

*Before the*  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, DC 20554**

In the Matter of )  
 )  
Digital Audio Broadcasting Systems And Their ) MM Docket No. 99-325  
Impact on the Terrestrial Radio Broadcast )  
Service )

**COMMENTS OF**  
**BENTON FOUNDATION, CAMPAIGN LEGAL CENTER, CENTER FOR**  
**GOVERNMENTAL STUDIES, COMMON CAUSE, NEW AMERICA FOUNDATION,**  
**OFFICE OF COMMUNICATION OF THE UNITED CHURCH OF CHRIST, INC.,**  
**AND PROMETHEUS RADIO PROJECT**

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## SUMMARY

With the transition to digital radio, the Commission has a rare opportunity to address documented failures in providing listeners with diverse and local programming. The transition to digital will provide broadcasters with additional programming capacity, and the Commission must use this opportunity to promote its goals of diversity, localism, and competition. The Public Interest Coalition supports the Commission's efforts to ensure that with the additional programming capacity, broadcasters, in return for the exclusive use of the public airwaves, provide meaningful service to the public. Thus, the Public Interest Coalition urges the Commission to adopt rules and policies in which the public will gain substantial benefits from the new technology.

First, the Commission must limit the number of subscription-based services a station can offer. Free over-the-air radio continues to play a vital role in people's lives. Limiting subscription-based services will protect and preserve free over-the-air radio.

Second, the Commission must impose spectrum fees on subscription-based services. Broadcasters will essentially be using additional spectrum to generate revenue. In return, to avoid unjust enrichment, it is appropriate for broadcasters to pay a fee for use of the spectrum to generate revenue. In addition, the Commission should seek to assign those spectrum fees in a manner that will directly benefit the public.

Third, the Public Interest Coalition supports the Commission's conclusion that it has the authority to adopt public interest obligations for subscription-based services. Under Title III, subscription-based services are required to serve the public interest. Thus, the Commission must adopt broadcast type public interest obligations, including the political broadcasting and payment disclosure rules, for subscription-based services.

Fourth, in addition to the broadcast type public interest obligations, the Commission must adopt additional minimum public interest obligations for both free and subscription-based services. These public interest requirements must further the Commission's goals of localism, diversity, and public safety. The Public Interest Coalition proposes that the Commission require all digital transmissions to air a minimum level of local civic or electoral affairs programming and independently produced programming. The Commission must also adopt rules and policies that will provide opportunities for minorities and women. Finally, the Commission must assure that all emergency related and public information is provided free of charge to the public.

Fifth, in addition to the above, the Commission must adopt rules in which subscription-based services fulfill additional public interest requirements for their free use of the spectrum. The Public Interest Coalition proposes a flexible plan from which radio stations will have the choice as to how they fulfill the additional public interest requirements. This flexible menu is based on a community's needs for certain services.

Sixth, as the radio industry adopts digital technology, the Commission must have a means for understanding how broadcasters are using the technology to serve the public. To do so, the Commission must adopt meaningful reporting requirements. These reports must be easily accessible to the public over the Internet and the public must be made aware as to where these filings can be accessed.

Finally, the Commission must ensure that automated broadcast operations are relevant during emergencies. Automated broadcast operations must be automatically overridden in an emergency.

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**PROMETHEUS RADIO PROJECT**

These Comments are submitted on behalf of Benton Foundation, Campaign Legal Center, Center for Governmental Studies, Common Cause, Office of Communication of the United Church of Christ, Inc., and Prometheus Radio Project (collectively “Public Interest Coalition” or “PIC”) in response to the Commission’s Second Further Notice of Proposed Rulemaking on *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service*, MM Docket No. 99-325, 22 FCCRcd 10344 (2007) (“*Second FNPRM*”). The Public Interest Coalition’s membership represents a broad range of the listening public and has a stake in ensuring that the transition to and development of digital radio advances the public interest.

The Commission is faced with a rare opportunity not only to provide listeners with more and varied types of programming, but it also has the chance to provide access to more and varied sources of programming. The Supreme Court has determined that it is

the right of viewers and listeners, not the right of broadcasters, which is paramount...,  
the right of the public to receive suitable access to social political, esthetic, moral and

other ideas and experiences which is crucial here.<sup>1</sup>

Thus, the Commission can use the transition to digital radio to ensure that listeners not only receive programming of their interest, but also that listeners can have the opportunity to access the airwaves to provide programming of interest to other listeners. To that end, the PIC urges the Commission to use this important opportunity to adopt rules and policies that will allow more citizens to access and make use of the spectrum. By creating ways for people, other than incumbent licensees, to make use of the additional capacity, the Commission will continue to further the Commission's goals of localism, diversity, and competition.

## **I. INTRODUCTION**

In this proceeding, the Commission has begun to permit broadcast radio licensees to transmit digitally, including the carriage of multiple program streams. In authorizing multicasting, the Commission determined that multicasting would "promote program diversity,"<sup>2</sup> and therefore stations will no longer need to obtain experimental authority for multicasting.<sup>3</sup> As part of a station's multicasting, the Commission will also allow stations to offer subscription-based services, pursuant to experimental authority granted by the Commission.

In allowing for multicasting, the Commission stated that it "strongly encourage[s] digital audio broadcasters to use their additional channels for local civic and public affairs programming and programming that serves minorities, underserved populations, and non-English speaking

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<sup>1</sup>*Red Lion Broadcasting Co. v. FCC*, 395 U.S. 367, 390 (1969).

<sup>2</sup>*Second FNPRM*, 22 FCCRcd at 10356.

<sup>3</sup>*Id.* at 10358.

communities.”<sup>4</sup> The Commission further noted broadcasters must meet a “high standard” when fulfilling the Congressional mandate that broadcasters serve the “public interest, convenience, and necessity.” The Commission stressed that broadcasters are required to meet this standard by “air[ing] programming responsive to community needs and interests.”<sup>5</sup>

In the *Second FNPRM*, the Commission seeks comment regarding digital transmissions in the hybrid digital format, including the regulation of subscription services, additional public interest obligations, requirements for public inspection files, and requirements for automated broadcast operations. The PIC submits these recommendations for the introduction of the current technical standard for hybrid IBOC digital audio broadcasting. While the Commission has noted that policy issues will be revisited once the transition has been made to all digital, the PIC also expects that policies will be revisited if any technical changes<sup>6</sup> occur during the hybrid IBOC mode.

The Public Interest Coalition urges the Commission to adopt rules and policies that will ensure that the public will gain substantial benefits from the broadcasters’ additional capacity for providing both free and subscription-based services. Thus, the PIC recommends that the Commission: (1) limit the number of subscription-based services a station can offer; (2) either seek to impose spectrum fees or adopt public interest obligations for subscription-based services; (3) adopt additional public interest obligations for all free and subscription-based transmissions; (4) adopt meaningful reporting requirements; and (5) ensure that automated broadcast operations are relevant during emergencies.

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<sup>4</sup>*Id.* at 10358.

<sup>5</sup>*Id.* at 10368.

<sup>6</sup>For example, an increase in the current power level should trigger a reevaluation of the Commission’s policies.

## **II. SUBSCRIPTION BASED SERVICES**

The Commission has authorized broadcasters to offer subscription-base services pursuant to experimental authority granted by the Commission. The Commission will grant this authority so long as the use will serve the public interest.<sup>7</sup> The Commission seeks comment on whether the amount of subscription-based services offered by a station should be limited, whether spectrum fees should be imposed on subscription-based services, and whether current broadcast-related obligations should be imposed on subscription-based services.

### **A. The Commission Must Limit Subscription-Based Services.**

The Commission has correctly raised “[concerns] that pay services, left unrestricted, could overwhelm free over-the-air services, to the detriment of the listening public.”<sup>8</sup> Thus, in facilitating the transition to digital broadcasting, the Commission has articulated a goal of “preserving the existing system of free over-the-air terrestrial radio service.”<sup>9</sup> With this goal in mind, the Commission has expressed a desire to limit the quantity of subscription-based radio services. The Commission seeks comment on limiting a station’s digital capacity devoted to subscription-based services to 20 to 25 percent of the station’s digital capacity.

Free over-the-air radio continues to play a vital role in public safety, civic, informational, and cultural settings. Indeed, approximately 94 percent of people within the United States listen to the

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<sup>7</sup>*Second FNPRM*, 22 FCCRcd at 10359-10360.

<sup>8</sup>*Id.* at 10362-10363.

<sup>9</sup>*Id.* at 10388.

radio every week.<sup>10</sup> The majority of those listeners plan to continue to listen to the radio, despite their usage of online radio, audio podcasts, or satellite radio, and these listeners do not expect to decrease the amount of time spent listening to the radio. Thus, radio is and will continue to be a prevalent and influential presence in the lives of the U.S. population.

It is critical for the Commission to ensure that free over-the-air radio is preserved and protected. Unlike the digital television transition, the digital radio transition is entirely within the Commission's discretion. In the digital television transition, Congress expressly directed the Commission to allow television broadcasters "to offer ancillary or supplementary services."<sup>11</sup> In the digital radio context, current licensees do not have the expectation to anything beyond their existing analog frequency, including the option to provide subscription-based services. However, the PIC recognizes that subscription-based services can provide valuable service, and the PIC recommends the Commission, at a minimum, adopt a 25% limit of the station's total digital capacity for subscription-based services. Limiting radio broadcasters from overwhelmingly using their capacity for subscription-based services will help to preserve and protect free service to the public.

**B. The Commission must Consider Imposing Spectrum Fees on Subscription-based Services.**

In the *Second FNPRM*, the Commission considers imposing spectrum fees for use of digital bandwidth for subscription services.<sup>12</sup> Congress has not given specific direction to the Commission on how to implement a transition to digital radio service. Because this process is entirely within the

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<sup>10</sup>See The Arbitron Company, *Radio Today: How Americans Listen to Radio, 2007 Edition*," available at <http://www.arbitron.com/downloads/PublicRadioToday07.pdf>.

<sup>11</sup>47 USC §§ 336(a)(1) and (2).

<sup>12</sup>*Second FNPRM*, 22 FCCRcd at 10389.

Commission's jurisdiction, the PIC strongly encourages the Commission to impose a spectrum fee for subscription-based digital radio services.

During the digital radio transition, broadcasters will have the opportunity to occupy additional, valuable spectrum with revenue-generating subscription services.<sup>13</sup> To allow broadcasters to use the additional spectrum without any attending obligations or fees would lead to a windfall.<sup>14</sup> However, Section 309(j) of the Communications Act requires that where the Commission issues an exclusive license, it must avoid unjust enrichment and recover for the public "a portion of the value of the public spectrum use."<sup>15</sup> In this instance, then, it is appropriate for broadcasters to pay part of the value back to the public, the actual owner of the spectrum.<sup>16</sup>

One way for the Commission to avoid unjust enrichment is by requiring stations providing subscription-based services to pay a substantial fee for that use. Currently, in the digital television context, the Commission has adopted an extremely modest fee of 5% of gross revenue for television stations choosing to offer subscription-based services. To the extent the Commission lacks authority to impose such fees, the PIC encourages the Commission to seek such authority. The PIC also suggests the Commission seek authority to apply the fees to a fund that will directly serve the interest of the listeners. For instance, the fees could be collected to support noncommercial broadcasters.

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<sup>13</sup>See Public Interest Coalition, *Petition for Reconsideration*, MM Docket No. 99-325 (Sept. 14, 2007) (Reconsideration based on radio licensees occupying additional spectrum rather than the false premise that no additional spectrum is involved).

<sup>14</sup>See *id.*

<sup>15</sup>47 USC §309(j)(3)(C).

<sup>16</sup>See *In re Improving Public Safety Communications in the 800 MHz Band*, 19 FCCRcd 14969, 15017 (2004) (requiring payments of assessed value of additional spectrum rights in order to avoid unjust enrichment and windfall to commercial licensee).

**C. Subscription-based Services Must Comply with Broadcast-related Obligations.**

The Commission seeks comment on what public interest requirements should be imposed on broadcasters offering subscription-based services. The Commission has tentatively concluded that it should apply existing broadcast-related requirements to subscription-based services offered by radio stations. These requirements are the same that are currently imposed by statute on analog stations, and include the following: (1) political broadcasting; (2) payment disclosure; (3) prohibited contest practices; (4) sponsorship identification; (5) cigarette advertising; and (6) broadcast of taped or recorded material.

In *Subscription Video*, the Commission concluded that subscription-based services were not included in the term for “broadcasting.”<sup>17</sup> Pursuant to *Subscription Video*, subscription-based services are not subject to statutory regulations intended for a “broadcast service.” However, *Subscription Video* merely permits the Commission to shield subscription-based services from statutory broadcast obligations; it does not create an independent bar to the Commission’s ability under Title III to adopt public interest obligations for subscription-based services.

Subscription-based services are exempt from statutory obligations imposed on a “broadcast service.” However, subscription-based services still fall within Title III regulations and are still required to serve the public interest. Thus, the Commission has the authority to adopt broadcast type obligations for subscription-based services pursuant to its general Title III authority to regulate in the public interest.<sup>18</sup>

Under Section 303(r), the Commission has an extremely expansive grant of power to create

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<sup>17</sup>*In the Matter of Subscription Video*, 2 FCCRcd 1001, 1005 (1987).

<sup>18</sup>*See* 47 USC §§303(g) and (r).

rules that are in the public interest. The Supreme Court has explained:

Section 303 (r) of the Communications Act...provides that “the Commission from time to time, as public convenience, interest, or necessity requires, shall...[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of [the Act].” [I]t is now well established that this general rule-making authority supplies a statutory basis for the Commission to issue regulations codifying its view of the public-interest licensing standard, so long as that view is based on consideration of permissible factors and is otherwise reasonable.<sup>19</sup>

The Supreme Court has also recognized the Commission’s general authority to ensure that the public airwaves are serving the “public interest, convenience and necessity.”<sup>20</sup> In *NBC v. United States*, the Court explained that the “public interest” should guide the Commission in allocating broadcast licenses. The Court concluded

The avowed aim of the Communications Act was to secure the maximum benefits of radio to all the people of the United States. To that end Congress endowed the...Commission with comprehensive powers to promote and realize the vast potentialities of radio. Section 303 (g) provides that the Commission shall “generally encourage the larger and more effective use of radio in the public interest”...and subsection (r) empowers it to adopt “such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act.” These provisions, individually and in the aggregate, preclude the notion that the Commission is empowered to deal only with technical and engineering impediments to the “larger and more effective use of radio in the public interest.”<sup>21</sup>

Thus, the Commission can adopt public interest obligations for subscription-based services under the Commission’s general Title III powers.

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<sup>19</sup>*FCC v. National Citizens Comm. for Broadcasting*, 436 U.S. 775, 793 (1978) (internal citations omitted).

<sup>20</sup>47 USC §303.

<sup>21</sup>*NBC v. United States*, 319 U.S. 190, 217 (1943).

In the alternative, the Commission may subject subscription-based services to public interest obligations, including broadcast type obligations, pursuant to its ancillary jurisdiction. The Commission can use its ancillary jurisdiction in circumstances where: (1) the Commission's general jurisdictional grant under Title I covers the subject of the regulations and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.<sup>22</sup>

In *Midwest I*,<sup>23</sup> the Supreme Court found that the Commission's broad ancillary authority was more than sufficient to prescribe local television carriage requirements for cable systems. As the Court noted, the rule would "further the achievement of long-established regulatory goals in the field of television broadcasting by increasing the number of outlets for community self-expression and augmenting the public's choice of programs and types of services."<sup>24</sup>

Public interest provisions are a central part of the Commission's broadcast regulatory scheme, and Congress has never stated an intent to relieve subscription services of public interest obligations. As such, under *Midwest I*, public interest rules for DAB subscription services are reasonably ancillary to the "Commission's effective performance of its statutorily mandated [public interest] responsibilities." Indeed, absent such requirements, DAB subscription services have the chance to dilute traditional radio services, weakening the public interest obligations currently in place for radio broadcasters.

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<sup>22</sup>*See American Library Association v. FCC*, 406 F.3d 689, 700 (D.C. Cir. 2005).

<sup>23</sup>*United States v. Midwest Video Corp.*, 406 U.S. 649, 662 (1972)

<sup>24</sup>*Id.* The Court later narrowed its ruling in *FCC v. Midwest Video Corp.*, 440 U.S. 689 (1979). There, the Court found that the Commission did not have ancillary authority to institute common carrier obligations on cable systems, primarily because Congress had expressly stated in the Communications Act that the Commission was not to treat broadcasters as common carriers. This holding does not affect the Commission's authority with respect to the purpose for which it is cited here.

Overall, the Public Interest Coalition agrees with the Commission’s conclusion that broadcast-ers choosing to offer subscription-based services should be subject to all rules governing political broadcasting, payment disclosure, contest practices, sponsorship identification, cigarette advertising, and broadcast of taped or recorded material. This is especially true in the context of political broadcasting. Absent political broadcasting rules, subscription-based services could give access to some candidates while providing less or no access to competing candidates. Listeners, and the public interest, would not be served by unbalanced access to and information about political candidates. By adopting rules such as the political broadcasting rules, the Commission can prevent subscription-based service from being used to repress the dissemination of information from different sources. Thus, the PIC supports the Commission’s conclusion to subject subscription-based services to broadcast type obligations. Moreover, as more fully discussed below, the PIC further recommends that the Commission adopt new public interest requirements.

### **III. ADDITIONAL PUBLIC INTEREST OBLIGATIONS FOR ALL DIGITAL SERVICES**

The Commission is required to ensure that the public airwaves are serving the “public interest, convenience and necessity.”<sup>25</sup> Broadcasters will continue to occupy valuable spectrum with either free services or revenue-generating subscription services. The continuing *quid pro quo* for the licensees’ right to the exclusive use of publicly owned spectrum must be their commitment under the Communications Act to serve the public interest. Accordingly, it is only appropriate that broadcasters return part of the additional value they are getting during the digital transition back to the public, the owners of the spectrum.

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<sup>25</sup>47 USC §303.

**A. The Commission Must Adopt Additional Public Interest Obligations For All Digital Streams.**

In the *Second FNPRM*, the Commission adopted statutory and regulatory public interest requirements for all free over-the-air digital streams. The Commission has also tentatively concluded that these same broadcast type obligations should be adopted for subscription-based services. These requirements included rules relating to political broadcasting, payment disclosure, prohibited contest practices, sponsorship identification, cigarette advertising, and broadcast of taped or recorded material. However, the Commission must not stop there. The Commission must take advantage of the new technology to promote localism, diversity, and safety. Based on these principles, the PIC continues to support adopting additional public interest obligations for all digital streams. The Commission must adopt the full panoply of public interest obligations to both broadcast and subscription services.

*1. DAB must promote localism.*

The Commission has recognized its interest in adopting policies and regulations that promote localism. The Commission has acknowledged that the “concept of localism [is] part and parcel of broadcast regulation virtually from its inception.”<sup>26</sup> Indeed, the Supreme Court has noted that “[f]airness [in distribution of radio service] to communities is furthered by a recognition of local needs for a community radio mouthpiece.”<sup>27</sup>

The PIC has previously presented its recommendations earlier in this proceeding.<sup>28</sup> To summarize, the PIC recommends that the Commission require all digital transmissions satisfy a

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<sup>26</sup>*Deregulation of Radio*, 84 FCC 2d 968, 994 (1981).

<sup>27</sup>*FCC v. Allentown Broadcasting Corp.*, 349 US 358, 362 (1955).

<sup>28</sup>*See* Public Interest Coalition, *Comments* in MM Docket No. 99-325, 19-28 (June 16, 2004) (“PIC Comments”).

minimum level of requirements for staff level approval of a license renewal. To receive staff level approval, the primary channel operated by the licensee of the station must air a minimum number of hours per week of qualifying local civic or electoral affairs programming<sup>29</sup> during drive-time and peak listening periods. The primary channel must be a free channel.

If the licensee is multicasting additional programming streams, whether they be free or subscription-based, the station must air a minimum number of hours per week of qualifying local civic or electoral affairs programming on those streams.<sup>30</sup> Stations can have the flexibility to allocate their local civic or electoral affairs programming among the non-primary channels. A licensee holding multiple licenses within the same market may not fulfill its local civic or electoral affairs programming requirements by duplicating its programming on its other stations in the market.

In addition, to receive staff level approval, twenty percent of a station's programming on the primary channel must be locally produced independent programming.<sup>31</sup> This twenty percent obligation would include programming that meets the minimum civic and electoral affairs programming. The Commission should encourage stations to program on their non-primary digital channels additional independently produced programming, including locally produced independent programming.

By meeting these two minimum requirements, a station would be entitled to a staff level approval of the station's license renewal application. Applications that do not meet these minimum requirements should be referred to the Commission for review. Additionally, any listener may file a

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<sup>29</sup>Local civic programming provides the public with information about local issues. Local electoral affairs programming is programming geared toward discourse on local, state, and federal candidates.

<sup>30</sup>*See* PIC Comments at 19-28.

<sup>31</sup>*See id.*

complaint with the Enforcement Bureau alleging that the station is not complying with the minimum requirements. If the staff determines that the station continually fails to meet the requirements, it should have the authority to direct the early filing of a license renewal application or take other enforcement measures as may be appropriate.<sup>32</sup>

2. *DAB must promote diversity in programming.*

The Commission has been called on to ensure broadcasters “present those views and voices which are representative of [their] community and which would otherwise...be barred from the airwaves.”<sup>33</sup> Thus, in adopting rules and policies for all digital streams, the Commission must be guided by its obligation to promote the public interest in a diversity of voices.

In *FCC v. National Citizens Comm. for Broadcasting*, the Supreme Court recognized

that the First Amendment...values underlying the Commission’s diversification policy may properly be considered by the Commission in determining where the public interest lies. “[The] ‘public interest’ standard necessarily invites reference to First Amendment principles,” and, in particular, to the First Amendment goal of achieving ‘the widest possible dissemination of information from diverse and antagonistic sources.’<sup>34</sup>

To advance this important principle, the PIC recommends that the Commission adopt rules and policies encouraging opportunities for minorities and women. The Commission’s 2004-2005 data relating to minority and female broadcast ownership reveals that women and minorities have very little participation in the ownership of broadcasting stations. In only 3.4% of broadcasting stations do women have a greater than 50% voting interest in the broadcast licensee entity. And, in only 3.6% of broadcasting stations do minorities have a greater than 50% voting interest in the broadcast licensee

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<sup>32</sup>*See id.*

<sup>33</sup>*Red Lion Broadcasting Co.*, 395 U.S. at 389.

<sup>34</sup>436 U.S. 775, 795 (1978) (internal citations omitted).

entity. The transition to DAB provides a prime opportunity for the Commission to facilitate requirements which would allow more inclusion of women and minorities. For instance, while not a substitute for ownership, the Commission could create opportunities that include time-brokerage or leasing agreements.

3. *DAB must promote public safety.*

The Commission has a duty to “promot[e] the safety of life and property through the use of wire and radio communications.”<sup>35</sup> The Commission should use this opportunity to consider the use of a digital stream to offer emergency or public information. The Commission also should assure that all emergency related and public information be provided free of charge to the public. For example, one potential vital public service is the use of an indoor GPS system. If a broadcaster decides to provide an indoor GPS service, the Commission should be able to link it to an emergency alert system for location based alerts and the broadcaster should not be able to provide the service on a subscription basis. Further, as a free service, linked to the emergency alert system, it should be available inexpensively for unlicensed and other devices not primarily using the broadcast band.

**B. Broadcasters That Offer Subscription-based Services Must Fulfill Additional Public Interest Requirements.**

As discussed above, with the transition to digital, broadcasters are receiving additional use of, and value, to their spectrum. Broadcasters are obligated to continue to serve the public interest in return for their free use of the spectrum. With the transition to digital, broadcasters will continue to use the spectrum for free, but have the opportunity to earn revenue by offering subscription-based services. Earlier in this proceeding, PIC proposed a clear and flexible plan under which stations

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<sup>35</sup>47 USC §151.

offering subscription-based services can meet meaningful public interest obligations.<sup>36</sup>

To summarize, the Public Interest Coalition proposed a flexible, simple menu of options for which stations who offer a subscription-based service can fulfill public interest obligations. The menu format assigns relative weights to different public interest requirements and assigns relative weights to new subscription-based services that a station offers.<sup>37</sup> The weights would be assigned in the form of points, which would reflect the Commission's priorities for different public interest needs and the value of certain services to a community. For example, a second audio stream comprised of a free over-the-air service that serves a previously unserved community would be strongly encouraged through relative point allocation. On the other hand, a proposal to offer a subscription service or lease out time to another broadcaster in the same market would require a larger number of points because that spectrum is essentially being removed from the public sphere.<sup>38</sup>

The simple menu point system the PIC previously suggested is as follows:

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<sup>36</sup>*See* PIC Comments at 19-28.

<sup>37</sup>*See id.*

<sup>38</sup>*See id.*

Offer programming stream on second channel from an independent commercial entity	40 points
Offer commercial programming in a second channel to underserved audiences through a SDB	40 points
Offer 5 minutes of broadcaster-produced public interest programming during drive time on primary channel	2 points
Offer 5 minutes of broadcaster-produced public interest programming out of drive time on primary channel	1 point
Offer broadcaster-created second channel to serve and underserved audience	30 points
Create an outreach community board to communicate and receive input from the community	20 points
Offer 10 minutes of program associated data during drive time	2 points
Offer 10 minutes of program associated data out of drive time	1 point
Offer 5% of digital capacity to public interest datacasting	15 points

This flexible menu is simply a starting point for discussion. The point is to ensure that listeners will benefit from digital audio broadcasting technology. Providing additional programming content, especially local and diverse content, to the public is a significant benefit of developing the technology. Listeners should also be able to benefit from the technology by having the opportunity to access the airwaves to provide programming. The proposed menu, therefore, provides a flexible and simple way to ensure broadcasters are serving the public interest.

#### **IV. PUBLIC INSPECTION FILES**

Under Section 303(j) of the Communications Act, the Commission has the authority to require broadcasters to provide programming related information. The Commission must have some reliable means for gathering and evaluating information on how radio broadcasters use their new digital systems to serve the public.

The PIC recommends that licensees provide quarterly reports regarding the station's service

to the community. PIC suggests these reports not only be submitted to the Commission, but also be posted on the station's website. The Commission should require on-air announcements of where listeners could access the filings. Radio stations without their own websites could receive exemptions or the Commission could post those stations' filings on its own website. PIC suggests these reports should be made available free of charge and in a sortable, searchable, and downloadable manner.

With respect to the quarterly reports, the PIC urges the Commission to adopt a standardized form, which would gather information on how stations are using their digital systems to serve the public. Specifically, the PIC urges the Commission to gather and evaluate information regarding the statutory obligations listed above. In addition, the PIC urges the Commission to collect and evaluate the following information:

1. If the station is multicasting, and if so, how many program streams it is providing.
2. Whether any, and how much, of the station's streams are providing local civic affairs programming, which is programming designed to provide listeners with information about local issues.
3. Whether any, and how much, of the station's streams are providing local electoral affairs programming, which is programming geared toward discourse on local, state, and federal candidates.
4. Whether any, and how much, of the station's streams are providing independently produced programming, which is programming produced by an entity not owned or controlled by a radio station owner. The station must identify the independent programmer.
5. Whether the station has entered into time-brokerage agreements with unaffiliated programmers, and if so, to identify the unaffiliated programmers and provide copies of all such agreements.
6. Whether any, and how much, of the station's streams are serving unserved or underserved communities.
7. Whether any, and how much, of the station's streams are providing public

service announcements

8. Whether any, and how much, of the station's streams are providing paid public service announcements.
9. Whether any, and how much, of the station's streams are broadcasting religious services or other locally produced religious programming that were aired at no charge.
10. What other types of programming is being provided on all the station's streams.
11. Whether the programming streams are being offered for free or by subscription.
12. How the programming the station airs serves the local community.
13. A thorough description of what efforts the station has made to determine the programming needs of the community.
14. Whether the station broadcast information about a current emergency that was intended to further the protection of life, health, safety, and property as defined by 47 CFR §79.2 and whether that information was accessible to persons with disabilities as required by §79.2.
15. What steps the station has taken to inform listeners that this disclosed information is available.

The reports will allow both the Commission and the public to evaluate whether licensees are in fact serving the public interest.

## **V. AUTOMATED BROADCAST OPERATIONS**

The Commission seeks comment on issues relating to automated broadcast operations, rules governing them, and their effect on “the ability of law enforcement and public safety officials to use radio broadcast stations effectively during emergencies.” The Public Interest Coalition recommends that automated broadcast operations be automatically overridden in the event of an emergency. The Commission must also require stations to report during what times the stations rely on automated

broadcasting.

## VI. CONCLUSION

The Public Interest Coalition respectfully requests the Commission to: (1) limit the number of subscription-based services a station can offer; (2) either seek to impose spectrum fees or adopt public interest obligations for subscription-based services; (3) adopt additional public interest obligations for all digital transmissions; (4) adopt meaningful reporting requirements; and (5) ensure that automated broadcast operations are relevant during emergencies.

Respectfully submitted,

/s/

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