

ALERT

FCC Proposes “Priority” Application Review Proposal for Broadcasters Providing Local Journalism

January 19, 2024

On January 17, 2024, the Federal Communications Commission (FCC or Commission) released a Notice of Proposed Rulemaking (NPRM) that proposes to prioritize review of certain applications submitted by commercial and noncommercial radio and television (TV) broadcast stations that provide locally originated programming.

The NPRM, which was adopted by a 3-2 vote over the strong dissent of the Commission’s two Republicans, proposes to adopt a processing priority that would prioritize evaluation of license renewal and transfer of control or assignment applications filed by stations that certify that they provide locally originated programming. Comments on the NPRM will be due 30 days after publication in the Federal Register. Reply comments will be due 30 days thereafter.

Proposed Priority Application Review

The NPRM purports to provide an incentive for stations to broadcast content responsive to the needs of the local community by proposing prioritizing evaluation of renewal, transfer, or assignment of license applications filed by stations certifying that they provide at least three hours of locally produced programming per week. As justification for the proposal, the NPRM cites the FCC’s 2017 decision, under then-Chairman Ajit Pai, to repeal the main studio rule (which required that full power stations maintain a main studio with full-time management and staff near their community of license). A large portion of the NPRM is devoted to criticizing the repeal of that rule, tentatively concluding that “locally originated programming usually reflects needs, interests, circumstances, or perspectives that may be quite

Authors

Kathleen A. Kirby
Partner
202.719.3360
kkirby@wiley.law

Ari Meltzer
Partner
202.719.7467
ameltzer@wiley.law

Joan Stewart
Partner
202.719.7438
jstewart@wiley.law

Stephanie Rigizadeh
Associate
202.719.4736
srigizadeh@wiley.law

Practice Areas

Media
Telecom, Media & Technology
Telecommunications & Broadband Service

pertinent to that community” and questioning whether the repeal of the rule has fostered creation of more and better local content.

While the NPRM criticizes the Commission’s earlier repeal of the main studio rule, it does not propose to reinstate it. Instead, the FCC seeks comment on the following proposed processing changes:

- **Processing Priority:** The Commission proposes that priority review would apply to applications that are on hold, pending, or facing processing issues requiring additional staff review. All other applications, referred to as “simple applications”, would be reviewed under current processing procedures. The Commission also seeks comment on whether it should include modification applications, waiver requests, requests for Special Temporary Authority, and radio or TV translators in the priority review.
- **“Local” Market Definition:** The FCC seeks comment on how to define the geographic area in which a station’s programming originates.
- **Locally “Originated” Programming:** The Commission proposes a broad definition for locally “originated” that encompasses any local activity involved in creating radio or TV programming. The activities could include program scripting, recording, or editing at a studio or other location in the local market.
- **Certification:** The FCC seeks comment on its proposal to prioritize review of broadcast stations certifying that the station provides at least three hours per week of locally originated programming. Additionally, the Commission proposes that the Media Bureau amend FCC application forms to ask the station, under penalty of perjury, whether it meets this criteria.

The NPRM does not include any estimate of how much faster the Commission would process priority applications or whether it would result in slower processing of other applications.

In his dissent, Commissioner Carr suggested that he would have supported the proposal if the NPRM did not include so much discussion about the repeal of the main studio rule. According to Commissioner Carr, “[t]here are plenty of ways that the FCC can ground its prioritization proposal in the agency’s long-standing and statutorily-grounded commitment to localism.”

Commissioner Simington, for his part, referred to the Commission’s majority as “wolves in wolves clothing” and accused them of “weaponiz[ing]” application processing in the language of localism. He questioned whether the effect of the proposal would be to allow the FCC to slow the processing of any application.

If you are interested in filing comments or have questions, please contact one of the attorneys listed on this alert or the Wiley attorney who routinely handles your FCC matter.