovered through ascertainment but, again, do not specify what amounts of such programming must be presented. In place of quantitative standards we proceed on more or less a case-by-case basis in evaluating stations' performance with regard to programming resulting from ascertainment.

233. A number of alternative approaches are available by which our current nonentertainment rules and policies can be modified or eliminated. These alternatives are as follows:

(1) The Commission could remove itself from all consideration of the amount of nonentertainment programming furnished by commercial broadcast radio licensees. Under this alternative, the marketplace would generally determine what levels of such programming would be presented.

(2) The Commission could relieve individual licensees of any obligation to present nonentertainment programming but would, instead, analyze the amounts of such programming on a marketwide basis. If the amount of nonentertainment programming presented in a particular market fell below a certain amount, the Commission would then take action to redress the deficiency.

(3) The Commission could free licensees of any specific responsibilities with respect to nonentertainment programming (and ascertainment and commercial minutes), but would require licensees to show, if challenged upon renewal, that they were serving the public interest. Marketwide criteria would be used for such evaluation.

(4) The Commission could impose quantitative programming standards for each nonentertainment programming category. Such quantitative standards could take the form of either a minimum number of hours per week that would have to be presented for each category

¹⁸⁸ 47 CFR 0.281(a)(8)(i)—Commercial AM and FM proposals for less than eight and six percent, respectively, of total nonentertainment programming; commercial TV proposals (except those made by UHF stations not affiliated with major networks) which project for the hours 6:00 a.m. to 12:00 midnight less than the indicated percentages in one or more of the following categories: five percent total local programming, five percent informational (news plus public affairs) programming, ten percent total nonentertainment programming.

of programming time that each station would have to devote to such category.

(5) The Commission could impose quantitative standards, as above, but instead of setting such standards, in terms of hours or percentage of time devoted to each category, could measure the adequacy of the programming on the basis of each station's expenditures thereon. This could take the form of the Commission's mandating a certain proportion of revenues or profits that each station would have to reinvest in nonentertainment programming.

(6) The Commission could establish a minimum fixed percentage of local public service programming that would have to be presented. This percentage could be met by the broadcast of any of the following alone or in combination: Local news, local public affairs, local public service announcements, community bulleting boards, or any other locally produced nonentertainment programming demonstrably related to serving local community needs. The meeting of this minimum percentage would be a *sine qua non* of license renewal.

None of these options would alter the Fairness Doctrine responsibilities of licensees.

B. Ascertainment

234. In paragraphs 29-40, above, we noted that our ascertainment requirements are set forth in policy statements rather than being specified in rules. Our rules do contain reference to ascertainment, however, principally with regard to the Broadcast Bureau's delegation of authority¹⁹⁹ and to licensees' public file obligations.¹⁹⁰

235. We believe that there are four options that warrant consideration with regard to ascertainment. They are:

(1) To eliminate both the ascertainment procedures and the general ascertainment obligation and to leave it to marketplace forces to ensure that programming designed to meet the needs and problems of each station's listenership is supplied;

(2) To require ascertainment to be conducted by licensees but to permit them to decide in good faith how best to conduct that ascertainment without formalized Commission requirements;

(3) To retain our ascertainment requirements, but in a simplified form; or

(4) To retain our ascertainment requirements as they currently exist.

C. Commercial Practices

236. Our principal reference to commercialization appears in § 0.281 of the Commission's rules.¹⁹¹ That section merely sets commercial limits that, if an applicant proposes to exceed, prevent the Broadcast Bureau from routinely granting an application pursuant to its delegation of authority.

237. The range of our options with regard to commercial practices include the following:

(1) We could eliminate all rules and policies dealing with the amount of commercial time and leave it to the marketplace to determine what levels of commercialization would be tolerated;

(2) We could set quantitative standards that, if exceeded, would result in some sanction being imposed against the licensee;

(3) We could eliminate all rules specific to individual licensees, but intercede if heavy levels of commercialization occurred marketwide; or

(4) We could retain quantitative guidelines but only with regard to the Broadcast Bureau's delegation of authority.

D. Program Logs

238. The Commission's requirements for program logs for AM and FM radio stations are set forth in §§ 73.1800 and 73.1810 of the Commission's rules. Because our program logging requirements are, in part, intended to assure documentation of licensees' efforts in providing nonentertainment programming and of their commercial practices, changes in our policies and rules in these areas may bring into question the need for retention of these rules. Accordingly, should we, as a result of this proceeding, eliminate nonentertainment programming requirements and commercial "limitations," we may also find the elimination or modification of our program log requirements to be warranted.¹⁹² On the other hand if, as a result of this proceeding, a higher showing is required of members of the public challenging a station's programming performance, it may be unreasonable to permit the elimination simultaneously of the records necessary to substantiate such a claim.

239. Three options present themselves in this regard. In the event that our nonentertainment and commercial rules and policies are eliminated or modified in this proceeding, we could:

(1) Eliminate the need for AM and commercial FM stations to keep program logs;

(2) Eliminate our program log requirements but require any AM or commercial FM licensee keeping records of its programming or commercial schedules for its own purposes to make these available to the public in accordance with the procedures currently outlined in § 73.1850 of the Commission's rules and discussed in the Public and Broadcasting Procedural Manual, Revised Edition; or,

(3) Continue our program log requirements as they currently exist.

240. The alternatives set forth above with regard to all of the subject areas are not exclusive. Although in the next section we set forth our current preferences, comment is invited on any or all of the above proposals. Additionally, comment is invited on any alternative not set forth herein but which it is felt we should consider (e.g., requiring radio stations to keep records concerning programming aired but without specifying any particular format that such records would have to take). Any such new proposals should, however, be limited to the areas under consideration in this proceeding.

V. Preferred Options

241. Our ultimate goal in this proceeding is to maximize the benefits of radio services to the public. If that goal can be achieved with a minimum of regulation on our part, we will increase the public benefit, for then we will have reduced the delays and costs of regulation without sacrificing service to the public. From this perspective, the option of eliminating the Commission's ascertainment obligations as well as the guidelines on nonentertainment programming and commercial matter is the most attractive. It offers the potential of a well-served public at greatly reduced regulatory cost. Moreover, the data presented in the previous section provides a strong indication that the marketplace can in fact be responsive to the public's needs and wants without Commission intervention. In other words, the evidence suggests that the Commission's statutory responsibility to protect the public interest can be honored if the Commission largely relies on the discretion of its broadcast licensees in the areas of ascertainment, nonentertainment programming, and

¹⁹⁹ See § 0.281(a)(6)(ii) which excepts from the Broadcast Bureau's delegated authority cases where there are substantial ascertainment defects that cannot be resolved by staff inquiry or action.

¹⁹⁰ See §§ 1.528(a) (11) and (12) which require licensees to place documentation of their ascertainment efforts into their public file.

¹⁹¹ See note 92, *supra*.

¹⁹² Additionally, as Emergency Broadcast System (EBS) log entries currently may be made in the program logs, it will be necessary to require commercial AM and FM stations to make such entries in their operating logs, necessitating the amendment of § 73.1820, as well.

commercial matter.^{192A} If we should ultimately adopt this approach, however, we would not completely walk away from broadcast regulation in these areas. If we found that the marketplace had failed to serve the public adequately, we would have to be prepared to take appropriate action to remedy the situation. In addition, we must always keep in mind the Fairness Doctrine^{192B} and how it will be enforced under the new regulatory procedures.

242. The approach we propose here is consistent with Congress' intent to permit commercial broadcasting to develop with the widest possible journalistic freedom consistent with its public obligations.¹⁹³ Furthermore, it is entirely consistent with Congress' intent that the Commission have sufficient flexibility, through the "supple instrument" of the public interest, to respond to the rapid and dynamic changes that have characterized broadcasting throughout its history. We believe it would be worthwhile to set forth in some detail a rationale for taking the maximum deregulatory steps consistent with our public interest responsibilities. We hope hereby to facilitate public comment which will assume a complete record and address the central legal and factual issues presented by this and related proposals.¹⁹⁴

Nonentertainment programming

243. We recognize the potential for radio markets to provide too little informational programming, but believe that the evidence indicates that the marketplace is likely to nonetheless serve consumer desires more efficiently than any regulatory alternative we can envision. We are concerned that the intrusion of the Commission into the market may result in the implementation of guidelines across markets that can hinder broadcasters in responding to the wants of their own listening audiences. If the guidelines are set too low for a particular market, they will simply be redundant; if too high, they may coerce the licensee into providing nonentertainment programming that the public does not want at the expense of preferred programming, thereby reducing consumer well-being.

244. The other specific proposals covering nonentertainment programming

each have drawbacks that must be addressed. Guidelines established for individual components or categories of nonentertainment programming (proposals 4 and 5) would further limit the ability of licensees to respond to the particular demands of their own communities. For example, a station facing a high demand for news programming but low demand for public affairs programming might find itself forced to produce more of the latter at the expense of the former, and also at the expense of listeners whose preferences would be disregarded.

245. Tying expenditures on nonentertainment programming to overall station-revenues or profits (proposal 5) threatens to undermine the causal link between market forces and responsiveness to consumer wants. There is good reason to believe that licensees maximize their potential to earn large revenues and profits when they accurately gauge and serve the wants of their community. If those wants include significant amounts of nonentertainment programming then proposal 5 will not cause harm. But if those wants tend not to include such programming, then proposal 5 may force the licensee to divert resources from programming preferred by listeners to that which is less preferred. This would run counter to the public interest criterion of satisfying consumer wants.

246. Guidelines aimed at individual stations (proposals 4, 5, and 6) fail to recognize that any evaluation of nonentertainment programming can appropriately be made only on a market-wide basis since listeners have available to them the sum of the programming of stations in the market, not just the programming of individual stations. Proposal 6, for example, fails to take into account that specialized communities exist that are not geographically localized and might be more interested in specialized news and public affairs programming that is national in scope than in general local programming. If there is a substantial demand for the local programming sought in Proposal 5, then so long as that demand is met by other stations in the market, it may be unwise to force the station catering to a specialized audience to provide similar coverage. If there is no demand for local programming, no station should be required to provide the programming.

247. Marketwide guidelines (Proposal 2), though superior to individual station guidelines in that they allow individual stations greater flexibility in responding to listener wants, also have drawbacks. Percentage guidelines that might be

appropriate in one market might not be in another market. Consumer demand for informational programming will depend on a number of factors, including the heterogeneity or homogeneity of the population (by ethnic or racial composition, by age, by income distribution, by white collar/blue collar, and the like). If the industrial base of one community is tied primarily to a single industry (e.g., farming, automobiles) then enough people in that community might be interested in specialized news or public affairs coverage of that industry to support such programming. In communities with diverse economic bases, there may be no analogous demand. In other words, rigid bureaucratically determined guidelines cannot respond well to these differences.

248. Proposal 3 places a heavy burden of proof upon licensees and, more importantly, forces the Commission to assess each individual station's programming rather than leaving that task to the listening audience—the marketplace. Under proposal 3, the Commission either would face the alternative of evaluating the claims of each licensee on an *ad hoc* basis, which could be unduly burdensome for the Commission, or falling back to the type of guidelines that we are attempting to eliminate.

249. The data strongly suggest that no regulatory alternative would be likely to satisfy consumer wants as well as the market solution offered in proposal 1. Under that proposal, the Commission would remove itself from all consideration of the amounts of nonentertainment programming furnished by radio broadcast licensees.^{194A} In that event we would expect that market forces operating in both large and small markets, as indicated elsewhere, in conjunction with Commission policies, rules and regulations, covering structural matters (e.g., EEO, multiple ownership, AM-FM duplication, minority ownership and the like) will create a marketplace that is more reflective of significant consumer demands than standards imposed by the Commission.

250. As mentioned above, adoption of the first option would not completely remove the Commission from broadcast regulation in the areas of ascertainment, nonentertainment programming, and commercial matter. We would still consider petitions to deny, complaints and other information to guard against marketplace failures. This potential for

^{194A} Except as discussed *infra*, at paragraphs 250-264.

^{192A} If additional data not currently available were to suggest a different policy conclusion, we would be responsive to such data. We therefore encourage all parties to provide any relevant data during the comment period.

^{192B} *Fairness Report*, 48 FCC 2d 1 (1974), *recon.*

¹⁹³ *Columbia Broadcasting System, Inc. v. Democratic National Committee*, *supra*.

¹⁹⁴ See paragraphs 51-54, *supra*.

Commission intervention is discussed in greater detail below in the section on petitions to deny. Moreover, proposal 1 does not contemplate any change in our enforcement of the Fairness Doctrine. That doctrine requires broadcasters to provide coverage of controversial issues of public importance and to ensure that the coverage is balanced with contrasting views. There is some question as to whether adoption of proposal 1 would create any problems in fairness enforcement and, if so, how those problems should be resolved. We invite parties to comment on that matter as well as the entirety of our reasoning for believing that option 1 may provide the greatest benefits to the public.

Ascertainment

251. Two of the principal factors leading to this review of our regulations were the significant increase in the number and competitiveness of radio stations and the tendency of more and more of these stations to cater to specialized audiences. Although the Commission has maintained formal ascertainment requirements, a number of factors strongly suggest that the continuation of these requirements may be unnecessary. In large markets, the matching of specialized audiences to particular stations, the greater fulfillment of minority interests, and the diversification that other Commission policies foster appear to remove the necessity for the formalized ascertainment procedures that have developed over time.

252. Although small market stations may have few radio competitors for commercial messages, they must compete with distant radio signals for listeners. Virtually all communities receive one or more distant signals and most small communities (with only one or two local stations) receive more than half a dozen. The competitive edge that the local small market station may enjoy is identification with and responsiveness to the local community. The licensee can usually be expected to know his community. This is evidenced by the large amount of news and public affairs programming provided by small radio markets.¹⁹⁶ Market forces exist that motivate the small market licensee to be aware of his local community's needs absent any formal ascertainment procedures.

253. Additionally, it is apparent that these mechanical procedures are costly and impose unnecessary burdens upon radio licensees. Parties, ranging from the United Church of Christ to the National

Association of Broadcasters, have also questioned the need for some or all of our formal ascertainment requirements.¹⁹⁶

254. Thus, it may no longer be in the public interest to require each licensee to ascertain the problems and needs of all significant groups in his community. Rather, since broadcasters appear to aim their programming at more specific groups, the ascertainment of all groups in a mechanical procedure may be wasteful.

255. With regard to the ascertainment of the needs of a licensee's particular audience, Commission requirements may be similarly unnecessary as the licensee has an economic incentive to be aware of, and responsive to, those needs in order to keep and increase his audience. We believe that such incentives will result in some form of ascertainment taking place even in the absence of a Commission requirement. Structural regulations by the Commission is intended to assure diversification in broadcast employment and ownership, giving many voices access to the radio medium. The effects of diversification, together with broadcast incentives to discover and serve the needs of their audiences, would probably generate market forces responsive to significant demands for programming. Therefore, as ascertainment was designed in part to ensure that such programming would be provided, these marketplace forces may render continuing government regulation to that same end unnecessary. Accordingly, we believe it may no longer be in the public interest to require AM and commercial FM broadcasters to ascertain the needs and problems of their community, and we therefore propose elimination of both the formal procedure and the ascertainment obligations itself.

256. None of the other alternatives presented is as attractive. To retain our current formalized ascertainment procedures would, as noted above, maintain a costly and probably unnecessary burden upon licensees. To retain ascertainment requirements but to modify them to make them less

formal might only lead to a situation similar to that which obtained prior to 1971. That is, so many questions could arise that we would likely be required to again formalize the procedure. Accordingly, that choice could easily lead us back to ascertainment requirements similar to those currently in place. The simplification of the ascertainment procedures similarly could leave many resolved problems that might well lead to the imposition of requirements akin to those currently in force.

Commercial practices

257. Existing guidelines on commercial minutes simply represent Commission value judgments. They are not based on any objective measure of consumer well being. The same would be true of any system of commercial guidelines, whether imposed marketwide or on individual licensees. Listeners seem to be quite responsive to nonpreferred programming; they usually tune it out for other programming or for non-radio alternatives. It therefore seems to us that individual radio markets can better determine appropriate levels of commercial messages than can the Commission. Indeed, present levels are far below Commission guidelines. We therefore prefer to eliminate all rules and policies dealing with commercial time and leave it to marketplace forces to determine what levels of commercialization would be tolerated. Again, we believe that those forces will be sufficient to deter abuses.

Program logs

258. With regard to the maintenance and retention of program logs, we believe that our other proposed actions could well make a requirement that radio stations maintain, and retain, program logs unnecessary. Since the object of deregulation is to remove unnecessary regulation, the public interest might best be served by the elimination of program log requirements for broadcast radio stations from our rules. (See Appendix B.) We do propose to adopt a rule, however, requiring stations which, for their own reasons or business requirements, elect to maintain a record of commercials and/or programming aired to make that record available for public inspection in accordance with current practice. This would represent a minimal cost to licensees but would provide the public with valuable information.

Procedural changes

259. The actions that we are proposing will affect current practice relating both to petitions to deny and to comparative

¹⁹⁶ See Tables 10A, 10B, 11A, 11B, 12A, and 12B, *infra*.

¹⁹⁶ See for example, Office of Communications of the United Church of Christ, Memorandum to Federal Communications Commission Re: Radio Deregulation, May 31, 1979, pp. 1-2. That document also contained an appendix listing 113 participant organizations and individuals that joined the Memorandum under an umbrella known as the "Telecommunications Consumer Coalition." See also National Association of Broadcasters Petition for Rule Making, In the Matter of Deregulation of Radio: Repeal of Delegations of Authority on Commercial Standards and Nonentertainment Programming, Program Logging Rules and Formal Ascertainment Requirements for Renewal Applications, and Other Relief for Radio Stations.

hearings. We therefore propose certain procedural modifications and invite comments upon these proposals as well as any alternatives that we may have omitted.

Petitions to deny

260. Section 309(d)(1) of the Communications Act states that "any party in interest may file with the Commission a petition to deny any application."¹⁹⁶ Petitions to deny must contain "substantial and specific allegations of fact which, if true, would indicate that a grant of the application would be *prima facie* inconsistent with the public interest."¹⁹⁷ Where there are substantial and material questions of fact present or where we are unable to find that a grant of the application would be consistent with the public interest, we must designate the application for hearing.¹⁹⁸

261. Among the grounds currently available by which petitioners may challenge applications are the levels of nonentertainment programming and commercials and the applicant's ascertainment efforts. Obviously, should we adopt the proposals made herein, these would no longer be available as grounds upon which to base a challenge to commercial AM and FM applications. Petitioners will still be able, however, to base petitions upon EEO violations, Fairness Doctrine violations and such other grounds as are currently, and will remain, available to petitioners. Additionally, in this regard, we note that discrimination in the provision of programming, especially where racial or sexual discrimination is involved, remains forbidden. Our ending of ascertainment obligations does not change our prohibition of such discrimination in programming. Thus, under our proposal, licensees will still be held individually responsible for the operation of their stations and petitioners will still have access to the petition to deny process.

262. Although levels of nonentertainment programming and commercials, and ascertainment efforts will no longer provide grounds for petitions to deny against individual stations, the Commission will not completely absent itself from consideration of these factors. We expect and encourage the public to keep the Commission informed as to how well the marketplace is performing. Based upon complaints from the public, we will monitor market performance.

Should complaints from the public result in data suggesting that the market is failing in the areas that we propose to deregulate, we will further investigate and, if warranted, take whatever actions are required by the public interest to correct the situation. For instance, if we discover that the marketplace is failing in radio markets of a certain class (e.g., markets with less than four stations) we would consider fashioning relief applicable to such markets. In this regard, it is appropriate at this point to refer to the recent ruling of the United States Court of Appeals for the District of Columbia Circuit in *WNCN Listeners Guild v. Federal Communications Commission*, No. 76-1692 (D.C. Cir. 1979). It appears that the court's primary concern in that case, which involved the question of format change, was that the Commission be prepared to intervene in the marketplace in those rare instances in which the market fails to satisfy consumer wants. Although we do not want to prejudice our position in that matter here, we do believe that all of our proposals in this notice include the opportunity for Commission intervention should the market fail to satisfy consumer wants. In this regard, we specifically solicit comments relating to what method the Commission should use to determine whether or not such a failure has occurred.

Comparative hearings

263. One of the most vexing problems that we face in taking the proposed actions is the effect that such actions will have upon comparative hearings. In choosing among competing applicants in broadcast license proceedings, the Commission is guided in the exercise of its authority by the "public interest, convenience, or necessity." To make such a determination in the case of competing applicants for a broadcast license, it is necessary for the Commission to decide which of the applicants can render the best practicable service to the community.¹⁹⁹

264. The Communications Act does not supply guidance, however, as to what factors we should weigh in making such a determination. Rather, the Commission has been left broad discretion to develop relevant criteria to be used in determining which mutually exclusive applicant would better serve the public interest. Accordingly, the Commission has been free to choose those criteria that it has reason to

believe would serve the purposes of the Act.²⁰⁰ As has recently been stated:

In granting broadcast licenses the FCC must find that the "public convenience, interest or necessity will be served thereby." 47 U.S.C. 307(a). Within these broad confines, the Commission is left with the task of particularizing standards to be used in implementing the Act.²⁰¹

265. The criteria that the Commission presently uses were developed through a series of comparative hearing decisions and were set forth in the Commission's *Policy Statement on Comparative Broadcast Hearings*.²⁰² The Commission is not bound, however, to maintain these comparative criteria forever. It is generally recognized that the Commission requires, and under the Communications Act has, the flexibility to adapt its regulations to changing circumstances.²⁰³ Indeed, our comparative criteria have already undergone numerous changes since the Commission's formation. For example, at one time the Commission agreed to review all program proposals, because it believed that such review would facilitate a choice of the best applicant.²⁰⁴ The Commission later concluded that, at least in initial licensing proceedings, consideration of program proposals was neither easy nor fruitful since an applicant could always make a "blue sky" proposal. The Commission therefore decided that it would no longer normally designate a comparative issue on program proposals. Instead it was decided that if an applicant could show that its proposal was significantly different, and showed a superior devotion to public service, it could petition for the addition of an issue. Thus, while not abandoning its commitment to public service, the Commission concluded that this commitment would not be compromised if it did not automatically consider program proposals.²⁰⁵

266. It is clear that the Commission has the authority to decide what issues will be relevant in comparative proceedings and to modify its opinions when circumstances dictate. If we adopt the proposals made herein, or variants thereof, however, we will be faced with the problem of articulating the basis for the evaluation of competing applicants.

¹⁹⁶ *Johnston Broadcasting Co. v. Federal Communications Commission*, 175 F. 2d 351, 357 (D.C. Cir. 1949).

¹⁹⁷ *National Black Media Coalition v. Federal Communications Commission*, *supra*, page 581.

¹⁹⁸ 1 FCC 2d 393 (1965).

¹⁹⁹ *National Broadcasting Company v. United States*, *supra*.

²⁰⁰ See, for example, *Plains Radio Broadcasting Co. v. F.C.C.*, 175 F. 2d 359, 362 (D.C. Cir. 1949).

²⁰¹ *Policy Statement on Comparative Broadcast Hearings*, *supra* at 397-398.

¹⁹⁶ 47 USC 309 (d)(1).

¹⁹⁷ *Columbus Broadcasting Coalition v. FCC*, 505 F. 2d 320, 323 (D.C. Cir. 1974).

¹⁹⁸ 47 USC 309(d)(2).

¹⁹⁹ *Federal Communications Commission v. Sonders Bros. Radio Station*, 309 U.S. 470, 475 (1940).

One option we are considering is that the Commission not consider as a matter of course program performance or commercial practices in a comparative proceeding. It might be unfair to allow a broadcaster maximum discretion to respond to market forces and then place the broadcaster at a comparative disadvantage if we should decide in a *post facto* fashion that the market forces produced an unsatisfactory situation.^{206A} Under an alternative proposal arising with respect to comparative renewal proceedings, an incumbent licensee might be allowed to voluntarily ask for Commission consideration of its nonentertainment programming or of its entertainment programming as a basis for finding that the licensee's past service is sufficiently meritorious to overcome a challenger's advantages on other grounds. In considering this alternative proposal, we again want to emphasize that our fundamental goal is service to the public. The courts have recognized that both nonentertainment programming²⁰⁶ and entertainment programming²⁰⁷ can meet public needs. Therefore, if an incumbent broadcaster fulfills his responsibilities, it may be in the public interest to reward that licensee with a significant advantage against any challenger.^{207A} Of course, under this alternative, if an incumbent does ask for consideration of its past program service, then—and only then—a challenger should be free to try to demonstrate that its proposed service would produce even greater public benefit.²⁰⁸ In any case, we ask for comments specifically on this point—that is, what role, if any, should consideration of an incumbent's programming practices, and/or a

challenger's programming proposals, play in comparative proceedings.

The experimental option

267. Although we originally considered as one possible option an experiment in which the nonentertainment programming and commercial guidelines would be eliminated for one or two license terms in order to determine the effects, we believe several developments may have eliminated any purpose in discussing it as a serious alternative. First, there is a substantial likelihood that the findings we would be seeking from an experiment are already available. We refer to the data showing that the marketplace provides more nonentertainment programming and fewer commercials than our current guidelines. Second, and most importantly, because of the nature of such an experiment—one in which the subjects would have a strong interest in achieving a particular outcome—the results would be subject to considerable question. Finally, if we eliminate our noncommercial and nonentertainment program guidelines, we are prepared to take whatever steps are necessary in the public interest should the marketplace fail. We invite comments on any course of action that might be taken with respect to any experiment.

Conclusion

268. In this Notice we have provided evidence that market forces will, in most instances, yield programming that serves consumer well-being, and that whenever possible the Commission should allow consumer choices rather than regulatory decision-making to be the determinant of the public interest.

269. As noted in the title of this item, we are not merely proposing specific rule and policy changes but are additionally initiating an inquiry into the areas covered by the anticipated changes. Accordingly, we are encouraging robust commentary on our proposals. While comments should be limited to the specific areas noted above, they need not be limited to the specific proposals and alternatives. Alternatives that have not been set forth above may also be proposed. In this regard we specifically solicit comments relating to what method the Commission should use to determine whether or not a market failure has occurred. We take this opportunity to note, however, that arguments supported by facts often carry the greatest weight and thus any relevant empirical data or studies should be either submitted or brought to our attention by appropriate citation.

270. The radio deregulation we are proposing today is part of an overall scheme that has as its hub a shift in our regulatory approach based on structural means of achieving diversity rather than one emphasizing conduct, fraught with all the dangers and inefficiencies inherent in such a system. Such an approach would entail more effective use of multiple ownership regulation, creation of a more representative pool of people making decisions about programs through EEO and minority ownership policies, and increasing the number of outlets through more efficient use of the spectrum, expanding the spectrum available to broadcast radio, and fostering new technologies. It is our belief that such measures will increase the number of independent voices in a fashion most likely to serve the public interest without the need for government intrusion in programming areas.

271. Authority for this proposed rule making and inquiry is contained in Sections 1, 4 (f) and (j), 303 (g) and (r), and 403 of the Communications Act of 1934, as amended (47 U.S.C. 1, 154 (i) and (j), 303 (g) and (r), and 403). Pursuant to applicable procedures set forth in §§ 1.415 and 1.46 of the Commission's rules, interested parties may file comments on or before, January 25, 1980, and reply comments on or before, April 25, 1980. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in this proceeding. In reaching its determination in this proceeding, the Commission may also take into account other relevant material before it, provided the nature and source of that material are identified in the public docket and made available for public comment.

272. Due to the number of staff personnel involved in this proceeding, we are requesting that those commenting furnish the Commission with an original and 9 copies of all comments, replies, or other documents filed in this proceeding. Participants filing the required copies who also desire that each Commissioner receive a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in this proceeding may do so by submitting one copy of their comments without regard to form, provided that the Docket Number is specified in the heading. Such informal participants who wish responsible members of the staff to have a personal copy and to have an extra copy available for the Commissioners may file an additional 5 copies.

^{206A} Applicants will still be compared on the other criteria discussed in the *Policy Statement on Comparative Broadcast Hearings*, 1 FCC 2d 393, 397, 397-98 (1965), including, *inter alia*, diversification, character, and spectrum efficiency. Although the *Policy Statement* purportedly was not intended to cover situations involving renewal applicants, 1 FCC 2d 393, n. 1, the Commission has in fact applied the same criteria to those latter situations. *E.g.*, *Central Florida Enterprises, Inc. v. FCC*, No. 76-1742 (D.C. Cir. Sept. 25, 1978), slip op. at 20-21, *reh. denied & clarification granted*, (Jan. 12, 1979), *cert. pet. pending*; *Citizens Communications Center v. FCC*, 447 F.2d 1201, 1212, n. 33 (D.C. Cir. 1971); *Seven League Productions, Inc.*, 1 FCC 2d 1567, 1598 (1965).

²⁰⁶ *E.g.*, *Office of Communications of United Church of Christ v. FCC*, 359 f.2d at 994.

²⁰⁷ *E.g.*, *Cosmopolitan Broadcasting Corp. v. FCC*, 581 F.2d 917, 931 (D.C. Cir. 1978).

^{207A} *Central Florida Enterprises, Inc. v. FCC*, *supra*.

²⁰⁸ As in the past, however, a challenger in this situation would have a very heavy burden in demonstrating that its proposed service would be better than the proven past performance of the incumbent.

Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D.C. (1919 M Street, NW.).

For further information on this proceeding, contact Roger Holberg, Broadcast Bureau, (202) 632-6302.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Attachments: Appendices A, B, and C.
See attached Statements of Commissioners.

Appendix A—Market Definition

We have used criteria that we believe reflect actual market forces as the basis for our market definitions. Radio stations compete with one another for audience and for advertisers. We have therefore relied on information that suggests these competitive patterns, rather than fixed geographic jurisdictions such as Standard Metropolitan Statistical Areas, to provide the basis for our definitions. In particular, we have relied heavily on the market definitions employed by the Standard Rate & Data Service, Inc. in its monthly *Spot Radio Rates and Data* book. This book is used by advertisers and advertising agencies; stations provide format and rate information and other relevant data. SRDS defines markets and assigns stations to these markets. A station, if it believes that it competes in more than one market, can pay for a duplicate listing in a second market. This suggests that listings represent stations' own perceptions of markets, and we include these duplicate listings in our market definition.

SRDS defines markets based on its own judgment, supplemented by direct station input. Markets are defined more broadly than city of license. For example, the SRDS Washington, D.C., market includes Alexandria, Arlington, Fairfax, Falls Church, and Woodbridge, Va., and Bethesda, Bladensburg, Potomac-Cabin John, Rockville, Silver Spring, and Wheaton, Md.

Although SRDS market definitions often conform to SMSA's, they do not always. For example, the SMSA for Duluth-Superior includes all of St. Louis county in Minnesota, which extends approximately 100 miles north of Duluth. The SRDS market does not include radio stations in northern St. Louis county, for example the station in Ely, 75 miles north of Duluth.

In general, we have adhered to SRDS definitions. There are six exceptions. SRDS lists the Dallas and Fort Worth markets separately. Approximately half of the Fort Worth stations, however, pay for duplicate listings under Dallas. Therefore we have combined the two. For five major metropolitan areas—Los Angeles, Chicago, New York, Detroit, and Philadelphia—SRDS provides both a city listing and a broader "urban area" listing. We believe that the city market definition is too narrow but, in several cases, the urban area designation is too broad. For example, the New York urban area includes stations in eastern Suffolk county that are about 100 miles from

Manhattan. For these six metropolitan areas we made our own judgments about appropriate market designations.

In our station count within markets, we excluded FM stations that duplicated AM station programming more than 50% of the time. Since SRDS data is limited to commercial stations, we relied on the *Broadcasting Yearbook 1979* and the Carnegie Commission study for data on noncommercial stations.

We seek comment on the market definitions we have employed including any alternate proposals concerning market definition.

Appendix B

PART 0—COMMISSION ORGANIZATION

1. Section 0.281 would be amended by revising (a) (7), (8), (9) and (10) to read as follows:

§ 0.281 Authority delegated.

* * * * *

(a) *Applications.* * * *

(7) *Programming: Commercial matter.* Commercial TV proposals exceeding 16 minutes of commercial matter per hour, or, during periods of high demand for political advertising, providing for exceptions permitting in excess of 20 minutes of commercial matter per hour during 10 percent or more of the station's total weekly hours of operation.

(8) *Programming: Program content and ascertainment of community needs.*

(i) Commercial TV proposals (except those made by UHF stations not affiliated with major networks) which project for the hours 6:00 a.m. to 12:00 midnight less than the indicated percentages in one or more of the following categories: Five percent total local programming, five percent information (news plus public affairs) programming, ten percent total non-entertainment programming.

(ii) Commercial TV proposals containing substantial ascertainment defects which, for any reason, cannot be resolved by further staff inquiry or action.

(9) *Programming: Substantial shifts in format.* Commercial TV applications disclosing substantial changes affecting either the entertainment or non-entertainment portions of existing formats which raise significant public interest questions, or which are opposed by the viewing public.

(10) *Programming: Promise versus performance.* Commercial TV renewal, transfer, and assignment applications which vary substantially from prior representations with respect to commercial practices or the programming categories set forth at § 0.281(a)(8)(i), and for which variation

there is lacking, in the judgment of the Broadcast Bureau, adequate justification in the public interest.

* * * * *

PART 73—RADIO BROADCAST SERVICES

2. Section 73.3526 would be amended by revising the introductory text of (a), (a)(1), (10), (11), (12), the closing text of (a) and note 2 to read as follows:

§ 73.3526 Local public inspection file of commercial stations.

(a) *Records to be maintained.* Every applicant for a construction permit for a new station in the commercial broadcast services shall maintain for public inspection a file containing the material described in subparagraph (1) of this paragraph. Every permittee or licensee of an AM, FM or TV station in the commercial broadcast services shall maintain for public inspection a file for such station containing the material described in subparagraphs (1), (2), (3), (4), (5), (6), and (7) of this paragraph. In addition, every permittee or licensee of a TV station shall maintain for public inspection a file for such station containing the material described in subparagraph (8), (9), (11) and (12) of this paragraph. The material to be contained in the file is as follows:

(1) A copy of every application tendered for filing, with respect to which local public notice is required to be given under the provisions of § 73.3580 or § 73.3594; and all exhibits, letters and other documents tendered for filing as part thereof; all amendments thereto, copies of all documents incorporated therein by reference, all correspondence between the FCC and the applicant pertaining to the application after it has been tendered for filing, and copies of Initial Decisions and Final Decisions in hearing cases pertaining thereto, which according to the provisions of §§ 0.451-0.461 of the rules are open for public inspection at the offices of the FCC. Information incorporated by reference which is already in the local file need not be duplicated if the entry making the reference sufficiently identifies the information so that it may be found in the file, and if there has been no change in the document since the date of filing and the applicant, after making the reference, so states. If petitions to deny are filed against the application, and have been duly served on the applicant, a statement that such a petition has been filed shall appear in the local file together with the name and address of the party filing the petition. The file shall also contain a copy of every written citizen agreement. For purposes of this

section, a citizen agreement is a written agreement between a broadcast applicant, permittee, or licensee, and one or more citizens or citizen groups entered for primarily noncommercial purposes. This definition includes those agreements that deal with goals or proposed practices directly or indirectly affecting station operation in the public interest, in areas such as—but not limited to—community ascertainment (where such ascertainment is required by the rules); programming, and employment. It excludes common commercial agreements such as advertising contracts; union, employment, and personal services contracts; network affiliation and syndication, program supply contracts. However, the mere inclusion of commercial terms in a primarily noncommercial agreement—such as a provision for payment of fees for future services of the citizen parties (see "Report and Order," Docket 19518, 57 FCC 2d 494 (1976)—would not cause the agreement to be considered commercial for purposes of this Section.

(10) Although not part of the regular file for public inspection, program logs for TV and non-commercial radio stations, and any record of programs or commercials aired kept by commercial radio stations, will be available for public inspection under the circumstances set forth in § 73.1850 and discussed in the Public Broadcasting Procedural Manual; Revised Edition.

(11) Each licensee or permittee of a commercially operated TV station (except as provided in Note 2, below) shall place in the station's public inspection file appropriate documentation relating to its efforts to interview a representative cross-section of community leaders within its service area to ascertain community problems and needs. Such documentation shall be placed in the station's public inspection file within a reasonable time after the date of completion of each interview but in no event later than the due date for filing the station's application for renewal of license and shall include:

- (i) The name, address, organization, and position or title of the community leader interviewed;
- (ii) The date, time and place of the interview;
- (iii) The name of the principal, management-level or other employee of the station conducting the interview;
- (iv) The problems and needs discussed during the interview or, when the interviewee requests that his/her statements be held in confidence, that request shall be noted; and

(v) For interviews conducted by non-principals or non-managers, the date of review of the interview record by a principal or management-level employee of the station.

Additionally, upon the filing of the application for renewal of license each such licensee shall forward to the FCC as part of the application for renewal of license a checklist indicating the numbers of community leaders interviewed during the current license term representing the several elements found on the form: *Provided*, That, if a community lacks one of the enumerated institutions or elements, the licensee or permittee should so indicate by providing a brief explanation on its checklist.

(12) Each licensee or permittee of a commercially operated TV station (except as provided in Note 2, below) shall place in the station's public inspection file documentation relating to its efforts to consult with a roughly random sample of members of the general public within its city of license to ascertain community problems and needs. Such documentation shall consist of:

- (i) Information relating to the total population for the station's city of license including the numbers and proportions of males and females; of minorities; of youth (17 and under); and of the elderly (65 and over);
 - (ii) A narrative statement of the sources consulted and the methods followed in conducting the general public survey, including the number of people surveyed and the results thereof.
- Such documentation shall be placed in the public inspection file within a reasonable time after completion of the survey but in no event later than the date the station's application for renewal of license is filed. Upon filing its application for renewal of license, each such licensee or permittee must certify that the above-noted documentation has been placed in the station's public inspection file.

Note 2. Paragraphs (a)(11) and (a)(12) of this section shall not apply to commercial TV stations within cities of license which (1) have a population, according to the immediately preceding decennial U.S. Census, of 10,000 persons or less; and (2) are located outside all Standard Metropolitan Statistical Areas (SMSA's), as defined by the Federal Bureau of the Census.

3. Section 73.1800 would be amended by revising paragraph (a) to read as follows:

§ 73.1800 General requirements relating to logs.

(a) The licensee of each television station shall maintain a program log as set forth in § 73.1810. The licensee of each AM, FM and TV station, shall maintain operating and maintenance logs as set forth in §§ 73.1820 and 73.1830. Each log required to be kept shall be kept by the station employee or employees (or contract operator) competent to do so, having actual knowledge of the facts required. The person keeping the log must make entries that accurately reflect the operating of the station. In the case of program and operating logs, the employee shall sign the appropriate log when starting duty and again when going off duty and setting forth the time of each. In the case of maintenance logs, the employee shall sign the log upon completion of the required maintenance and inspection entries. When the employee keeping a program or operating log signs it upon going off duty or completing maintenance log entries, that person attests to the fact that the log, with any corrections or additions made before it was signed, is an accurate representation of what transpired.

4. Section 73.1810 (a) and (b)(5) would be revised and undesignated headnote immediately following paragraph (h)(3) would be changed as follows:

§ 73.1810 Program Logs.

Commercial TV Stations

(a) Commercial TV stations shall keep a program log in accordance with the provisions of § 73.1800 for each broadcast day which, in this context, means from the station's sign-on to its sign-off.

(b) Entries. The following entries shall be made in the program log:

(5) For Emergency Broadcast System Operations. An entry for tests of the EBS procedures pursuant to the requirements of Subpart G of this part and the appropriate station EBS checklist, unless such entries are consistently made in the station operating log. All commercial AM and FM stations shall make such entries in their operating log.

(h) * * *
(3) * * *

All TV Stations and Noncommercial Educational AM and FM Stations

6. Section 73.1820 would be amended by revising paragraph (a)(1)(iv) to read as follows:

§ 73.1820 Operating Logs.

* * * * *

(a) * * *

(1) * * *

(iv) An entry of each test of the Emergency Broadcast System procedures pursuant to the requirements of Subpart G of this part and the appropriate station EBS checklist, unless such entries are consistently made in the station program log. All commercial AM and FM radio stations shall make such entries in their operating logs. TV stations may make entries in the program log.

* * * * *

7. Section 73.1850 would be amended by revising paragraph (a) to read as follows:

§ 73.1850 Public inspection of program logs.

(a) All stations required to keep program logs, and all stations not required to keep program logs but which keep a record of programs and/or commercials broadcast notwithstanding the lack of a requirement to do so, shall make their program logs or records available for public inspection and reproduction at a location convenient and accessible to the residents of the community to which the station is licensed. All such requests for inspection shall be subject to the procedural requirements in paragraph (b) of this section. Where good cause exists, the licensee may refuse to permit such inspection. (See paragraph 64, the Public and Broadcasting Procedural Manual). The licensee shall remain responsible for the safekeeping of the logs or records when permitting inspections.

* * * * *

STATISTICAL TABLES

Table 1

Number of AM and FM Radio Stations on the Air, 1934-1979

<u>YEAR-(as of 1/1)</u>	<u>AM</u>	<u>FM</u>	<u>TOTAL</u>
1934	583	-	583
1935	585	-	585
1936	616	-	616
1937	646	-	646
1938	689	-	689
1939	722	-	722
1940	765	-	765
1941	831	20	851
1942	887	43	930
1943	910	49	959
1944	910	52	962
1945	919	54	973
1946	948	57	1,005
1947	1,062	150	1,212
1948	1,621	473	2,094
1949	2,006	771	2,777
1950	2,144	753	2,897
1951	2,281	732	3,013
1952	2,355	721	3,076
1953	2,458	686	3,144
1954	2,583	670	3,253
1955	2,732	664	3,396
1956	2,896	656	3,552
1957	3,079	665	3,744
1958	3,253	695	3,948
1959	3,377	776	4,153
1960	3,483	906	4,389
1961	3,602	1,075	4,677
1962	3,745	1,213	4,958
1963	3,860	1,341	5,201
1964	3,976	1,424	5,400
1965	4,025	1,605	5,630
1966	4,075	1,806	5,881
1967	4,135	1,926	6,061
1968	4,203	2,198	6,401
1969	4,254	2,393	6,647
1970	4,288	2,542	6,830
1971	4,343	2,661	7,004
1972	4,367	2,873	7,240
1973	4,392	3,046	7,438
1974	4,409	3,231	7,640
1975	4,448	3,455	7,903
1976	4,479	3,665	8,144
1977	4,497	3,743	8,240
1978	4,513	3,927	8,440
1979	4,547	4,074	8,621
1979 (7/31)	4,547	4,107	8,654

Sources: 1934-1948 data are from Christopher H. Sterling and Timothy R. Haight, The Mass Media: Aspen Institute Guide to Communication Industry Trends (Praeger Publishers, New York, 1978), Table 170-A, p. 43; 1949-1976 data are from the FCC Annual Report for Fiscal Year 1976; 1977-1979 data are from F.C.C. Broadcast Bureau, License Division, AM-FM Branch.

Table 2: The Number of Stations in Selected Radio Markets, 1934-1979

Market	Current # Stations	# of Stations as of				
		1974	1969	1959	1949	1934
Pittsburgh, Pennsylvania	35	31	22	19	6	
Cincinnati, Ohio	25	21	13	8	5	
Birmingham, Alabama	20	17	13	10	3	
Greensboro, N.C.	17	13	9	6	2	
Las Vegas, Nevada	13	11	6	3	0	
Austin, Texas	13	11	7	4	2	
Roanoke, Virginia	12	10	7	5	1	
Lincoln, Nebraska	11	8	4	3	1	
Sarasota, Florida	10	9	4	3	1	
Canton, Ohio	9	9	6	4	1	
Eau Claire, Wisc.	8	7	5	4	0	
Erie, Pennsylvania	8	8	5	4	0	
Tyler, Texas	7	6	4	2	1	
Wichita Falls, Texas	6	5	3	3	0	
Gastonia, North Carolina	5	5	4	3	0	
Bay City, Michigan	4	4	2	1	1	

Notes & Sources:

- (1) These markets were chosen by a method that assured an even distribution of market sizes, but within any market size the particular market included was randomly selected. Markets were ranked according to number of stations (See Table 3), and then a starting point was chosen (a number between one and 15 was picked, at random). From that starting point, every fifteenth market (in descending order of ranking) was chosen. Where several stations held equal rank (for example, more than one market had 17 stations) the particular market chosen was picked at random (by using a random number generator).
- (2) The market rankings and station assignments to markets come from Table 3 and Appendix A.
- (3) The years that stations began operation, which underlie this table, come from Standard Rate & Data Service, Inc., Spot Radio Rates and Data, Vol. 61, No. 3, March 1, 1979, Skokie, Illinois, Broadcasting Yearbook 1979, and F.C.C. license records.

Table 3: Commercial and Noncommercial Radio Stations in Large Markets, 1979

Total # Stations	Market	Commercial Stations Noncommercial Stations			
		# AM	# FM	# NPR	#Other
64	Los Angeles	29	28	4	3
59	Chicago	22	24	1	12
54	New York	23	22	3	6
42	San Francisco	18	16	3	5
40	Boston	16	15	2	7
37	Dallas-Fort Worth	16	15	1	5
36	St. Louis	14	11	1	10
36	Seattle	19	12	1	4
36	Washington, D.C.	18	13	2	3
35	Detroit	15	18	1	1
35	Pittsburgh	18	12	2	3
34	Philadelphia	15	14	1	4
31	Atlanta	18	8	1	4
31	Houston	14	12	1	4
31	Miami-Miami Beach	13	14	1	3
30	Norfolk-Portsmouth-Newport News-Hampton	14	11	1	4
30	Minneapolis-St. Paul	15	7	3	5
29	Tampa-St. Petersburg	18	9	1	1
28	Cleveland	11	13	1	3
28	Phoenix	19	8	1	0
28	Portland	15	10	3	0
28	San Diego	13	12	1	2
28	Denver	17	10	1	0
27	Baltimore	13	10	2	2
25	Cincinnati	11	8	1	5
25	Kansas City	11	10	1	3
24	Hartford-New Britain	9	10	0	5
24	Milwaukee	10	11	1	2
24	San Antonio	13	9	0	2
23	Honolulu	17	5	0	1
23	Jacksonville	14	7	1	1
22	Albany-Schenectady-Troy	9	8	2	3
22	Louisville	11	7	3	1
22	Memphis	10	7	1	4
22	New Orleans	11	8	1	2
22	Oklahoma City	9	12	0	1
22	Orlando	9	9	0	4
21	Fresno	12	7	1	1
21	Indianapolis	8	6	1	6
21	Riverside-San Bernardino-Ontario	9	8	1	3
21	Albuquerque	12	6	0	3
20	Birmingham, Ala.	11	7	1	1
20	Buffalo	8	9	3	0

Table 3, continued

20	Raleigh-Durham	10	6	0	4
20	Salt Lake City	14	6	0	0
20	Spokane	10	6	0	4
19	San Juan	12	6	1	0
19	Nashville	10	6	1	2
19	Sacramento	9	9	0	1
19	Scranton	10	5	1	3
18	Richmond, Va.	11	5	1	1
18	Columbus, Ohio	7	6	3	2
18	Springfield-Chicopee-Holyoke	9	3	0	6
18	Syracuse	8	8	1	1
17	Colorado Springs	8	7	0	2
17	Portland, Maine	6	10	1	0
17	Greensboro, N.C.	8	5	0	4
17	Tucson	10	5	2	0
17	West Palm Beach	9	6	1	1
17	El Paso	10	6	1	0
16	Chattanooga	8	6	0	2
16	Columbia, S.C.	6	6	1	3
16	Rochester, N.Y.	6	7	1	2
15	Allentown, Pa.	7	5	0	3
15	Eugene, Oregon	7	5	2	1
15	Tulsa	7	7	1	0
15	Grand Rapids, Mi.	7	6	1	1
15	Knoxville	9	4	1	1
15	Little Rock	9	5	0	1
15	Omaha	7	6	1	1
15	San Jose	5	7	0	3
14	Beaumont	7	6	1	0
14	Charleston, W. Va.	7	6	0	1
14	Davenport-Rock Island	5	6	0	3
14	Greenville-Spartanburg, S.C.	10	3	1	0
14	Huntington-Ashland-Ironton	8	4	0	2
14	Jackson	7	6	0	1
14	Lubbock	7	5	0	2
14	Madison	4	6	2	2
14	Mobile	8	5	0	1
14	Providence	10	3	0	1
14	Savannah	7	6	0	1
14	Shreveport	7	6	0	1
13	Austin	5	6	1	1
13	Sioux Falls, S.D.	5	4	0	4
13	Akron	5	4	1	3
13	Augusta, Ga.	8	4	0	1
13	Charlotte, N.C.	8	4	0	1
13	Dayton	4	4	0	5
13	Ft. Lauderdale-Hollywood	7	5	0	1
13	Las Vegas	8	4	0	1
13	Modesto	6	5	0	2
13	Utica-Rome, N.Y.	7	5	0	1
13	Appleton	7	4	0	2
12	Wichita	5	5	1	1

Table 3, continued

12	Charleston, S.C.	6	5	1	0
12	Des Moines	6	5	0	1
12	Duluth-Superior	6	3	1	2
12	Peoria	6	5	1	0
12	Reno	6	5	0	1
12	Roanoke	7	4	1	0
12	Santa Barbara	6	5	0	1
12	Toledo	5	5	1	1
12	Youngstown	7	4	1	0
12	Amarillo	6	5	0	1
12	Champaign-Urbana	3	6	2	1
11	Bakersfield	7	4	0	0
11	Baton Rouge	7	4	0	0
11	Boise City	7	3	0	1
11	Corpus Christi	7	4	0	0
11	Ft. Wayne	5	4	0	2
11	Harrisburg	5	3	0	3
11	Lansing	5	4	2	0
11	Lincoln	5	4	0	2
11	Montgomery	7	4	0	0
11	Odessa, Tx.	5	5	0	1
11	Oxnard-Ventura	5	6	0	0
11	Parkersburg, W.Va	6	3	0	2
11	Pueblo	7	3	0	1
11	Springfield, Mo.	6	4	1	0
11	Takoma	5	3	1	2
11	Tallahassee	4	5	1	1
11	Winston-Salem	6	4	1	0
10	Columbus, Ga.	6	4	0	0
10	Evansville, Ind.	4	4	0	2
10	Fargo-Moorhead, N.D.	4	3	1	2
10	Anchorage	6	3	1	0
10	Atlantic City	5	5	0	0
10	Billings	5	3	0	2
10	Cedar Rapids, Ia.	4	3	1	2
10	Florence-Sheffield, Ala.	6	4	0	0
10	Huntsville	5	4	1	0
10	Kalamazoo	5	3	1	1
10	Sarasota-Bradenton	6	3	0	1
10	Terre Haute	4	5	0	1
10	Waterloo-Cedar Falls, Ia.	4	2	2	2
10	Ann Arbor	5	2	2	1
9	Binghamton, N.Y.	4	3	1	1
9	Canton	6	3	0	0
9	Fayetteville, N.C.	6	2	0	1
9	Flint	6	2	1	0
9	Ft. Myers, Fl.	3	5	0	1
9	Lancaster, Pa.	4	4	0	1
9	Lexington, Ky.	5	3	1	0
9	Macon, Ga.	6	3	0	0
9	Manchester, N.H.	5	3	0	1
9	McAllen-Pharr, Tex.	4	4	0	1

Table 3, continued

9	Monroe, La.	4	4	0	1
9	Pensacola, Fl.	6	2	0	1
9	South Bend, Ind.	4	4	0	1
9	Wheeling, W.Va.	4	3	0	2
9	Wilmington, N.C.	4	4	0	1
9	Yakima, Wash.	4	4	0	1
8	Ft. Smith, Ark.	5	3	0	0
8	Hamilton-Middletown	4	3	0	1
8	Biloxi-Gulfport, Miss.	5	3	0	0
8	Bridgeport, Ct.	4	3	0	1
8	Worcester, Mass.	5	1	0	2
8	Topeka	6	2	0	0
8	Columbia, Mo.	2	2	1	3
8	Daytona Beach	5	3	0	0
8	Eau Claire	5	2	0	1
8	Elmira	4	3	0	1
8	Green Bay	3	2	1	2
8	La Crosse, Wi.	3	3	2	0
8	Lynchburg, Va.	5	3	0	0
8	New Haven	4	3	0	1
8	Ponce, P.R.	4	3	0	1
8	Rochester, Mn.	3	4	0	1
8	Rockford, Ill.	5	3	0	0
8	Salinas, Ca.	3	4	0	1
8	Sioux City	4	2	1	1

Sources: Standard Rate & Data Service, Inc., Spot Radio Rates & Data, Vol. 61, No. 3, March 1, 1979; Broadcasting Yearbook 1979; and A Public Trust, The Report of the Carnegie Commission on the Future of Public Broadcasting, Bantom Books Inc., New York, 1979.

For explanation of market definition, see Appendix A.

Table 4: Commercial Radio Stations Reporting Some Regularly Scheduled Black Programming, 1979

Number of Stations in a Given Market Reporting Some Regularly Scheduled Black Programming 1/	Number of Markets	Total Number of Stations Reporting Full Time Black Programming	Total Number of Stations Reporting Some Black Programming. 2/
9	1	5	4
8	1	3	5
7	2	8	6
6	2	7	5
5	6	22	8
4	12	23	25
3	20	16	44
2	39	23	55
1	<u>157</u>	<u>29</u>	<u>128</u>
	239	136	280

Source:

Standard Rate and Data Service, Inc., Spot Radio Rates and Data, Vol. 61, No. 3, March 1, 1979, "Radio Stations Regularly Scheduling Negro/black Programs," p.19. Methods and Sources used by SRDS: Employing a rotation system, questionnaires are mailed frequently to insure data reported is current and accurate. Definition as to what constitutes Negro/black programming is left to the discretion of the stations. Each station is advised that failure to return a completed form will mean deletion of the station from this tabulation as information is not carried forward. Stations not maintaining full monthly listings are not reported since it is not possible to maintain current information.

1/ Market definitions from Table 3 and Appendix A.

2/ The 280 stations reporting part-time Black programming averaged 19.8 hours per week of Black programming.

Table 5: Radio Markets with Regularly Scheduled Black Oriented Programming on Commercial Stations, 1979, by Market Size

Total # stations in the market <u>1/</u>	# of markets of that size	# of markets with at least one commercial station with full time black programming <u>2/</u>	# of markets with at least one commercial station with some black programming <u>2/</u>
more than 31	12	11	11
23-31	19	14	17
16-22	31	15	24
10-15	74	20	42
8-9	36	7	19

1/ Includes both commercial and noncommercial stations. Data from Table 3 and SRDS.

2/ Source: Standard Rate & Data Service, Inc., Spot Radio Rates and Data, Vol. 61, No. 3, March 1, 1979, "Radio Stations Regularly Scheduling Negro/black Programs," p.19. For methods and sources used by SRDS, see Table 4.

Table 6: Commercial Radio Stations Reporting Some Regularly Scheduled Spanish Language Programming, 1979.

Number of Stations Reporting Some Regularly Scheduled Spanish Language Programming. 1/	Number of Markets	Total Number of Stations Reporting		Total Number of Stations Reporting Full-Time Spanish Language Programming
		Some Spanish Language Programming But No Other Foreign Language Programming. 2/	Some Spanish Language Programming and Also Other Foreign Language Programming 3/	
6	2	4	5	3
5	5	5	10	10
4	3	6	9	3
3	13	17	6	16
2	32	40	16	8
1	118	87	27	4
Totals	173	153	73	44

Source: Standard Rate and Data Service, Inc., Spot Radio Rates and Data, Vol. 61, No. 3, March 1, 1979, "Radio Stations Regularly Scheduling Foreign Language Programs," pp. 22-23. Methods and Sources used by SRDS: Employing a rotation system SRDS mails questionnaires frequently to insure data reported is current and accurate. Definition as to what constitutes Foreign Language Programming is left to the discretion of the stations. Each station is advised that failure to return a completed form will mean deletion of the station from this tabulation as information from previous reports is not carried forward. Stations not maintaining full monthly listings are unreported since it is not possible to maintain current information.

1/ Market definitions from Table 3 and Appendix A.

2/ The 153 stations reporting part-time Spanish language programming, but not reporting any other foreign language programming, average 14.9 hours per week of Spanish language programming.

3/ For example, Spanish and Italian. The hours of foreign language programming provided was not broken down by language.

Table 7: Commercial Radio Stations Reporting Some Regularly Scheduled Foreign Language Programming Other Than Spanish, 1979.

Language	Number of Stations Programming in That Language			Total # of Stations with Some Regularly Scheduled Programming in That Language	Total # of Stations with Some Regularly Scheduled Programming in That Language Only	Total # of Stations with Some Regularly Scheduled Programming in That Language and Other Language
	Total # of Markets with Some Regularly Scheduled Programming in That Language 1/	Total # of Stations with Some Regularly Scheduled Programming in That Language	Total # of Stations with Some Regularly Scheduled Programming in That Language			
Arabic	3	3	0	3	3	3
Assyrian	2	2	0	2	2	2
Basque	3	3	2	3	1	1
Bohemian	1	1	0	1	1	1
British	1	1	0	1	1	1
Bulgarian	1	1	0	1	1	1
Cajun	3	3	0	3	3	3
Chinese	1	1	0	1	1	1
Chomorro	1	1	0	1	1	1
Croatian	5	7	2	7	5	5
Czech	5	7	0	7	7	7
Dutch	1	2	0	2	0	2

Source: Standard Rate and Data Service, Inc., Spot Radio Rates and Data, Vol. 61, #3, March 1, 1979. "Radio Stations Regularly Scheduling Foreign Language Programs," pp. 22-23. For methods and sources used, see Table 6.

1/ Market definitions from Table 3 and SRDS.

Table 7, continued

<u>Language</u>	<u>Markets</u>	<u>Scheduled Programming in that Language</u>	<u>Scheduled Programming in that Language Only</u>	<u>Scheduled Programming in That & Other Language</u>
Estonian	1	1	0	1
Filipino	4	4	2	2
Finnish	3	4	3	1
French	25	27	15	12
German	39	43	13	30
Greek	24	27	4	23
Haitian	1	0	1	1
Hebrew	1	1	0	1
Hindi	1	1	0	1
Hindustani	1	1	0	1
Hungarian	9	12	2	10
Indian	2	2	0	2
(Amer.)				
Indian	2	2	0	2
Navajo	8	9	2	7
(West)				
Indian	1	1	0	1
Indonesian	1	1	0	1
Irish	5	6	0	6
Italian	40	55	7	48
Japanese	5	5	0	5
Korean	4	4	1	3
Latin	1	0	0	1
Latvian	1	1	0	1
Lebanese	1	1	1	0
Lithuanian	6	6	0	6
Macedonian	2	2	0	2
Maltese	1	1	0	1
Norwegian	1	1	0	1
Pakistani	1	1	0	1
Persian	1	1	0	1
Polish	53	63	13	50
Portugese	23	29	5	24
Punjabi	1	1	0	1
Rumanian	5	5	0	5
Russian	3	3	0	3

Table 7, continued

<u>Language</u>	<u>Markets</u>	<u>Scheduled Programming in That Language</u>	<u>Scheduled Programming In That Language Only</u>	<u>Scheduled Programming In That & Other Language</u>
Samoan	2	2	1	1
Scandinavian	2	2	0	2
Serbian	3	4	0	4
Sioux	1	1	1	0
Slavic	2	2	0	2
Slovak	5	7	0	7
Slovenian	1	2	0	2
Swahili	1	1	0	1
Swedish	5	6	1	5
Swiss	1	1	0	1
Syrian	1	1	0	1
Tagalog	2	2	0	2
Ukrainian	7	7	0	7
Vietnamese	1	1	0	1
Yiddish	5	6	1	5
Yugoslavia	4	4	1	3

Table 8: Radio Stations Providing Ethnic or Foreign Language Programming, SRDS vs. Broadcasting Yearbook Data

<u>Type of Programming</u>	<u>Number of stations providing programming according to SRDS</u>	<u>Number of stations providing programming according to Broadcasting Yearbook</u>
American Indian	12	55
Black	416	793
French	27	105
German	43	121
Greek	27	58
Italian	55	120
Japanese	5	11
Polish	63	183
Portuguese	29	33
Spanish	270	570
Ukranian	7	14

Sources: Standard Rate and Data Services, Inc., Spot Radio Rates and Data, Vol. 61, No. 3, March 1, 1979, pp. 19, 22-23. For methods and sources used by SRDS, see Tables 4 and 6.

- : Broadcasting Yearbook, 1979, pp. D-74 - D-104, "Formats" and "Special Programming." A station using a combination of formats may appear under several classifications. Blocks of programming averaging less than 20 hours per week are considered "special programming."

Table 9

LISTENER ATTITUDES TOWARD RADIO NEWS */

	Total Mention
News on the radio is important - I especially tune to a particular station to hear the news.	30.0%
When news comes on the radio, I pay attention to the news content.	56.4%
Radio news doesn't matter much to me - I pay little attention to the news or news content.	10.1%
I dislike it when the news comes on the radio. I usually turn off the radio or switch stations when news comes on.	3.2%
No answer.	3.0%
Approximate Totals	**

Sample size = 1100.

SOURCE: AP Research, "Radio News Listening Attitudes,"
(Magid Study), p.11 B.

*/ From responses to the question: "RADIO STATIONS OFFER ALL
TYPES OF DIFFERENT ENTERTAINMENT AND INFORMATION. LET'S TALK
ABOUT RADIO NEWS FOR A MOMENT. WHICH OF THESE STATEMENTS BEST
DESCRIBES YOUR ATTITUDE TOWARD NEWS ON THE RADIO?"

**/ Multiple mentions need not total 100%.

Table 10A: Percentage of Stations in Market with Various Amounts of News and Public Affairs Programming, by Market Size

Number of Stations in the Market	Number of Markets	Number of Stations in Sample	Percentage of Stations with Given Amount of News and Public Affairs Programming.						over 50%
			0-4%	4-6%	6-8%	8-10%	10-25%	25-50%	
more than									
31	12	383	3.8	15.8	20.0	19.2	33.4	4.1	3.8
23-31	19	400	4.7	21.3	20.4	11.9	34.6	2.8	4.4
16-22	32	468	4.9	13.3	17.6	13.9	44.4	3.4	2.5
10-15	74	724	2.7	12.1	15.8	17.1	49.0	2.3	1.0
8-9	36	243	2.9	9.6	8.9	14.1	62.0	2.1	0.3
3-7	88	272	1.0	2.6	6.9	11.2	76.9	1.4	0.0
1-2	197	260	0.3	0.5	5.1	8.9	78.7	6.4	0.0

SOURCE: License Renewal Applications.

NOTE: In each market class, each market was given equal weight, rather than each station.

Table 10B: Percentage of Stations in Market with Various Amounts of News and Public Affairs Programming, by Market Size

Number of Stations in the Market	Number of Markets	Number of Stations in Sample	Percentage of Stations with Given Amount of News and Public Affairs Programming.						over 50%
			0-4%	4-6%	6-8%	8-10%	10-25%	25-50%	
more than									
31	12	383	4.2	16.2	19.3	18.8	33.4	4.2	3.9
23-31	19	400	4.5	21.3	20.3	12.3	34.3	3.0	4.5
16-22	32	468	4.9	13.9	17.7	14.7	42.7	3.6	2.4
10-15	74	724	2.7	12.4	16.0	16.9	47.2	3.9	0.8
8-9	36	243	3.7	8.2	10.3	14.0	61.7	1.6	0.4
3-7	88	272	1.1	2.9	7.4	8.8	79.0	0.7	0.0
1-2	197	260	0.0	1.2	4.2	8.8	79.2	6.5	0.0

SOURCE: License Renewal Applications.

NOTE: In each market class, each station was given equal weight, rather than each market.

Table 11A: Percentage of Stations in Market with Various Amounts of News Programming, by Market Size

Number of Stations in the Market	Number of Markets	Number of Stations in Sample	Percentage of Stations with Given Amount of News Programming						over 50%
			0-4%	4-6%	6-8%	8-10%	10-25%	25-50%	
more than									
31	12	383	20.1	26.8	23.1	10.5	15.3	0.9	3.4
23-31	19	400	19.9	29.9	13.7	13.3	18.7	1.4	3.0
16-22	32	468	13.5	20.8	21.3	15.1	25.6	2.1	1.6
10-15	74	724	10.0	18.6	19.3	19.2	31.7	0.9	0.5
8-9	36	243	5.9	15.0	13.0	18.8	45.9	1.1	0.3
3-7	88	272	1.5	5.3	11.2	16.3	65.7	0.0	0.0
1-2	197	260	0.5	4.3	9.1	14.0	72.0	0.0	0.0

SOURCE: License Renewal Applications.

NOTE: In each market class, each market was given equal weight, rather than each station.

Table 11B: Percentage of Stations in Market with Various Amounts of News Programming, by Market Size

Number of Stations in the Market	Number of Markets	Number of Stations in Sample	Percentage of Stations with Given Amount of News Programming						over 50%
			0-4%	4-6%	6-8%	8-10%	10-25%	25-50%	
more than									
31	12	383	20.6	26.9	22.7	9.9	15.1	1.6	3.1
23-31	19	400	19.8	29.8	14.3	13.3	18.5	1.5	3.0
16-22	32	468	13.7	21.4	21.6	14.1	24.6	3.2	1.5
10-15	74	724	10.1	18.8	20.0	18.8	31.1	0.7	0.6
8-9	36	243	6.2	15.6	13.6	18.1	44.4	1.6	0.4
3-7	88	272	1.8	5.9	10.3	15.8	66.2	0.0	0.0
1-2	197	260	0.4	4.6	8.5	13.5	72.7	0.4	0.0

SOURCE: License Renewal Applications.

NOTE: In each market class, each station was given equal weight, rather than each market.

Table 12A: Percentage of Stations in Market with Various Amounts of Public Affairs Programming, by Market Size

Number of Stations in the Market	Number of Markets	Number of Stations	Percentage of Stations with Given Amount of Public Affairs Programming				over 6%
			0-2%	2-4%	4-6%	over 6%	
more than							
31	12	383	37.4	35.8	12.1	14.7	
23-31	19	400	46.9	33.8	8.1	11.3	
16-22	32	468	50.2	31.6	8.9	9.3	
10-15	74	724	52.7	32.2	9.3	5.8	
8-9	36	243	43.1	42.9	8.9	5.1	
3-7	88	272	54.1	34.7	9.8	1.3	
1-2	197	260	43.9	35.7	10.9	9.6	

SOURCE: License Renewal Applications.

NOTE: In each market class, each market was given equal weight, rather than each station.

Table 12B: Percentage of Stations in Market with Various Amounts of Public Affairs Programming, by Market Size

Number of Stations in the Market	Number of Markets	Number of Stations in Sample	Percentage of Stations with Given Amount of Public Affairs Programming				
			0-2%	2-4%	4-6%	over 6%	
more than							
31	12	383	37.1	35.5	13.1	14.4	
23-31	19	400	46.3	34.5	8.3	11.1	
16-22	32	468	51.1	31.0	8.8	9.2	
10-15	74	724	53.5	32.0	8.6	5.9	
8-9	36	243	43.6	42.4	9.1	4.9	
3-7	88	272	49.6	38.2	11.4	0.7	
1-2	197	260	40.8	35.8	13.5	10.0	

SOURCE: License Renewal Applications.

NOTE: In each market class, each station was given equal weight, rather than each market.

Table 13
 Number of Commercial and Noncommercial Radio Stations Doing
 Substantial Amounts of News and Public Affairs, 1979

Total # of Stations in Market	Market	Number of Stations with over 50% News and Public Affairs	Number of Stations with 25-50% News and Public Affairs	Number of NPR Stations	Number of All News Stations According to Broadcasting Yearbook
64	Los Angeles	2	1	4	2
59	Chicago	1	1	1	2
54	New York	3	5	3	3
42	San Francisco	3	0	3	2
40	Boston	1	2	2	1
37	Dallas-Fort Worth	1	1	1	3
36	St. Louis	0	1	1	1
36	Seattle	0	1	1	0
36	Washington, D.C.	1	0	2	2
35	Detroit	0	1	1	1
35	Pittsburgh	1	3	2	1
34	Philadelphia	2	0	1	2
31	Atlanta	2	0	1	2
31	Houston	2	2	1	2
31	Miami-Miami Beach	4	1	1	3
30	Norfolk-Portsmouth	0	1	1	1
	Newport News-Hampton	0	0	1	0

Table 13, continued

30	Minneapolis-St. Paul	1	0	3	2
29	Tampa-St. Petersburg	1	1	1	1
28	Cleveland	1	0	1	1
28	Phoenix	1	1	1	1
28	Portland	2	0	3	1
28	San Diego	0	1	1	1
28	Denver	2	1	1	2
27	Baltimore	0	0	2	1
25	Cincinnati	0	0	1	1
25	Kansas City	1	1	1	1
24	Hartford-New Britain	1	1	0	1
24	Milwaukee	0	0	1	1
24	San Antonio	0	0	0	1
23	Honolulu	1	1	0	1
23	Jacksonville	1	0	1	1
22	Albany-Schenectady-	0	2	2	0
	Troy	0	0	3	2
22	Louisville	0	0	1	1
22	Memphis	0	0	1	1
22	New Orleans	0	0	1	1
22	Oklahoma City	0	1	0	1
22	Orlando	0	2	0	0
21	Fresno	0	1	1	1
21	Indianapolis	1	0	1	1
21	Riverside-San Bern-	0	0	1	1
	ardino-Ontario	0	0	1	1
21	Albuquerque	0	2	0	1
20	Birmingham, Ala.	0	0	1	1

Table 13, continued

20	Raleigh-Durham	0	1	1	1	0	2	1	1	0	0	2	0	0	0	0	1	2	1	0	0	0	0	1	1	0	0			
20	Salt Lake City	0	0	3	0	1	0	1	1	1	1	3	0	1	0	1	0	1	0	2	1	1	0	1	1	0	2	1	1	0
20	Buffalo	0	1	0	0	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
20	Spokane	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
19	Nashville	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
19	Sacramento	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
19	Scranton	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
19	San Juan	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
18	Richmond, Va.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
18	Columbus, O.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
18	Springfield- Chicopee-	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
18	Holyoke	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	Syracuse	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	Colorado Springs	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	Portland, Maine	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	Greensboro, N.C.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	Tucson	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	West Palm Beach	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
17	El Paso	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
16	Chattanooga	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
16	Columbia, S.C.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
16	Rochester, N.Y.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
15	Allentown, Pa.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
15	Eugene, Ore.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
15	Grand Rapids, Mich.	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
15	Knoxville	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0
15	Little Rock	0	1	0	1	0	1	1	1	1	1	0	1	0	0	1	0	0	1	1	0	0	0	1	0	1	1	0	0	0

Table 14A: Average Number of Commercial Seconds per Broadcast Hour, Sample of Stations in Large, Medium, and Small Markets, Georgia and Alabama

Hour ending:	<u>Mon.</u>	<u>Tues.</u>	<u>Wed.</u>	<u>Thur.</u>	<u>Fri.</u>	<u>Sat.</u>	<u>Sun.</u>
1:00 am	70.9	95.5	36.8	137.3	135.4	17.5	64.2
2:00 am	3.0	105.0	43.3	140.7	101.6	32.3	67.5
3:00 am	0.0	121.4	17.5	94.3	89.1	34.6	52.5
4:00 am	0.0	89.5	27.5	87.7	78.2	26.6	67.5
5:00 am	9.0	72.5	39.2	126.6	95.5	13.8	59.2
6:00 am	72.8	169.7	175.3	238.2	167.5	53.4	77.8
7:00 am	431.3	532.2	531.3	525.0	555.0	186.2	107.1
8:00 am	529.9	600.5	675.1	726.6	735.0	251.7	143.2
9:00 am	476.1	519.8	566.8	656.3	681.6	279.4	158.9
10:00 am	394.8	454.6	458.3	622.6	544.2	285.5	168.7
11:00 am	356.5	346.2	387.9	538.4	465.5	277.2	179.4
12:00 n	428.6	361.7	447.7	518.6	519.0	289.3	80.5
1:00 pm	404.7	391.5	491.6	555.5	563.5	338.0	216.7
2:00 pm	343.7	364.9	445.3	570.2	513.0	296.1	252.8
3:00 pm	376.3	329.7	425.1	562.6	514.0	274.3	261.8
4:00 pm	395.9	408.7	489.4	607.0	633.3	254.1	252.7
5:00 pm	441.9	482.3	562.7	642.8	702.9	314.1	245.1
6:00 pm	410.3	461.0	545.7	644.7	650.7	189.8	243.4
7:00 pm	328.8	373.6	391.7	582.5	550.4	133.9	223.3
8:00 pm	229.5	267.9	344.4	537.1	412.0	133.3	145.3
9:00 pm	179.0	238.5	297.1	471.4	355.2	231.9	198.2
10:00 pm	163.6	290.8	254.0	324.5	340.0	128.6	149.9
11:00 pm	145.0	191.5	205.5	279.0	289.4	121.5	129.7
12:00 pm	58.1	84.1	145.7	207.0	226.0	60.3	87.7

SOURCE: Composite Week Logs Provided by Stations with License Renewal Applications.

For each station, data were used for one day of the week.

The markets included in this sample are all the markets listed in Table 18.

Table 14B: Average Number of Commercial Seconds per Broadcast Hour, Sample of Stations in Large and Medium Sized Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	69.0	95.5	33.0	142.1	135.5	20.4	64.2
2:00	3.3	105.0	49.0	140.7	94.5	35.0	67.5
3:00	0.0	121.4	18.0	90.0	80.0	37.5	52.5
4:00	0.0	89.5	30.0	83.6	68.0	28.8	67.5
5:00	9.0	72.5	38.0	127.1	81.0	15.0	59.2
6:00	71.8	205.2	138.0	206.0	142.1	47.3	21.5
7:00	380.2	550.8	538.6	520.9	566.0	150.0	72.9
8:00	461.7	653.2	656.9	680.5	738.8	203.1	104.5
9:00	435.5	588.5	601.1	635.0	675.2	277.5	121.8
10:00	343.3	524.4	477.6	543.9	544.0	286.9	158.2
11:00	296.7	400.8	388.4	479.1	467.0	250.0	157.6
12:00 n	381.9	390.0	433.7	474.3	495.3	256.7	109.6
1:00 pm	301.9	436.8	458.2	476.8	506.0	342.8	229.8
2:00	333.7	401.8	447.6	490.5	464.8	323.9	237.9
3:00	331.4	367.5	422.9	479.8	495.0	277.5	249.8
4:00	394.5	490.8	521.1	557.7	634.0	271.4	267.9
5:00	411.2	540.5	548.7	581.8	698.9	331.1	265.6
6:00	389.8	508.5	518.4	565.8	657.8	185.0	257.4
7:00	369.4	413.5	404.7	580.8	619.5	157.3	232.3
8:00	227.5	275.5	366.3	503.1	498.6	168.8	150.6
9:00	195.6	275.0	301.3	464.7	392.5	158.1	153.1
10:00	180.6	314.6	278.3	348.8	354.2	153.5	87.5
11:00	123.8	206.2	221.8	278.8	323.3	124.6	81.6
12:00	45.0	93.1	146.4	232.6	262.5	70.0	61.3

SOURCE: Composite week logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

The markets included in this sample are the first 14 markets listed in Table 18.

Table 14C: Average Number of Commercial Seconds Per Broadcast Hour, Sample of Stations in Medium and Small Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	90.0	-	46.3	70.0	135.0	0.0	-
2:00	0.0	-	15.0	140.0	180.0	0.0	-
3:00	-	-	15.0	155.0	180.0	0.0	-
4:00	-	-	15.0	145.0	180.0	0.0	-
5:00	-	-	45.0	120.0	240.0	0.0	-
6:00	90.0	63.0	250.0	358.8	320.0	80.0	810.0
7:00	538.7	338.5	518.1	535.1	530.6	263.1	190.0
8:00	660.0	495.0	707.9	839.3	727.5	348.8	235.0
9:00	553.2	382.5	501.5	708.2	694.5	283.3	246.9
10:00	493.2	315.0	421.5	815.1	574.5	282.8	193.8
11:00	470.6	237.0	386.9	683.3	463.2	331.7	231.3
12:00 n	517.7	305.0	474.2	626.9	566.5	354.4	11.3
1:00 pm	601.0	301.0	555.0	747.8	678.5	328.3	185.6
2:00	362.9	291.0	440.9	765.0	609.5	240.6	284.4
3:00	462.0	254.0	429.2	727.4	552.0	267.8	287.2
4:00	398.6	244.5	429.2	791.8	632.0	219.4	220.6
5:00	500.5	366.0	589.2	819.9	710.8	280.0	201.7
6:00	453.5	366.0	597.6	585.8	636.5	200.0	210.0
7:00	191.0	285.0	368.2	690.0	412.2	83.3	203.1
8:00	240.0	250.0	306.9	500.0	238.9	56.5	60.0
9:00	462.5	170.7	287.0	507.5	270.0	391.7	920.0
10:00	272.5	229.0	195.6	221.0	306.0	64.0	1080.0
11:00	315.0	143.8	169.6	380.0	208.0	111.3	900.0
12:00	162.5	55.0	144.2	61.7	80.0	28.8	510.0

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

-- means no programming broadcast in those hours.

The markets included in this sample are all the markets listed in Table 18 with the exception of the first 14 markets listed.

Table 15A: Average Number of News Seconds per Broadcast Hour, Sample of Stations in Large, Medium, and Small Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	127.3	95.5	195.7	215.6	200.6	173.3	220.0
2:00	133.2	105.0	153.3	232.5	219.8	205.2	190.0
3:00	190.0	121.4	165.8	232.5	201.8	219.1	236.0
4:00	140.0	89.5	185.8	234.4	204.5	220.1	213.0
5:00	165.0	72.5	195.8	176.3	223.6	235.9	240.0
6:00	277.4	428.8	320.7	276.3	246.0	253.2	269.5
7:00	367.2	540.3	474.3	402.6	533.8	370.9	236.1
8:00	419.0	641.7	444.0	489.4	548.7	467.9	256.6
9:00	465.4	576.0	451.3	459.4	524.7	435.4	137.5
10:00	296.1	375.7	236.8	350.2	374.0	356.4	172.7
11:00	268.3	377.7	261.8	272.3	317.0	294.0	131.0
12:00 n	317.2	387.0	266.1	317.8	286.7	275.8	185.4
1:00 pm	445.0	568.7	443.4	429.8	529.7	390.6	380.4
2:00	276.8	436.0	239.4	297.8	308.7	248.9	306.7
3:00	275.1	359.3	257.1	253.4	324.3	293.3	235.5
4:00	331.8	384.7	269.2	308.7	332.7	309.0	269.6
5:00	344.1	439.3	399.9	357.5	328.7	310.4	204.5
6:00	415.5	544.0	346.4	374.1	359.3	339.0	205.2
7:00	291.2	482.1	222.5	289.9	310.0	267.8	248.7
8:00	237.5	314.1	181.3	216.8	295.3	287.6	226.9
9:00	229.3	326.0	172.9	236.5	254.7	242.2	228.8
10:00	256.0	318.7	167.3	219.8	343.8	206.4	194.1
11:00	239.1	310.3	209.8	216.6	296.1	230.4	240.0
12:00	282.7	334.7	272.6	206.7	229.6	282.5	183.8

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

The markets included in this sample are all the markets listed in Table 18.

Table 15B: Average Number of News Seconds Per Broadcast Hour, Sample of Stations in Large and Medium Sized Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	104	495	142	230	188	200	220
2:00	108	510	148	248	218	221	190
3:00	190	535	136	248	198	236	236
4:00	140	541	160	250	201	237	213
5:00	165	508	172	188	216	254	240
6:00	292	471	319	302	247	286	242
7:00	372	484	470	371	591	374	190
8:00	359	567	439	376	520	489	312
9:00	443	582	452	428	487	430	151
10:00	269	417	212	304	369	350	179
11:00	277	395	219	223	261	247	150
12:00 n	306	378	262	261	241	228	142
1:00 pm	324	520	331	280	289	274	442
2:00	239	435	227	245	224	212	307
3:00	254	350	243	222	251	238	211
4:00	318	391	263	270	292	277	234
5:00	307	464	423	287	283	268	273
6:00	305	527	333	272	254	238	202
7:00	296	459	200	221	246	246	241
8:00	207	303	127	225	273	268	242
9:00	198	270	115	211	262	204	232
10:00	228	279	107	208	327	175	195
11:00	209	295	136	204	287	249	244
12:00	258	290	211	169	242	321	196

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

The markets included in this sample are the first 14 markets listed in Table 18.

Table 15C: Average Number of News Seconds per Broadcast Hour, Sample of Stations in Medium and Small Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	360.0	-	330.0	0.0	270.0	0.0	-
2:00	360.0	-	180.0	0.0	240.0	0.0	-
3:00	-	-	315.0	0.0	240.0	0.0	-
4:00	-	-	315.0	0.0	240.0	0.0	-
5:00	-	-	315.0	0.0	300.0	0.0	-
6:00	30.0	302.0	324.0	180.0	240.0	100.0	320.7
7:00	357.6	653.0	482.0	480.0	406.7	363.8	322.5
8:00	553.6	791.0	453.0	766.7	606.0	423.3	138.8
9:00	508.2	564.0	450.0	536.1	600.0	446.7	108.8
10:00	347.7	293.0	284.0	463.3	384.0	370.0	159.4
11:00	251.8	343.0	286.0	392.8	429.0	393.3	90.6
12:00 n	338.6	405.0	274.0	456.7	378.0	376.7	277.5
1:00 pm	675.9	660.0	657.0	796.1	1011.0	636.7	249.4
2:00	349.1	438.0	263.0	426.7	498.0	326.7	306.1
3:00	315.5	378.0	284.0	330.0	471.0	410.0	281.7
4:00	358.2	372.0	281.0	403.3	414.0	376.7	336.7
5:00	414.9	390.0	356.0	530.0	420.0	400.0	75.0
6:00	647.4	578.0	372.0	601.1	570.0	570.0	352.6
7:00	275.0	533.3	263.0	600.0	438.0	315.0	265.0
8:00	400.0	341.3	274.3	180.0	340.0	330.0	0.0
9:00	480.0	430.0	312.0	345.0	274.3	325.0	180.0
10:00	480.0	422.0	312.0	270.0	384.0	288.0	180.0
11:00	480.0	360.0	372.0	270.0	318.0	192.0	180.0
12:00	480.0	480.0	408.0	420.0	180.0	157.5	0.0

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

-: means no programming broadcast in those hours.

The markets included in this sample are all the markets listed in Table 18 with the exception of the first 14 markets listed.

Table 16A: Average Number of Public Affairs Seconds per Broadcast Hour, Sample of Stations in Large, Medium, and Small Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	158.1	21.00	17.1	11.2	5.0	247.8	15.0
2:00	44.4	15.0	10.0	15.0	4.5	0	15.0
3:00	200.0	15.0	15.0	15.0	5.4	0	20.0
4:00	270.0	76.0	10.0	73.1	5.4	0	10.0
5:00	15.0	110.0	10.0	120.0	5.4	231.2	9.0
6:00	100.8	66.0	12.0	64.7	47.1	105.4	364.0
7:00	81.5	141.6	26.5	41.1	84.8	11.7	420.6
8:00	71.1	38.7	37.1	11.6	2.0	34.2	290.3
9:00	118.7	48.0	90.0	13.4	18.0	18.3	136.6
10:00	34.5	90.6	109.2	14.9	114.0	12.3	146.2
11:00	32.3	53.6	35.7	93.6	83.3	69.7	160.2
12:00 n	28.1	42.0	89.4	17.0	34.6	141.1	2.7
1:00 pm	154.3	28.0	44.1	30.7	18.0	105.9	62.2
2:00	21.0	146.0	24.7	98.1	106.0	81.4	117.4
3:00	31.3	162.0	139.7	28.7	131.3	139.1	39.2
4:00	54.1	24.0	15.4	13.4	138.6	1.0	4.5
5:00	39.9	36.0	40.2	9.2	72.0	10.6	13.7
6:00	34.6	73.6	21.2	24.8	78.0	71.5	86.3
7:00	31.6	93.0	55.0	32.4	80.0	15.7	19.0
8:00	37.7	117.5	46.0	16.3	126.4	15.7	123.7
9:00	18.7	99.8	103.7	11.3	87.6	41.0	7.5
10:00	44.1	181.4	25.0	0	3.5	10.0	185.6
11:00	30.9	176.0	46.7	8.0	3.5	0	120.0
12:00	195.7	164.3	50.4	45.0	4.0	10.5	232.5

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

The markets included in this sample are all the markets listed in Table 18.

Table 16B: Average Number of Public Affairs Seconds
Per Broadcast Hour, Sample of Stations in Large and
Medium Sized Markets, Georgia and Alabama

Hour Ending	<u>Mon.</u>	<u>Tues.</u>	<u>Wed.</u>	<u>Thurs.</u>	<u>Fri.</u>	<u>Sat.</u>	<u>Sun.</u>
1:00 am	174	21	18	12	6	286	15
2:00	46	15	12	16	5	0	15
3:00	200	15	18	16	6	0	20
4:00	270	76	12	78	6	0	10
5:00	15	110	12	128	6	249	9
6:00	150	48	12	82	30	128	392
7:00	7	58	33	58	108	17	593
8:00	19	6	40	11	3	22	427
9:00	56	15	120	19	27	27	201
10:00	27	34	22	21	171	16	215
11:00	35	40	42	132	125	46	218
12:00 n	30	51	105	24	52	208	4
1:00 pm	235	27	31	27	27	93	5
2:00	32	165	22	21	144	120	109
3:00	32	33	207	16	137	205	60
4:00	56	18	11	8	199	0	7
5:00	55	24	44	13	96	3	21
6:00	14	91	15	36	117	86	7
7:00	41	119	39	23	105	23	28
8:00	43	167	28	20	173	23	132
9:00	19	126	117	14	126	60	8
10:00	46	242	18	0	5	0	198
11:00	31	221	8	10	5	0	128
12:00	207	203	27	0	5	0	248

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

The markets included in this sample are the first 14 markets listed in Table 18.

Table 16C: Average Number of Public Affairs Seconds
per Broadcast Hour, Sample of Stations in Medium
and Small Markets, Georgia and Alabama

Hour Ending	Mon.	Tues.	Wed.	Thurs.	Fri.	Sat.	Sun.
1:00 am	0.0	-	15.0	0.0	0.0	0.0	-
2:00	30.0	-	0.0	0.0	0.0	0.0	-
3:00	-	-	0.0	0.0	0.0	0.0	-
4:00	-	-	0.0	0.0	0.0	0.0	-
5:00	-	-	30.0	0.0	0.0	0.0	-
6:00	30.0	120.0	12.0	0.0	150.0	0.0	0.0
7:00	156.0	309.0	15.0	0.0	33.3	0.0	51.4
8:00	193.6	104.3	32.0	13.3	0.0	60.0	0.0
9:00	238.6	114.0	33.0	0.0	0.0	0.0	0.0
10:00	49.1	204.0	275.0	0.0	0.0	3.3	0.0
11:00	27.3	81.0	24.0	0.0	0.0	120.0	37.5
12:00 n	24.5	24.0	60.0	0.0	0.0	0.0	0.0
1:00 pm	0.5	30.0	69.0	40.0	0.0	133.0	183.8
2:00	0.0	108.0	30.0	286.7	30.0	0.0	133.3
3:00	30.0	420.0	12.0	60.0	120.0	0.0	0.0
4:00	50.5	36.0	24.0	26.7	18.0	3.3	0.0
5:00	8.2	60.0	33.0	0.0	24.0	26.7	0.0
6:00	78.0	39.0	33.0	0.0	0.0	38.6	255.5
7:00	0.0	45.6	84.0	75.0	30.0	0.0	0.0
8:00	10.0	0.0	77.1	0.0	33.3	30.0	0.0
9:00	15.0	51.4	48.0	0.0	0.0	0.0	0.0
10:00	15.0	24.0	42.0	0.0	0.0	36.0	0.0
11:00	30.0	30.0	132.0	0.0	0.0	0.0	0.0
12:00	15.0	35.0	102.0	300.0	0.0	45.0	0.0

SOURCE: Composite Week Logs provided by stations with License Renewal Applications.

For each station, data were used for one day of the week.

-: means no programming broadcast in those hours.

The markets included in this sample are all the markets listed in Table 18 with the exception of the first 14 markets listed.

Table 17

Selected Reasons for Preferring A Particular Station, By Station's Format

(Based in each case on those identifying a favorite station that has the specified format)

Which of these reasons best describes why _____ is your overall favorite station?"	<u>Favorite Format is:</u>			
	<u>Middle of the Road</u>	<u>Contemporary</u>	<u>Country</u>	<u>Beautiful Music</u>
Good local news coverage	35.6%	10.5%	22.9%	17.5%
Plays the one kind of music I prefer	35.3	57.3	70.7	78.6
Habit of listening to it	18.3	25.7	17.2	13.5
Announcers/disk jockeys I especially like	18.0	14.6	14.6	5.6
Network news and network programs	12.1	5.8	11.5	6.3
Good reception-comes in loud and clear	9.5	12.3	12.7	11.9
Fewer commercials	7.5	11.7	4.5	17.5
Community announcements and information	7.2	6.4	9.6	3.2
Community affairs dealing with local issues	4.9	.6	5.7	3.2
Good play-by-play of sports events	4.9	.6	3.8	2.4
Easy to find on the dial	2.3	5.3	5.1	2.4
Plays a variety of music	1.3	3.5	----	2.4
Contests with good prizes	1.3	.6	2.5	----
Other Reasons	6.9	.2.9	5.7	4.0
No answer	----	----	.6	2.4
Total Number of Responses	306	171	157	126

Note: Multiple mentions, need not total 100%.

Source: AP Research, "Radio News Listening Attitudes," (Magid Study), pp.4B, 6B, 7B, 8B.

Table 18: Incidents of Commercial Time Equalling or Exceeding 18 Minutes, Sample of Markets in Georgia and Alabama

<u>Markets 1/</u>	<u>Total Number of Observations 2/</u>	<u>Number of incidents of 18 minutes or more</u>	<u>Number of Stations with incidents of 18 minutes or more</u>
Atlanta (31, 24)	492	1	1
Birmingham (20, 17)	326	3	1
Savannah (14, 13)	282	0	0
Mobile (14, 11)	180	0	0
Augusta (13, 9)	184	0	0
Montgomery (11, 11)	213	0	0
Columbus (10, 8)	163	4	2
Huntsville (10, 8)	170	1	1
Florence (10, 10)	199	4	1
Macon (9, 9)	167	1	1
Albany (7, 7)	136	9	4
Tuscaloosa (7, 6)	122	1	1
Gadsden (5, 4)	79	0	0
Anniston (4, 3)	61	0	0
Decatur (5, 5)	102	9	2
Auburn-Opelika (4, 2)	45	8	1
Jasper (3, 3)	46	2	2
Jessup (3, 3)	48	0	0
Milledgeville (3, 3)	49	4	1
Moultrie (3, 3)	46	0	0
Thomson (3, 3)	51	0	0
Alexander City (2, 2)	34	0	0
Calhoun (2, 2)	26	0	0
Cartersville (2, 2)	33	0	0
Dawson (2, 2)	29	1	1
Ft. Payne (2, 2)	31	0	0
Hamilton (2, 2)	30	0	0
Manchester (2, 2)	39	4	1
Monroeville (2, 2)	31	0	0
Russellville (2, 1)	12	0	0
Warner-Robins (2, 2)	31	0	0
West Point (2, 1)	15	0	0
York (2, 1)	10	0	0

1/ The numbers in parentheses represent, respectively, the total number of stations in the market (See Appendix A for market definitions) and the number of stations in the sample.

2/ For each market in the sample, one day was chosen from the composite week.

Table 18, continued

Alma (1,1)	14	0	0
Arab (1,1)	16	0	0
Baxley (1,1)	13	0	0
Bremen (1,1)	12	1	1
Claxton (1,1)	13	0	0
Centerville (1,1)	12	0	0
Covington (1,1)	12	0	0
Elba (1,1)	14	0	0
Evergreen (1,1)	11	0	0
Flomaton (1,1)	13	0	0
Ft. Valley (1,1)	12	0	0
Gordon (1,1)	18	0	0
Greenville (1,1)	14	0	0
Hazelhurst (1,1)	18	1	1
Louisville (1,1)	17	0	0
Luverne (1,1)	11	0	0
Opp (1,1)	14	0	0
Piedmont (1,1)	12	0	0
Rainsville (1,1)	15	0	0
Reidsville (1,1)	13	0	0
Royston (1,1)	12	0	0
Soperton (1,1)	14	0	0
Sylvania (1,1)	16	0	0
Tallasee (1,1)	13	0	0
Vernon (1,1)	12	0	0

Source: Composite Week Logs Provided by Stations in License Renewal Applications.

Table 19: Incidence of Various Levels of Commercial Time, Stations in a Sample of Markets in Georgia and Alabama

Market ^{1/}	Number of Seconds of Commercial Time					
	1080 or more	950-1079	800-949	600-799	300-599	less than 300
Atlanta (31, 24)	1	13	30	49	152	247
Birmingham (20, 17)	3	5	12	47	98	161
Savannah (14, 13)	0	2	3	19	74	184
Mobile (14, 11)	0	1	0	20	64	97
Augusta (13, 9)	0	7	4	16	30	127
Montgomery (11, 11)	0	0	1	27	80	105
Columbus (10, 8)	4	6	12	10	40	91
Huntsville (10, 8)	1	1	10	17	67	74
Florence (10, 10)	4	12	12	26	68	77
Macon (9, 9)	1	10	16	18	68	77
Albany (7, 7)	9	11	10	7	32	67
Tuscaloosa (7, 6)	1	1	8	21	36	55
Gadsden (5, 4)	1	2	1	23	21	31

^{1/} The numbers in parentheses represent, respectively, the total number of stations in the market (see Appendix A for market definitions) and the number of stations in the sample.

Table 19 (continued)

Anniston (4, 3)	0	1	1	8	16	35
Decatur (5, 5)	9	0	12	20	19	42
Auburn-Opelika (4, 2)	8	3	3	6	7	18
Jasper (3, 3)	2	3	9	6	9	17
Jessup (3, 3)	0	0	2	10	20	16
Milledgeville (3, 3)	4	2	10	11	12	10
Moultrie (3, 3)	0	1	2	7	15	21
Thomson (3, 3)	0	0	1	7	10	33
Alexander City (2, 2)	0	0	4	5	11	14
Calhoun (2, 2)	0	0	0	0	3	23
Cartersville (2, 2)	0	1	0	2	18	12
Dawson (2, 2)	1	3	4	3	1	17
Ft. Payne (2, 2)	0	0	0	2	9	20
Hamilton (2, 2)	0	2	1	3	14	10
Manchester (2, 2)	4	3	3	4	4	21
Monroeville (2, 2)	0	0	0	5	7	19
Russellville (2, 1)	0	0	1	8	3	0

Table 19 (continued)

Warner-Robins (2, 2)	0	0	0	1	9	21
West Point (2, 1)	0	0	1	1	9	4
York (2, 1)	0	0	0	0	4	6
Alma (1, 1)	0	0	1	3	8	2
Arab (1, 1)	0	0	0	2	10	4
Baxley (1, 1)	0	0	2	6	5	0
Bremen (1, 1)	1	3	4	4	0	0
Claxton (1, 1)	0	0	1	3	6	3
Centerville (1, 1)	0	0	0	0	0	13
Covington (1, 1)	0	0	0	0	4	8
Elba (1, 1)	0	2	3	5	3	1
Evergreen (1, 1)	0	0	0	1	2	8
Flomaton (1, 1)	0	0	0	0	0	13
Ft. Valley (1, 1)	0	0	0	2	8	2
Gordon (1, 1)	0	0	0	3	12	3
Greenville (1, 1)	0	1	1	2	7	3
Hazlehurst (1, 1)	1	0	2	2	5	2

Table 19 (continued)

Louisville (1, 1)	0	1	3	6	3	4
Luverne (1, 1)	0	0	0	0	0	11
Opp (1, 1)	0	0	0	0	1	13
Piedmont (1, 1)	0	0	0	0	5	7
Rainsville (1, 1)	0	0	0	2	6	7
Reidsville (1, 1)	0	0	1	2	9	1
Royston (1, 1)	0	0	0	3	7	2
Soperton (1, 1)	0	1	4	3	4	2
Sylvania (1, 1)	0	0	0	0	5	11
Tallasee (1, 1)	0	0	0	0	5	8
Vernon (1, 1)	0	0	1	4	5	2

Source: Composite Week Logs Provided by Stations in License Renewal Applications.

**Separate Statement of Charles D. Ferris,
Chairman Re Radio Deregulation**

September 6, 1979.

The action we have proposed today is a new step in our continuing effort to seek and find more effective and efficient ways to make communications responsive to public needs. We have accepted the challenge of Congress, the President, and the American people to take a fresh look at the continuing relevance of regulation in a dramatically changing communications marketplace. We have already started this process in cable television and telephone regulation. Today we start that process in radio broadcasting.

The data contained in the Notice adopted today indicates that in radio broadcasting, the public interest can be met most effectively by the forces of competition in the radio marketplace.

For many years detailed FCC regulation of radio was thought essential to guarantee that the voices of a few would not so dominate the airwaves as to drown the dissenting opinions and tastes of many others. Today the data in this Notice indicates that as the number of radio stations has dramatically increased, listeners have been offered a wider range of choices, largely despite, rather than because of, government regulation.

In each of the areas we propose to deregulate, our preliminary data reveals that radio stations have by and large exceeded the requirements government has imposed. Survival in a competitive marketplace appears to require radio stations to impose upon themselves a heavier burden of responsiveness to community needs than has government regulation.

But, in order for deregulation in any form to work well, we must remain committed to keeping the marketplace competitive, and increasing its capacity to respond directly to consumer needs. Those areas of radio regulation where we have been most effective—using structural tools such as the enforcement of stringent Equal Employment Opportunity requirements, programs to encourage minority ownership, and measures that will increase the number of stations by more efficient use of the spectrum—become even more critical.

By removing ineffective government involvement, we will free our limited resources to enable us to promote more aggressively a competitive and responsive radio marketplace. The action we propose today is thus more than deregulation. It marks a new view of government's role in this field. It is a proposal for more effective communications regulation, one that recognizes the sensitivity of government involvement in programming decisions and the importance of stimulating a competitive market environment that can serve the same goals.

It may be that in this case additional data will show us wrong in our preliminary view that the radio marketplace is one ripe for this shift in government enforcement resources. But to me the most important fact is that this proceeding shows that a federal agency is capable of zero-basing its regulatory scheme, accreted over a 45-year period, in an attempt to look for a better way.

**Concurring Statement of Commissioner
Robert E. Lee in Re: Deregulation of Radio**

I agree completely with the issuance of a notice raising questions about our historic interpretation of our statutory mandate and our role as regulators. I am concurring because I don't feel wedded to any particular language or proposal. I want to gather as much information as possible about the legal, economic and practical consequences of all the alternatives here so that, when this is over, everyone will be better off.

Statement by FCC Commissioner James H. Quello

September 6, 1979.

Re: Modification or elimination of Commission rules and policies pertaining to commercial AM and FM radio in the areas of nonentertainment programming, ascertainment, commercialization and related fields.

In going forward with this important rulemaking at this time, the Commission has taken an important first step toward deregulation of radio broadcasting. I believe we should continue our efforts to remove wasteful, unnecessary and obstructive government oversight from a highly competitive industry which is fully responsive to the marketplace.

The deregulatory thrust of this notice is timely and sensible. If the first of the options for each of the proposed rules are finally adopted they would provide substantial deregulation, reduced bureaucracy and a concomitant reduced cost of government in keeping with the mood and will of the American taxpayers today. It should also contribute to a less litigious, freer and better broadcast service.

While some of my colleagues have expressed misgivings regarding the self-regulating effects of the marketplace, I have no such concerns. Experience has taught me that the marketplace is a very good regulator indeed. Moreover, the Commission's own data, compiled in support of today's action, shows very clearly that the marketplace and public acceptance, not regulation, is responsible for advancing the radio broadcasting industry in this country to its present pre-eminence in the world.

The time has long since passed when local radio broadcasters and their audiences require extensive oversight from Washington. Virtually all radio markets are replete with diversity, competition and ample incentive to provide good service. It's heartening to note that our data bear out what my own broadcast experience taught me long ago; a broadcaster competing in his own self-interest will go to great lengths to identify the diverse interests which make up his market and then do his best to provide those interests with the best service possible. There are many more radio stations today than TV or newspapers in every sizable market. In many markets there is almost a surplus of radio stations—there is an automatic and constant search for unserved or new program needs.

Today's Commission action seeks comment upon a wide range of options and I applaud the breadth of this approach. It should be understood, however; that primary focus

should be placed upon the *first* of the various options which constitute the recommendations of the Commission staff. Considering the natural tendency of regulators to regulate, I believe that the staff should be supported in its conclusion that there are some facets of radio regulation which should be left to marketplace forces and not controlled from Washington. If I were required to take final action today, I would support the staff recommendations. Before taking final action, however, I expect to take full advantage of a wide range of comments which I am confident will help to sharpen and clarify all of the issues and which will provide a full and complete record upon which to base a reasoned and thoughtful judgment.

Arbitrary levels of non-entertainment programming serve no useful public purpose. It is clear from our data and from even a minimal exposure to the broadcasting services that non-entertainment programming is demanded by the public. It is *equally clear* that *news and public affairs programming* are not demanded by *all of the public all of the time*. The marketplace—the public taste, and not regulation—should determine how much, what kind and at what times during the broadcast day such programming is broadcast. I believe greater responsiveness to legitimate public needs comes about through public acceptance or rejection in the area served by radio broadcasters.

Arbitrary commercial limitations likewise serve no useful purpose. Stations which persist in exceeding reasonable bounds of commercialization risk and suffer public disaffection. They invariably find that the benefits are short-lived and the marketplace quickly establishes a point of diminishing returns.

The onerous process of ascertainment of community needs and interests, as defined in great detail by this Commission, is a mechanistic exercise which has only served to elevate form over substance. A broadcaster, if he is to survive and prosper, must in his own way know and ascertain his community.

It should be remembered that regulation—all regulation—places a burden upon not only those who must directly submit to regulation but upon everyone. Regulation is not free. Tax dollars must support the work of this Commission. To the extent that work is meaningless or counter-productive, those tax dollars are squandered. I believe those rules and policies considered in today's action clearly fall into those categories.

The public has much to gain by taking a very serious interest in today's action. Broadcasters and non-broadcasters alike should take the time and put forth the effort to examine the issues and provide the Commission with their best thinking. The Commission, in turn, bears the responsibility to put aside narrower interests and to make its decision on the basis of providing the best service to the most people at the lowest costs.

I believe the FCC should continue its deregulatory thrust in the future, but I realize our efforts are limited in scope by the Communications Act. Only legislation can provide major deregulation dealing with license terms, political broadcasting,

government involvement in program format and alternatives to the comparative hearing process. I hope some time in the near future the FCC will take appropriate action to deliberate and make recommendations for deregulatory legislation.

My views advocating complete deregulation have been presented before the House and Senate Subcommittees on Communication. The broad deregulatory viewpoints expressed are so relevant to the essence of this rulemaking process that I am including pertinent excerpts as an addendum to this statement.

Addendum to Statement by FCC Commissioner James H. Quello
September 6, 1979.

Re: Modification or elimination of Commission rules and policies pertaining to commercial AM and FM radio in the areas of non-entertainment programming, ascertainment, commercialization and related fields.

September 13, 1978.

Comments of FCC Commissioner James H. Quello on Title IV, H.R. 13015 Before the House Subcommittee on Communications

I propose clean, decisive, legislative surgery to remove the major pervasive defects and massive economic wastes of broadcast regulation. Unequivocally remove all First Amendment and regulatory constraints! *Subject broadcasting to exactly the same regulations and First Amendment constraints as its major competitor and closest cousin—newspapers.* This also means eliminating the nebulous, troublesome and out-dated "public interest" standard.

In return, assess broadcasts a practical spectrum usage fee and provide for open marketplace addition of stations that meet reasonable standards of engineering feasibility.

The time has never been more propitious.

This action would most effectively and forcefully implement the visionary main thrust of H.R. 13015—that regulation should be necessary only "to the extent marketplace forces are deficient." *In other words, wherever the market is open and competitive, regulations should be abolished. This certainly applies to broadcasting markets in this country where intense competition exists and is growing apace.* Broadcasters not only compete aggressively against each other, but also with all other media including newspapers, magazines, outdoor advertising, transportation advertising, direct mail, etc. It's time to remove regulations and allow competitive market forces to operate. This would provide massive deregulation, reduced bureaucracy and a resulting reduction in government costs—all in keeping with the current trend, and mood of the American public. Then, too, *the public would benefit from a freer, more robust, more venturesome broadcast journalism emancipated from unnecessary restrictive government oversight.*

The views expressed here and the supporting arguments to be presented are my own and do not represent an official FCC view. I fully realize that court interpretations and a continuing variety of adversary

viewpoints are formidable considerations for legislative action or reform. *I am also fully cognizant that present FCC decisions and deliberations must be based on the current Communications Act and existing case law and not on a proposed legislative action or re-write.* However, I am proposing substantial revision from the unique perspective of over four years FCC service and over twenty-five years in broadcasting. Also, I note that Henry Geller, respected communications lawyer and new head of the National Telecommunications and Information Administration, is a staunch advocate of First Amendment rights. He was quoted by Les Brown of the New York Times: "The more we let radio and television be the way print is, the better off we are. Let the marketplace answer whether there should be more networks, not the FCC." I also agree with Mr. Geller's statement in the August 1979 issue of the RTNDA publication where he was quoted: "I think the Fairness Doctrine does impose First Amendment restraints. I think, as I testified recently before the Congress, that if you scrap the public trustee schema entirely in order to accomplish goals through other means—means of spectrum usage tax or others—that that's very worthy of exploration and that's what re-write is about." I repeat the quote here as a reminder there are knowledgeable people of worthy purposes questioning the propriety of the public trustee concept as applied to current broadcast regulations.

I believe government or court-mandated First Amendment restrictions and also the government-mandated public trustee concept are outdated and no longer justifiable in today's competitive technological, economic and journalistic climate in communications.

In fact, broadcasting was not initially formulated as a public trusteeship. It was actually conceived as an advertising supported, risk capital, commercial enterprise. No government funds were appropriated to finance pioneer broadcast service or to initiate commercial service. Much has been said of the people's airways or the public trustee concept—perhaps, too, because by sheer continued repetition over the years it has become accepted as a fact. However, Eric Sevareid, who said so many things so well over the years, once commented:

"I have never understood the basic legally governing concept of 'the people's airways.' So far as I know there is only the atmosphere and space. There can be no airway, in any practical sense, until somebody accumulates the capital, know-how, and enterprise to put a signal into the atmosphere and space."

As a former newsman, I have always hoped that some day broadcasting would be treated the same as other journalistic and advertising media. With continuing debate and various court interpretations, it seems this can best be achieved by bold, innovative legislative action. In my opinion, the time has finally come to grant full Constitutional rights of freedom of the press and freedom of speech to broadcasters. This would end years of discriminatory treatment which is no longer justifiable with today's massive competition in all communications media.

There are many more TV and radio stations today than newspapers in every

sizable market. The growth of cable, translators, UHF, FM and the development of satellites has provided more media availability than ever before. Future potential is practically unlimited. Then, too, broadcast journalism today is mature, professional and objective as any media. Regulatory restraints are no longer justified in today's era of competitiveness, numerous outlets and professional journalism.

The scarcity argument justifying governmental intervention in broadcasting seems more specious today than when it first crept into court decisions years ago that limited First Amendment guarantees for broadcasters.

There are limitations upon the numbers of businesses of any kind in a given community. Limited spectrum "scarcity" arguments once embraced by the courts should hardly apply in today's abundance of radio-TV media compared with newspapers. Economic reality is a far more pervasive form of scarcity in all forms of business whether in broadcasting, newspapers, auto agencies or selling pizza. It is a fact that not everyone who wants to own a broadcasting station in a given community can do so. It is also an economic fact that not everybody who wants to own a newspaper, an auto agency or a pizza parlor in a given community can do so.

I believe the public would be served by abolishing Section 315 including the Fairness Doctrine and Section 312(a)(7). The Fairness Doctrine is a codification of good journalistic practice. Its goals are laudatory. However, I no longer believe government is the proper source for mandating good journalistic or program practice. I believe the practice of journalism is better governed by professional journalists, editors and news directors. Programming is best done by professional program directors, producers and talent. Even with some programming deficiencies, a government cure with censorship overtones is worse than the industry disease.

There is little doubt that if TV and radio had existed in 1776, our founding fathers would have included them as prime recipients of the Constitutional guarantees of freedom of the press and freedom of speech. After all, they were *guaranteeing citizens these freedoms* so that a well-informed public and electorate could vote on issues and candidates—free of any semblance of government interference or control. *The Constitutional freedoms were instituted for the benefit of the citizenry—the total public—rather than the media. It is the public that stands to gain from an all media freedom of the press.*

Section 315 and Section 312(a)(7) guarantee access to broadcasting in order to seek political office. This is not required of newspapers and magazines because of the Constitutional guarantees accorded only to print journalism. Clearly print journalism, with its guaranteed "freedom of the press" has risen to the task of informing the electorate and uncovering illegal or unethical practices without government interference or regulation—I see not reason to assume broadcast journalists or executives are any less responsible or diligent. Broadcast journalists have earned and rightfully deserve all Constitutional freedoms.

I believe that removing the government restraints of Section 315, including the Fairness Doctrine and Section 312(a)(7), would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

I'd like to emphasize that my plea is not for freedom from program regulation for broadcasters. I am appealing for freedom from program regulation for the public at large. My experience in broadcasting and with the FCC leads to the firm belief that far too much programming provides no useful function except to satisfy some rule or regulation of the FCC. I have an equally firm belief that much controversial programming which could be of great service to the public is avoided by licensees wary of government requirements.

It is ironic that the regulated—while vociferously complaining about their over-regulated status—are often the last who wish to see this yoke lifted. It is well recognized that regulation carries with it a measure of protection from competition and without regulation there is no such protection. I believe that there are areas of telecommunications which do not readily lend themselves to a totally competitive environment (like telephones), but I don't believe that broadcasting is one of them. It is obvious to anyone familiar with the industry that competition is already very strong in many markets and it could be an even stronger force without the regulatory constraints which have developed over the years. The public stands to benefit from this potential but not until it is given full opportunity to develop.

I would guess that most large broadcasters may view my proposals with at least mild alarm since they are best able to cope with the maze of regulations and restrictions which we impose. They are able to maintain counsel, hire expert personnel and buy or produce programming to satisfy the public and the government. Presumably, they would prefer "business as usual" to any wide-ranging deregulatory scheme which might contain the seeds of greater competition. My proposals, then, are not calculated to garner wide support among existing licensees. Rather, they are meant to establish a climate whereby the American public can receive more, freer and better broadcasting service. I believe it is a proper goal of the Communications Act of 1934 and of the First Amendment to the Constitution and I believe it is a proper goal for the new Communications Act.

Broadcast licensees should be assessed an appropriate annual spectrum fee and then assigned licenses without expiration dates. At present, broadcast licensees must prepare lengthy applications for license renewal every three years. These applications are then reviewed by the Commission, which must find that renewal is or is not in the public interest. The applications are further subject to challenge from members of the licensee's audience under the very loose application of the principles of standing as a party in interest.

For most licensees, the triennial shipment of pounds of paper to Washington, D.C. is ritualistic, time-consuming, expensive and

nonproductive. In the vast majority of instances, the Commission makes the public interest finding that permits renewal and the three-year cycle begins anew. In a few cases, renewal is delayed by objections from members of the public. In very few cases, the licensee is forced into a hearing to determine whether he is fit to remain a licensee. And, there are many instances where other parties file "on top" of the licensee in an effort to gain the license for themselves.

The process of license renewal appears to be a very expensive, time-consuming method of ferreting out those few licensees who have failed to meet a subjective "public interest" standard of performance. With adoption of a free marketplace concept similar to newspapers, license renewal would no longer be required. The enormous savings in time and money could be used for more constructive purposes in programming and news.

Some would contend that license renewal time offers the Commission the only real opportunity it has to review the overall performance of its licensees. However, I believe greater responsiveness to legitimate public needs comes about through public acceptance or rejection in the area served by the broadcaster.

What rules would then govern broadcasters? The same law and rules as newspapers or other businesses or professions—criminal codes, libel, slander laws, anti-trust laws, EEOC requirements, SEC requirements, etc. There is no need for discriminatory singling-out of broadcasting for special restrictive regulations—broadcasters generally are as responsible, dedicated and every bit as socially-conscious as other Americans—in media, industry, professional or government groups. Most feel a self-imposed public trusteeship. The few incompetents and miscreants fail and lose their business or jobs or run afoul of the law as in any other profession or business.

Also I believe news objectivity and overall fairness and efficiency are better assured through professional broadcast and print journalists and through professional program executives. Many government-appointed officials, regardless of how well meaning, are handicapped by lack of experience and little understanding of media operations or the practicalities and economics of running a communications business.

Past considerations of the renewal issue have included the argument that a license "in perpetuity" would greatly weaken the competitive spur in the Communications Act. It must be remembered that broadcasting stations, although licensed, are also private business enterprises backed by private capital, subject to the risks and opportunities of entrepreneurship. Broadcasters have no incentive to offend or alienate potential audiences; on the contrary, it just makes good business sense to attempt to serve as much of the potential audience as possible and as well as possible. All media and particularly broadcasting require public acceptance to succeed and even survive. Regulation is supposed to be a rather imperfect substitute for competition where competition either doesn't exist or is restrained by certain market forces. In practically all of the

broadcasting markets in this country, competition not only exists but is intense and growing. As stated before, broadcasters not only compete among themselves but with all other media including newspapers, magazines, outdoor advertising, direct mail, etc. Therefore, it would seem reasonable to remove as much regulation as possible in order to permit competitive market forces to operate.

One immediate beneficial effect of open market competition would be elimination of government involvement in news and programming—where it never belonged in a free society.

There are many areas requiring continued government direction and surveillance but not a major news and information medium in a government conceived in and dedicated to the principles of free speech and a free press. I want the record to indicate that I advocate government involvement in appropriate areas—government involvement and direct action was required to attain such desirable goals as social security, minimum wages, FDIC protection for savings, civil rights, medicare and public health, anti-trust rules and environmental protection. Government must continue a vital role in solving problems in energy, national security, urban decay, equal rights and lagging economy.

Also there is a continuing need for consumer activist participation against products, organizations and services that mislead or bilk the consumer. Broadcasting should benefit from such interest but on the very same basis as any other news media. Broadcasting needs full, unfettered press freedom to report, clarify, editorialize and advocate on all events and controversies subject to the same marketplace constraints and criticism as newspapers or magazines. This includes expanding its already active role in exposing consumer frauds and unsavory corporate, public and governmental practices.

The argument that removing the public interest standard would permit broadcasters to eliminate news, public affairs or meaningful programs is indeed specious. It would be contrary to all industry trends and to broadcasting self-interest to eliminate or minimize news and information programming. Broadcast journalism and public affairs are increasing in importance. I believe the major impact of TV and radio on the American way of life today is in news and news analysis—not in entertainment programs. I think most people agree that broadcasting today is most remembered and respected for its hours of exceptional journalism—and that the greatest benefit most Americans derive and expect from broadcasting is information. Recent research indicates more Americans are getting initial news from TV and radio than from newspapers. This potential for molding public opinion poses an enormous responsibility and opportunity. No practical broadcaster will ignore the audience mandate for comprehensive objective coverage of news and public affairs. I firmly believe that full First Amendment rights will generate more top level management emphasis on news and public affairs. Owners, executives and broadcast managers of the future will more

and more assume roles of publishers and editors-in-chief. With full press freedom, stations and networks will have added incentive for editorializing and for larger news staff capable of more investigative and detailed "one the spot" reporting.

Once more, I believe in freedom of speech and freedom of the press for all media. This freedom best serves the overall public unfettered by government pressure or by citizen activists groups demanding special broadcast consideration for their own private social and political philosophies through government-mandated access. I further believe newsmen have the right to be wrong and that news executives have the responsibility of seeing that they are not wrong too often. I believe newsmen have the right and obligation to seek the truth—the facts. I also believe freedom of speech applies to government officials—they should be able to criticize the press, including the broadcast press, without raising the ominous spectre of censorship because of possible regulatory oversight.

In conclusion, I repeat that with today's intensely competitive broadcast news and advertising media, there is no logical reason for the special discriminatory regulation of broadcasting.

The laudable deregulatory thrust of HR 13015 should be specifically implemented by granting broadcasting full First Amendment rights and removing all regulatory restraints. The overall public would be the important beneficiaries through massive deregulation, reduced litigation, reduced bureaucracy and a resulting reduced cost to taxpayers. With elimination of renewals, petitions and unnecessary rulemakings, the FCC staff (which included 332 attorneys at last count) could be systematically reduced by probably as much as 40%. The principal remaining broadcast function would be engineering spectrum allocation and enforcement. The bureau reduction could be gradually accomplished through attrition, via transfer, resignation and retirement.

The reduction in bureau staff and government expenses would be in keeping with the mood and will of the American public today. I believe this total proposal would pass convincingly today in any objective public referendum.

Moreover, removing the government restraints of Section 315 and 312 would free broadcast journalism, foster more comprehensive and independent reporting and better serve the American people.

Commercial AM and FM Radio Deregulation Broadcast Agenda Item #2, September 6, 1979

Statement of Commissioner Abbott Washburn Concurring in Part and Dissenting in Part

Summary

I am concurring in seeking public comment on the actions described in the Notice with regard to ascertainment and non-entertainment programming. I am dissenting with regard to the proposed action on commercialization. I also offer an alternative proposal on ascertainment.

Ascertainment

The Notice asks questions of the public about the proposed rescission of all ascertainment requirements for AM and FM licenses. While I can concur in going out with questions on this matter, I doubt that in the long run it would be in the public interest to abandon ascertainment altogether. In recent years the ascertainment process has contributed to the development of a healthy "dialogue" between broadcasters and public groups and leaders at the local level. It has proved useful to licensees, the Commission, and the public alike. To abandon it completely now would be a waste. Admittedly, however, it has become too detailed, complicated, and time-consuming a process.

Accordingly, I propose an alternative course of action wherein the present ascertainment requirements would be greatly reduced and simplified, while at the same time stating specifically what the Commission requires. Under such a change, for example, the general public survey would be eliminated altogether and the requirements for the community leader survey simplified.

The Notice indicates that even though the 6% FM guideline and the 8% AM guideline for informational programming would be abandoned, the Commission still would expect broadcasters to provide such programming to meet listeners' preferences. *Therefore, some form of ascertainment would be needed.* The simplified procedure, suggested above, should meet this requirement. I hope that respondents will address this alternative approach.

Guidelines for Informational Programming

The Notice seeks comments on a proposal to abandon the 6% FM guideline and 8% AM guideline for informational programming. While I can concur in seeking such comments, I am concerned that doing away with these guidelines could generate serious problems for the Commission. Without them, for example, the Commission would be seriously hampered in the comparative hearing process and in the petition-to-deny process—a "vexing problem," as the Notice states in paragraph 261. After decades of weighing these public-service considerations in assessing licensee performance, *not* looking at these factors now would be a dramatic about-face. The Commission would unquestionably face strong legal challenges in the courts, especially since numerous public-interest groups have found the guidelines to be important benchmarks for gauging broadcasters' efforts. Both they and the broadcasters themselves would be left in uncertainty as to what standards the FCC would employ with respect to news and public affairs programming.

The litigation and uncertainty could be lengthy. Would the deregulatory benefits be offsetting? I think not. Most broadcasters now carry informational programming in excess of the percentages in the guidelines. Their elimination, therefore, would not

represent significant "relief" to the industry.¹

I will concur in seeking comments on this proposal, but with serious doubts as to its usefulness.

Action in the Event of "Failure of the Market"

The Notice states that while the Commission will no longer examine percentages of news and public affairs programming, it "will not completely absent itself from consideration of these factors." It will expect adequate performance market-by-market. In the event of "failure of the market," the Commission will "take whatever actions are required by the public interest to correct the situation" (Para. 260). Comments are sought as to what form of action this might be.

On the one hand we seem to be abandoning these time-honored measurements of the broadcasters' public-service performance. On the other hand we insist "we intend to see that the public interest is served" (Para. 242). How will we assess "failure of the market" in this area of informational programming? By what standards will the Commission judge such failure? Does the Commission have the legal authority to examine and regulate markets? How will individual stations know what is expected of them? How will public-interest groups be able to proceed?

Esther Peterson, Consumer Advisor to the President, phrased it well in testimony before the House Communications Subcommittee on July 10, 1979: "The goal of informing the public is best served when all stations are obligated to contribute to its advancement." Otherwise, she pointed out, "minority and other citizens groups would lose their ability to negotiate with broadcasters about programming that addresses their interests."

In this proposed move the Commission gives the impression of seeking to delete informational programming requirements completely. In actuality, however, it would be jettisoning clear guidelines for news and public affairs, and substituting in their place "further actions" of an undefined nature. This somewhat equivocal posture of the Notice gives rise to the difficulties.

If the undefined "further actions" are to become specific later—fashioned on the responses to the Notice—it would seem

¹ I am also troubled by the evidence that public affairs programming could be short-changed. Paragraph 184 on page 69 states:

"The evidence that we have presented strongly suggests that on a marketwide basis there will be a significant amount of news programming in both large and small markets. There is no evidence of similar consumer demand for public affairs programming."

And, again, paragraph 189 on page 70 reports that while there would continue to be a substantial amount of local news programming, "There is no similar evidence for local public affairs programming."

Absent government guidelines, therefore, the Notice seems to be saying that public affairs programming would likely go by the boards. (Unlike news, of course, it is not usually profitable). How can this be reconciled with the first prong of the statutory Fairness Doctrine, which requires coverage of major issues in the community?

better to withhold judgment on this course of action until all the comments are in.

Commercialization

The Commission over the years has encouraged self-regulation in this area. Examples of self-regulation are the NAB Radio Code limit of 18 minutes of commercial matter per hour, and the NAB Television Code and INTV Code limit of 9½ minutes of commercial matter per hour for weekend children's television programs.

The fact that the FCC has endorsed these self-restrictions and made them its own policies has resulted in greater adherence to them by broadcasters. (It has also helped to gradually bring the commercialization levels down.) If we should now drop our interest in them, the trend would be in the opposite direction. The percentage of licensees adhering to them would decline. It can be argued, as the Notice does, that the marketplace will take care of this, that the public will avoid stations that overcommercialize. But there is not much evidence to support this contention. In some markets the station or stations choosing to exceed the 18-minutes-per-hour limit could well pull along some of the others, who would feel that they, too, had to do so in order to be competitive. The public in these markets would then be subjected to higher levels of commercialization.

The fact is, I am convinced, that the public expects the FCC to involve itself in commercialization. It expects us to indicate reasonable limits beyond which a broadcaster is overcommercializing and imposing an undue burden on the listening and viewing audiences.

So I have trouble with any proposed action by the Commission that diminishes our consideration of, and interest in, the matter of overcommercialization. On this point, therefore, I must dissent.

Statement of Commissioner Joseph R. Fogarty

Concurring in Part; Dissenting in Part

In Re: Deregulation of Radio

I concur in the *Notice of Inquiry and Proposed Rule Making* to the extent that it seeks full public comment on the deregulatory issues and options set forth, but I dissent to the declaration of a Commission preference at this time in favor of completely abandoning our regulation concerning ascertainment, nonentertainment programming, and commercialization.

This *Notice* is premised on changes in the radio industry, principally the great increase in the number of radio stations since the commencement of regulation in 1934, and on "neoclassical" economic theory which contends that consumer welfare is best served by the free, unrestrained interplay of market forces of supply and demand. The *Notice* posits the fundamental issue of whether there can be greater Commission reliance on marketplace forces and commercial judgments in ensuring that radio will serve the public interest in programming diversity, including service to significant minority interests and tastes. With respect to our current nonentertainment programming guidelines, the *Notice* develops the economic argument that absent regulation the radio

marketplace will still provide listeners with adequate news programming. Although the *Notice* concedes that "public affairs" programs would decline under deregulation, it views their potential loss as acceptable, arguing that this programming is non-economic and that the discerned industry practice of "graveyarding" public affairs indicates that listeners do not value such programs. The *Notice* argues a case for the deletion of all ascertainment requirements as redundant of normal business judgments in a competitive radio marketplace and as imposing unnecessary regulatory burdens. Current guidelines on overcommercialization are considered similarly unnecessary in a competitive marketplace.

To consider carefully and to seek full public comment on these issues and arguments is proper and appropriate. We are under no mandate to prefer particular regulation simply for its own sake. Indeed, we have a continuing responsibility to reassess the costs and benefits of our regulatory means and ends to ensure that the public interest is being served in fact as well as in theory. Whether a deregulated radio marketplace can be relied upon to meet the public interest more effectively than regulation is a matter of debate before Congress and this Commission. This *Notice* hopefully will provide the Commission with a record for possible legislative recommendations and possible agency action as well.

While I concur in the commencement of this proceeding, I strongly believe that the *Notice* only states the fundamental questions; it does not answer them. The *Notice* raises difficult and complex legal and policy issues whose resolution is at this time far from clear. It is therefore premature for any categorical statement of a preferred course of Commission action.

At the outset of this inquiry, it bears emphasizing that because the Commission is proposing changes in not only its regulation but also in its interpretation of its legislative charter, the Communications Act of 1934, as amended, strict adherence to the principles of reasoned agency decisionmaking is essential. While the Commission's exercise of its quasi-legislative rulemaking power is entitled to a wide degree of deference, our discretion is not unbounded. Our rulemaking actions must be consistent with the standards of the Administrative Procedure Act which require the setting aside of any "agency action, findings, and conclusions" which are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,"¹ or "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right."² The stringency of review under these standards depends in a given case "upon analysis of a number of factors, including the intent of Congress as expressed in the relevant statutes, particularly the agency's enabling statute; the needs, expertise, and impartiality of the agency as regards the issue presented; and the ability of the court

¹ 5 U.S.C. 706(2)(A).

² 5 U.S.C. 706(2)(C).

effectively to evaluate the questions posed."³ Beyond these general principles, court decisions have established that more exacting scrutiny will be called for when for some reason the presumption of regularity usually accorded agency decision making is rebutted. Such rebuttal may be implicated when an agency departs from its consistent and longstanding precedents or policies. As the Court of Appeals for the Second Circuit has stated:

" * * * changes in policy must be rationally and explicitly justified in order to assure "that the standard is being changed and not ignored, and that [the agency] is faithful and not indifferent to the rule of law." Although an agency must be given flexibility to reexamine and reinterpret its previous holdings, it must clearly indicate and explain its action so as to enable completion of the task of judicial review. [citation omitted.] There must be a thorough and comprehensible statement of the reasons for the decision * * *. [citation omitted]."⁴

I have set out these principles of reasoned decision making at some length because of the conviction that *how* we arrive at our ultimate decision on the issues presented in this *Notice* is as critically important as the substantive result reached. Any deregulation we adopt will be of no avail to either public or industry if it is not done right. The judicial teachings mean that as a minimum requirement, the Commission must demonstrate that any contemplated deregulation of radio will continue to meet and serve the public interest goals and purposes of our existing regulation; or, in the alternative, we must show why the public interest will be better served by modifying or abandoning those goals and purposes, if that is to be the intent of effect of any deregulatory action. The Commission must also square any deregulation with its legislative mandate, the Communications Act of 1934, as amended, and the intent of Congress in its enactment.

While I do agree with the *Notice* that the economic concepts of competition and "consumer well-being" are essential elements of the "public interest" standard established by the Act, they are but component parts of the public interest and not its whole. Other values in addition to "economic" satisfaction are implicated: "It is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here."⁵ In interpreting its statutory mandate, the Commission has long recognized that "the paramount and controlling consideration is the relationship between the American system of broadcasting carried on through a large number of private licensees upon whom devolves the responsibility for the selection and presentation of program material, and the congressional mandate that this licensee responsibility is to be exercised in the interests of, and as a trustee for the public at

³ *Natural Resources Defense Council, Inc. v. SEC.* —F.2d—, No. 77-1761 (D.C. Cir., April 20, 1979), slip op. at 34.

⁴ *Office of Communication of the United Church of Christ v. FCC.* 560 F.2d 529, 532 (2d Cir. 1977).

⁵ *Red Lion Broadcasting Co. v. FCC.* 395 U.S. 367, 390 (1969).

large which retains ultimate control over the channels of radio and television communications." "The Commission's regulatory responsibility in the broadcast field "essentially involves the maintenance of a balance between the preservation of a free competitive broadcast system, on the one hand, and the reasonable restriction of that freedom inherent in the public interest standard provided in the Communications Act, on the other."⁷

In meeting this regulatory responsibility of balancing free competition with public interest obligation, the Commission has left broadcasting's development and presentation of entertainment programming largely to marketplace competition.⁸ However, long-

⁷ *Editorializing by Broadcast Licensees*, 13 FCC 1246, 1247 (1949).

⁸ *En Banc Programming Inquiry*, 44 FCC 2303, 2309 (1970).

⁹ The section of the *Notice* treating "Historical Perspective" implies the Congress in its 1927 and 1934 enactments of broadcast legislation was primarily concerned with the incipient RCA radio monopoly. Although not entirely clear, the further implication appears intended that since the RCA monopoly has long since passed away, there is no longer any continuing statutory mandate for public interest regulation of radio. This revisionist history is conspicuously devoid of any supporting citation to the legislative record of the 1927 and 1934 Acts. Secretary of Commerce Hoover's often-cited "warning," quoted at paragraph 11 of the *Notice*, is on its face of broader import and effect than any such restrictive interpretation. It squares better with the long-held view that Congress considered the airwaves a natural resource to be held in trust for all the people of the United States and intended that broadcasters who receive their radio frequencies free take them as fiduciaries for the public whose interests they are licensed to serve. To quote Hoover, broadcasting was "not to be considered as merely a business carried on for private gain . . ."

The *Notice* also contains several recurring references to public, federally-financed broadcasting, particularly National Public Radio, in contexts which suggest that the creation and development of noncommercial radio may provide a basis for abandoning the public interest regulations of commercial radio. See paragraphs 58, 90, 133, 144 n. 155, and 156-59. Again, the *Notice* offers no citation to the legislative history of the public broadcasting statutes in support of this novel interpretation. There is, however, plain language to the contrary. In its Report of the legislation that created public broadcasting, the Public Broadcasting Act of 1967, the Senate Committee on Commerce stated:

The programming of these [public broadcasting] stations should not only be supplementary to but competitive with commercial broadcasting services. This competition will benefit both types of service.

In this connection your committee wishes to make crystal clear that the enactment of this legislation and the growth of noncommercial broadcasting services, will in no way relieve commercial broadcasters of their responsibilities to present public affairs and public service programs, and in general to program their stations in the public interest. S. REP. NO. 222, 90th Cong., 1st Sess. 6 (1967).

Similarly, the corresponding Report of the House Committee on Interstate and Foreign Commerce stated that "The program support provided by Title II of the Bill will, among other things, enable the noncommercial educational broadcast stations to provide supplementary analysis of the meaning of events already covered by commercial newscasts." H.R. REP. NO. 572, 90th Cong., 1st Sess. 10 (1967) (Emphasis added). The legislative record of subsequent amendments to the public broadcasting charter discloses no contrary views.

standing Commission policy has recognized that competitive forces alone may not afford the public suitable access to news and other informational programming; the Commission has considered it a "necessity for licensees to devote a reasonable percentage of their broadcast time to the presentation of news and programs devoted to the consideration and discussion of public issues of interest in the community served by the particular station."¹⁰ The fundamental concerns underlying both the ascertainment and nonentertainment programming requirements have been consistently stated:

It is axiomatic that one of the most vital questions of mass communication in a democracy is the development of an informed public opinion through the public dissemination of news and ideas concerning the vital issues of the day.¹¹

[W]e have allocated a very large share of the electromagnetic spectrum to broadcasting chiefly because of our belief that this medium can make a great contribution to an informed public opinion.¹²

It is unclear to me whether it is the position of the *Notice* that an unregulated radio marketplace will continue to meet these public interest goals and policies or that these goals and policies are now to be considered irrelevant or superseded by the somewhat illusive concept of "consumer welfare." At several points the *Notice* appears to concede that because of the absence of a pricing mechanism directly linking consumer demand with programming supply, there may be significant distortions in the radio marketplace that would preclude the continued availability of diverse information programming.¹³ Yet, the *Notice* relies confidently on general economic theory in repeatedly concluding that any such distortions should be minimal and that in any event the marketplace is far more competent than the Commission to make consumer welfare judgments in this area. In this regard, the *Notice* seems to say that because the benefits of existing regulation are hard to identify and quantify empirically, the burden should be on regulation to justify itself, even though it is conceded that the benefits of future deregulation are equally elusive. Here, there is a pervasive and troubling circularity in much, if not all, of the proffered economic

The point of this digression is that the equating of "historical perspective" and legislative intent is a slippery and perilous enterprise.

¹⁰ Although the subject of continuing Commission responsibility to pass upon voluntary assignments of radio licenses has been construed to require that the Commission consider whether the proposed abandonment of a distinctive radio programming format is in the public interest; where a significant segment of the listening public opposes the assignment in protest of the loss of such a format and presents substantial factual allegations that the format is both unique and financially viable, the Commission will be required to hold a hearing. *WNCN Listeners Guild v. FCC*, F.2d, No. 76-1692 (D.C. Cir., en banc, decided June 29, 1979); see also Dissenting Statement of Commissioner Joseph R. Fogarty in re: Decision to Seek Supreme Court Review of *WNCN Listeners Guild v. FCC*, FCC News Release, Mimeo No. 20773 (August 24, 1979).

¹¹ *Editorializing by Broadcast Licensees*, 13 FCC at 1249.

¹² *Id.*

¹³ *Fairness Report*, 39 Fed. Reg. 26372, 26375, 48 FCC 2d 1, 10 (1974).

justification for complete deregulation: i.e., the marketplace will best serve the public interest because the public interest is best served by the marketplace; or otherwise stated, whatever programming is produced by the marketplace is by definition in the public interest.¹⁴

I believe the applicability and efficacy of this neoclassical economic model and theory in today's radio industry deserves a fair hearing in this proceeding. But, the Commission's existing statutory mandate, if not also intellectual honesty and procedural fairness, compels a measure of judicious circumspection before we so confidently and completely abandon our minimum of public interest regulation in favor of the uncharted vicissitudes of the marketplace.

The *Notice* relies on the existence of all-news or news-oriented stations in radio markets with 16 or more stations and on data indicating that news programming exceeds Commission guidelines in smaller markets to suggest that absent regulation there will be no lack of availability of such programming. While this analysis is a basis for some optimism, it must be remembered that these are statistics generated in a *regulated not a deregulated* environment; they predict but do not speak with certainty. The *Notice* concedes that news is high-cost programming. It is my impression that many, if not most, radio licensees comply with our current guidelines by subscribing to one or more of the news wire services or networks. Having made the financial commitment to such services or networks, these stations have an obvious incentive to use and broadcast this news material. Whether licensees will continue their present levels of news programming when given the option and the financial incentive to drop news in favor of less costly programming is far from clear. Since there is evidence (the Magid/AP study cited at paragraphs 170-71) that a majority of the listening public values (i.e., "pays attention to") news programming when it comes on the radio but only a minority choose a station for its news, a potential "marketplace failure" may be indicated. There is also a troubling issue in the *Notice's* implication that in larger markets, the public interest (or "consumer welfare") would continue to be served where all but one station ceased any significant news effort, provided the one remaining station was all-news or "news oriented." To square such an extreme degree of deference to marketplace competition with the public interest licensing

¹³ See, e.g., paragraph 136: "Certain demographic groups . . . particularly the elderly, may not be valued highly by advertisers and thereby may have less impact on programming than they would under a traditional market arrangement;" and paragraph 144: Researchers "agree that advertiser-supported broadcast markets will not respond perfectly to consumer wants, primarily due to the failure to ascertain intensity of demand. . . . Most likely to be omitted are (1) programming for which there is a small audience that highly values the programming (but cannot register that preference due to the lack of a pricing mechanism) and (2) high cost programming."

¹⁴ This observation recalls the remark of economist John Kenneth Galbraith that "Economics has been not a science but a conservatively useful system of belief defending that belief as a science."

standard of the Act would be an exceedingly difficult task.

With respect to the *Notice's* discussion of public affairs programming, I find it somewhat curious and ironic that the current industry practice of "graveyarding" such programs is cited as a ground for sanctioning their abandonment. While public affairs programs may be "non-economic" (i.e., not as profitable as, say, automated disco) in the mass audience-oriented radio marketplace, I would prefer to see some attempt at discerning whether such programs appeal to significant minority audiences, thereby indicating a possible "marketplace failure," before blessing their demise. More importantly, however, I have considerable difficulty reconciling a decline in public affairs programming with the commitment of the Commission and the Congress to the continued importance of the fairness doctrine. As recently as 1974, the Commission emphasized that "we regard strict adherence to the fairness doctrine—including the affirmative obligation to provide coverage of issues of public importance—as the single most important requirement of operation in the public interest—the 'sine qua non' for grant of a renewal of license."¹⁵ The *Notice* proposes no change in our fairness doctrine policies or commitment, recognizing that its obligations are a statutory requirement.¹⁶ How the Commission can approve the abandonment of public affairs programming by radio licensees consistent with these policies and commitment warrants explanation.

More fundamentally, I do not believe that the Commission may lawfully abrogate its existing regulation *solely* on the basis of untested theory which leaves the public interest in radio communication so totally to the marketplace. As the Court of Appeals for the D.C. Circuit has repeatedly advised this Commission:

"* * * radio channels are priceless properties in limited supply, owned by all of the people but for the use of which the licensees pay nothing. If the marketplace *alone* is to determine programming format, then different tastes among the totality of the owners may go ungratified. Congress, having made the essential decision to license at no charge for private operation as distinct from putting the channels up for bids, can hardly be thought to have had so limited a concept of the aims of regulation. In any event, the language of the Act, by its terms and as read by the Supreme Court, is to the contrary."¹⁷

I recognize that the theory and arguments advanced in the *Notice* are to a large extent imponderables in the paper context of an administrative rulemaking proceeding and that their merit as a public interest substitute for existing regulation is necessarily dependent on their application in the real world of the broadcast radio marketplace. For this reason, I would be prepared to test the *Notice's* assumptions and predictions in a

marketplace experiment with deregulation. What I am not prepared to do at this juncture is simply to declare a deregulation victory in the name of neoclassical economic theory and walk away from the radio marketplace before the battle begins. A more reliable and secure basis for deregulation is required.

In this connection, I see that the *Notice* states that "If we found that the marketplace had failed to serve the public adequately, we would have to be prepared to take appropriate action to remedy the situation."¹⁸ However, the *Notice* is all too silent as to how we will know whether or not the marketplace is failing (i.e., the question of data and evaluation standards), and what regulatory remedies for failure would be appropriate. Most troubling in this regard is the proposed elimination of the program log requirements for broadcast radio stations. Apparently, the *Notice* would provide neither the Commission nor the public with the data base and ongoing record necessary to determine whether deregulation is serving the public in fact as well as in theory. The *Notice* states the expectation that no marketplace failure will occur. However, given the proposed evidentiary void, this confident statement hardly instills confidence.

I understand the *Notice's* hesitancy to conduct a marketplace experiment in view of the so-called "Hawthorne effect" which holds that where the subjects of an experiment have a strong interest in achieving a particular outcome, the results may be subject to considerable question. However, this hesitancy cannot justify a total failure to provide any means or basis for assessing the success or failure of the proposed deregulation. The apparent reluctance of the *Notice* to grapple with this deficiency suggests less than full confidence in the results, as opposed to the theory of deregulation. If we are not prepared to undertake a marketplace experiment, then the burden is clearly on the Commission—not merely on public complainants—to monitor the results of deregulation systematically and to report to the public on the record thereby developed. Without these safeguards, the real basis for deregulation will be perceived as nothing more than the less than satisfactory principle that whatever the marketplace produces is a priori in the public interest.

One final matter merits particular attention and comment. The *Notice* indicates that although ascertainment, nonentertainment programming, and commercialization issues would be generally eliminated in comparative hearings, it states that applicants would still be compared on the "other criteria" discussed in the 1965 *Policy Statement*, including "diversification, character, and spectrum efficiency." The *Notice* further suggests that if a challenger were better qualified under these criteria, then upon the incumbent's request the Commission might consider the incumbent's nonentertainment programming or its entertainment programming to determine whether its past service nonetheless entitled it to prevail; and in that case the challenger would be permitted to introduce its own program proposals for comparative evaluation.

¹⁸ Paragraph 241.

This aspect of the *Notice* raises serious and difficult problems. First, it is far from clear how this approach would square with the "best practicable service" criterion mandated by the Communications Act.¹⁹ In this connection, the Act specifically provides for the filing of competing applications both for new facilities and against the renewal applications of incumbent licensees,²⁰ and the Commission must give such applications a comparative hearing according to rational, defined standards.²¹ The *Notice* is vague to silent on how the Commission can determine comparative hearings under marketplace deregulation without initial and direct reference to the critical element of program service. As Mr. Justice Frankfurter's opinion for the Court in *National Broadcasting Co. v. United States* states:

"* * * The Act does not restrict the Commission merely to supervision of the traffic. It puts upon the Commission the burden of determining the composition of that traffic."²²

It is also unclear how, absent the articulation of programming performance standards, the Commission could determine that an incumbent facing a challenger with diversification advantages should nonetheless prevail because of a "meritorious" past broadcast record. Some regulatory standard would have to give content and substance to this elusive adjective in the equally elusive context of a deregulated radio marketplace. At this point, the *Notice* begins to look like deregulation for non-multiple, management-integrated radio station licensees, and dangerous uncertainty for everyone else.

The Act also specifies that a broadcast radio license conveys no right of ownership and no interest beyond the prescribed license term.²³ The conceptual difficulties which crop up in the context of comparative hearings indicate that our consideration of radio marketplace deregulation must confront the contention that the *Notice* may be proposing to do what the Act forbids: create a vested property right in the channels of many, if not all, incumbent radio broadcast licensees. *De facto* private ownership comports with neoclassical economic theory applied to broadcasting; however, it does not accord with the clear statutory mandate and regulatory structure enacted by the Congress.

Separate Statement of Commissioner Tyrone Brown

Re: Notice of Inquiry and Proposed Rulemaking in the Matter of Deregulation of Radio

I voted for issuance of this Notice of Proposed Rulemaking/Notice of Inquiry

¹⁹ The Supreme Court has held that the public interest licensing standard encompasses " * * * the ability of the licensee to render the best practicable service to the community reached by his broadcasts. " *National Broadcasting Co. v. United States*, 319 U.S. 190, 216 (1942), citing *FCC v. Sanders Radio Station*, 309 U.S. 470, 475 (1940).

²⁰ 47 U.S.C. 309(e).

²¹ *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945); *Citizen Communications Center v. FCC* 447 F.2d 1201 (D.C. Cir. 1971).

²² 319 U.S. 190, 215-216 (1943).

²³ 47 U.S.C. 301, 307(d).

¹⁵ *Fairness Report*, 39 Fed. Reg. at 26375, 48 FCC 2D at 10, citing *Committee for the Fair Broadcasting of Controversial Issues*, 25 FCC 2d 283, 292 (1970).

¹⁶ See paragraph 192 and n. 178.

¹⁷ *WNCN Listeners Guild*, supra n. 9, slip op. 40-41 (Emphasis added), citing *Citizens Committee to Save WEFM v. FCC*, 506 F.2d 246, 268 n. 34 (D.C. Cir. 1974) (en banc).

because I believe a comprehensive reexamination of this Commission's approach to regulation of commercial radio broadcasting is overdue. A host of considerations require such a searching inquiry.

The number of commercial radio outlets has increased almost 15-fold since enactment of the 1934 Communications Act, and television has replaced radio as the principal information medium. As a result, program specialization in radio has developed to a greater degree than was envisioned in the early years. Moreover, in addition to 8,653 commercial radio stations, there are today nearly 1,000 noncommercial educational stations that did not exist in 1934. Industry spokesmen and representatives of various listener groups contend (though the differing reasons) that, notwithstanding the sizeable portion of our resources that go into regulating radio, our effort falls far short of achieving public interest objectives. The Congress recently responded to these expressions of dissatisfaction by considering legislative proposals which would substantially alter the existing regulatory regime. Under these circumstances, a fresh look certainly is in order. For this reason, I wholeheartedly endorse the promise in this Notice that the proceeding we open today is but the first part of a review of all of our nontechnical radio rules, regulations and policies.

I also applaud the Commission's decision to extend this review to all markets and not merely to large markets as originally suggested. If our regulations impose any unnecessary burdens at all, they fall most heavily on small market broadcasters whose time and resources are often limited.

Finally, I am pleased that the Commission is prepared to take action following the appropriate notice and comment procedures without requiring a period of experimentation. As I have indicated elsewhere,¹ I believe an experiment would not serve any valid purpose. Broadcasters would be well aware that they are under a microscope and that on their conduct rests the fate of "radio deregulation."

I wish to emphasize that my vote in favor of issuance of the Notice indicates no preference—tentative or otherwise—for the so-called "Course That We Propose To Take" discussed in the Notice. It was clear during the Commission meeting on this matter that a majority could not be marshalled to vote, even tentatively, for elimination of all nonentertainment programming, ascertainment, commercialization and logkeeping requirements. Thus, the "proposed" course of action outlined in the Notice should be considered nothing more than the most far-reaching deregulatory option suggested by the record as it now stands.

I currently favor substantial deregulation. However, as indicated above, I am inclined toward something less than complete regulatory forbearance on nonentertainment

programming and ascertainment. In any event, whatever course the Commission ultimately adopts, I hope it is one that eliminates unnecessary paperwork, provides as much certainty as possible, and maintains the public interest objectives upon which the communications Act rests.

1. *Scope of this Proceeding.* The term "deregulation," fashionable though it has become, is somewhat of a misnomer for the options that will be available to the Commission at the close of this proceeding. Before the Commission can grant an initial or renewal radio broadcast license, we are required by statute to determine whether such a grant will serve the public interest, convenience and necessity. The public interest standard is a part of our statutory mandate, and we cannot eliminate or ignore it. Thus, as the Notice emphasizes, there is no intent in this proceeding to deregulate radio in the sense of eliminating the public interest standard.

Nor, for purposes of this proceeding, is there any controversy over the underlying specific public interest objectives toward which our existing rules and policies are directed. Although some may question those objectives in other contexts, the Commission currently holds to the view that the public interest requires (1) that regular informational programming be available to radio listeners, (2) that broadcast management stay in touch with the community so it is aware of local needs and interests, (3) that radio not become a wall-to-wall advertising medium, and (4) that radio licensees maintain records to document fulfillment of their public interest obligations. Undoubtedly, we will receive comments that these objectives are wrongheaded. I do not propose to consider such comments. We are here drawing into question not the underlying public interest objectives, but only the means of achieving those objectives.

A further point of clarification is in order. This proceeding is limited to nonentertainment programming. We are not here concerned with Commission regulation of entertainment formats *per se*, a question now before the courts. *WNCN Listeners Guild v. FCC*, Slip Op. No. 78-1692 (D.C. Cir. June 20, 1979). Specialized entertainment formats to provide specialized information programming to their targeted audiences.

2. *Why Consideration of Deregulation at All?*

All regulatory programs cost money. They impose costs on business (ultimately borne by the consuming public, in radio's case in the form of higher prices for advertised products) and direct costs on all taxpayers. For fiscal year 1978, we estimate that the FCC's portion of the direct costs of governmental oversight of radio broadcasting was \$13.3 million, or just under 20 percent of the total budget of this agency. These public expenditures are certainly justified if the purposes of the regulatory program they foster could be achieved only by regulation. However, if (and to the extent that) our regulations do not affect the conduct of radio broadcasters—motivating them to provide services they would not otherwise provide—we are wasting the taxpayer's money. Under such circumstances, we would also be

imposing unnecessary and far greater indirect costs on consumers through the paperwork requirements that broadcasters currently must meet. For this reason, regulatory agencies should periodically review regulatory requirements to determine whether they in fact advance public policy goals.

In this instance, economic analysis conducted by our Staff and empirical evidence we have gathered to date, arguably indicate that competition for listeners in the radio marketplace is achieving the public interest objectives of our nonentertainment programming, ascertainment and commercialization rules and policies.² Given the economic and other data described in the Notice, I believe we are obligated to ask whether greater regulatory forbearance on radio programming is the proper course.

3. *Economic Analysis.* The economic analysis set forth in the Notice suggests that, along with other factors, the increase in the number of radio stations—by 2,000 in the past ten years—has resulted in marketplace competition for listeners that effectuates public interest objectives at least as well as our existing rules and policies. Specifically, the data indicates that radio stations generally broadcast substantially more informational programming than our guidelines require and fewer commercial minutes than the guidelines permit. These preliminary findings are central to the proposal to eliminate nonentertainment programming and commercialization guidelines. Undoubtedly, they will be subjected to careful scrutiny by the commenting parties.

At the outset, I recognize that the radio marketplace is not a perfect one. Although there certainly are many marginal operations, the industry on the whole appears to enjoy handsome profits—in excess of what would be expected under circumstances approaching ideal competition.³

I do not believe this imperfection in the radio market, to the extent it exists, is a basis for rejecting any of the options described in the Notice. If the market, imperfect though it may be, would achieve all public interest objectives on its own, then there is no need for regulation. However, the existing profit condition of the industry carries a practical implication that is relevant to this proceeding. Considering the profitability of radio generally, the Commission probably

² Logkeeping (required by us for purposes of monitoring compliance) would no longer be justified as a governmental requirement if the other programming requirements are eliminated.

³ This Commission's past allocation policies, resulting in the licensing of fewer stations in some markets than today would be optimal economically, probably constitute the principal reason why many radio broadcasters enjoy exceptional profits. This is not intended as a criticism of past allocation policies. Technical limitations (including perceived limits on the useable portion of the electromagnetic spectrum and the needs of other spectrum users) have often taken precedence over economic considerations in the Commission's spectrum allocation decisions. Moreover, an allocation policy that appears optimal in the infancy of an industry may be less than optimal at a later date, depending on the demand for the product—here the ability to reach large numbers of consumers with advertising.

¹ Remarks of Commissioner Tyrone Brown Before The 17th Annual Southern California Broadcasters Association Public Service Workshop, Los Angeles, California, December 8, 1978 (FCC Mimeo No. 10397).

could not justify deregulation solely (or even substantially) as a step taken to ameliorate burdensome regulatory costs borne by the industry. Such a rationale would not ring true at a time when prospective owners are virtually standing in line to acquire radio facilities. Thus, I repeat, deregulation must be defended, if at all, on the basis that existing rules do not make a difference and therefore are an unnecessary burden to taxpayers and consumers.

There is another characteristic of the radio marketplace that makes it imperfect. Radio broadcasters compete vigorously for the largest possible audience. At the same time, they also compete for advertising revenues. As our Notice points out, in a sense the listener is not the consumer of radio but the product which broadcasters sell to advertisers. In other words, in radio broadcasting, true consumer (listener) sovereignty does not exist insofar as advertiser wants do not correspond with listener wants. Given that fact, certainly there are circumstances under which it is appropriate for the Commission to intervene on the side of the listener, and certainly we have done so in the past. Our economic analysis indicates, however, that the intervention we currently engage in—through the programming and commercialization guidelines and the ascertainment requirements—does not generally contribute to listener sovereignty beyond that provided by market forces. This is the proposition at the heart of the economic analysis which I hope will be thoroughly tested through adversary comment in this proceeding.

4. *Policy and Legal Considerations.* The most far-reaching option described in the Notice proposes regulatory oversight of radio broadcast markets rather than of individual broadcasters. This approach also proposes that the Commission for the first time explicitly announce that it will not (except as required under the Fairness Doctrine) require provisions of particular broadcast services for listener groups not large enough to attract their preferred program services in the marketplace. In my judgment, the proposal to switch to broadcast market regulation is the most fundamental change envisioned by the Notice, and the proposal to limit regulatory concern to economically significant listener groups is the most controversial.

It bears repeating that the Commission's regulatory approach cannot contravene the terms or intent of the Communications Act. That statute prescribes a scheme for periodic licensing of individual stations, with individual station accountability. It may be that a shift from individual to marketwide responsibility on programming issues would constitute an impermissible departure from the terms or intent of the Communications Act. My current view, however, is that the statute accords the Commission sufficient discretion to shift to the marketwide approach with respect to programming if we determine, on the basis of a convincing record, that to do so will best serve the public interest. However, I consider this question to be a close one, and I hope the commenting parties will devote substantial attention to it.

During the Commission meeting that resulted in issuance of the Notice in this

proceeding, Commissioner Jones asked whether our sole public interest concern in the areas under consideration is to assure that consumer "wants" are met. Commissioner Jones' question is a profound one. When the Notice repeatedly refers to the marketplace as maximizing consumer preferences, it is necessarily speaking of listener groups large enough to attract a market response to their program preferences. But what about listener groups that are not significant in this economic sense? Are they to be ignored?

As a policy matter, the Commission might conclude that economically insignificant groups are insignificant as a matter of communications policy because attempts to provide for them through regulation will not succeed or will not be worth the costs. At the moment, I cannot accept this conclusion on either ground.

Putting aside the issue whether the statute would permit us to totally ignore economically insignificant groups, our current regulatory approach is bottomed on the notion that groups and views that may not be attractive to advertisers should nonetheless have opportunities for access to the airwaves. Our current approach provides for such opportunity by requiring the broadcast of some nonentertainment programming.

I am particularly concerned about discussion of issues in their embryonic stage—before they reach the level of "controversial issues of public importance." Such discussions are to the Fairness Doctrine's "controversial" issues as a simple breaking and entering was to the resignation of a President. In the play of forces that determine what programming is to be aired, the proponents of views on nascent issues should have at least an opportunity to compete for access.

Moreover, as a practical matter, total elimination of nonentertainment programming guidelines and ascertainment requirements would not eliminate pressures for access to radio facilities. We might have to accommodate such pressures in other ways. For example, if we completely eschewed oversight of informational programming, I would expect to see many more complaints filed under Part One of the Fairness Doctrine.

All of this leads me to the most important question in this proceeding. Does competition exist in the radio marketplace to the extent that we can wash our hands of any involvement in nonentertainment programming? I fear that it does not, which is why I have offered a proposal which takes into account the desires of broadcasters for deregulation and for certainty but at the same time continues their public interest obligations.

5. *The Course I Propose to Take.* First, I have proposed elimination of Commission-enforced guidelines that have the effect of regulating the amount of time devoted to commercials on radio. I have made this proposal because I believe, given the variety of choices available to radio listeners, listener dissatisfaction with over-commercialization will be as effective a regulator of the amount of commercials run during the broadcast day as regulation by the FCC.

Second, I have proposed elimination of FCC-enforced guidelines looking toward specific percentages of news, public affairs and other nonentertainment programs. As a substitute for this category-by-category requirement, I have proposed that each radio broadcaster be required to devote a fixed minimum percentage of program time to local public service programming broadcast at reasonable times throughout the broadcast day.⁴

I believe local nonentertainment programming is the core of the public interest obligation in radio. But, if at all possible, I would leave it to each broadcaster to determine in the light of his particular format, how he would go about meeting that obligation. Thus, the flat local public service requirement I have proposed could be met through local news and public affairs programming, community bulletin boards, public service announcements or through other locally-produced nonentertainment programming demonstrably related to serving the local community's needs. Meeting that obligation would be a *sine qua non* for license renewal.

Third, I have proposed that the Commission eliminate the existing mechanistic approach to our ascertainment requirement. Ascertainment is intended to assure that broadcasters become familiar with the various elements in their communities so that they can direct their nonentertainment programming to the varying needs and interests of the community. However, largely at the behest of broadcasters, the Commission over the past 15 years has established a series of hoops for broadcasters to jump through to assure that they have "met" the basic ascertainment requirement. I would retain the substance of an ascertainment so that broadcasters can take the results into account in meeting their local public service obligation. I would eliminate detailed formalistic requirements which have served only to generate mountains of paper and extended litigation. I would give broadcasters broad discretion—reviewable only for reasonableness—to determine how to go about meeting the substantive ascertainment requirement.

Finally, I have proposed elimination of FCC-required daily program logs to the extent such logkeeping no longer would be necessary to assure compliance with other requirements I have proposed to eliminate.

I have by no means arrived at a fixed position on the issues covered in the Notice. However, I believe my proposals have the advantage of eliminating much unnecessary paperwork and affording broadcasters the certainty and flexibility they are entitled to with regard to their public interest obligations. I also believe they do so without surrendering the public interest objectives of the Act.

Concurring Statement of Commissioner Anne P. Jones re Notice of Inquiry/Notice of Proposed Rule Making on Radio Deregulation

I agree with the general thrust of this notice and therefore concur in its issuance. I am not,

⁴This proposal is reflected in "Alternative 6" of the Notice's nonentertainment programming options.

however, prepared at this time to state a preference for any of the various options presented in it for changes in our rules, policies, or procedures on nonentertainment programming, ascertainment, commercialization, and program logs.

Whether one or the other of these options, some combination of them, or some approach to these matters we have not yet thought of is best is a decision which I believe will be better made after we have received comments on this notice, and I prefer to wait until then to make it.

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