

United States Senate

December 23, 2009

2076

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

RE: WHYY-TV, Wilmington, Delaware
Facility ID: 72338
BRET-20070329AGJ

Dear Chairman Genachowski:

Earlier this month the City of Wilmington, the city of license to WHYY-TV, filed an Informal Objection to the station's license renewal, urging that it be denied or, alternatively, conditioned on improved service to meet the community's needs and interests.

I share the concerns raised by the City of Wilmington and commended their efforts in a speech to the Senate on December 18. A copy of my statement is attached and I request that it be associated with the record in the above matter. I urge the Commission to take this opportunity to act decisively to give real meaning to a broadcaster's obligation to serve its community of license.

Sincerely,



Edward E. Kaufman
United States Senator

cc: William J. Marrazzo, President and CEO, WHYY Inc.
Steven C. Schaffer, Schwartz, Woods & Miller
Richard L. Emge, Senior Assistant City Solicitor, City of Wilmington
Nicolas Miller, Miller & Van Eaton, P.L.L.C.

Broadcast Stations Need To Serve Their Communities

SENATOR EDWARD E. KAUFMAN

Friday, December 18, 2009

As Delivered in the Senate:

Mr. KAUFMAN. Mr. President, I want to take a few minutes today to speak about television and to alert my colleagues to a troubling situation.

Recently, the only VHF television station licensed in Delaware cancelled the one nightly public affairs program covering Delaware issues, closed its local studio, and moved almost all of its employees out of state.

That station – WHYI-TV -- did this even though the community that it is supposed to serve first, that should be its primary focus – is Wilmington, Delaware. This is offensive and wrong. These and other actions led the City of Wilmington last week to challenge the license renewal of WHYI. I understand and commend the city's complaint, and I hope it will bring about better service to Delawareans.

Frankly, I think WHYI was emboldened to make these changes by the weakened oversight of the regulatory agency charged with making sure that broadcast stations serve the public interest: the Federal Communications Commission. If this sort of snub to the community of license proceeds with no repercussions, we could be seeing less and less local service from stations all across the country.

If the requirement to serve the public interest has no meaning, if the broadcast station provides its community of license with nothing more than what we can get from a national cable, satellite, or internet channel, then the public is getting a bad deal for giving away spectrum at no charge.

At the core of the FCC's licensing policies – right from the beginning – is the principle that every community of appreciable size needs, and deserves, its own station. As a nation, we have licensed dozens of broadcast stations to cities all across America. We do not have nation-wide broadcast channels. You get that on cable channels like HBO or Discovery. TV channels are local.

These stations that are granted free use of the public airwaves are required to be responsive to local needs. Each has a duty to determine the programming appropriate for its viewing community and then make its programming decisions based on those needs.

That's the deal! Broadcasters are temporary trustees of the public airwaves. For that privilege, they must serve their own communities.

It is exactly because broadcasters must address local issues and needs that the FCC required cable companies to carry local broadcast channels. For the same reason, satellite carriers have been restricted in their ability to bring distant network signals into homes that should be receiving their local stations.

Yet, unless the FCC steps up and makes it clear to broadcasters that their duty to serve the public interest is real and includes making programming decisions that are responsive to their communities of license, I fear that the public is going to lose out and that local needs will go unmet.

As long as stations think that they can get away with doing less, they will be tempted to do less. If there are no consequences to ignoring their obligations, they will likely take short-cuts, and our communities will be the worse-off for it. If that happens, our historic allocation of channels all across the country, designed to ensure community-oriented service, will become a sham.

I call these concerns to the attention of my colleagues today because this is what is happening in my own home town of Wilmington.

We have one VHF station in Delaware. It is Channel 12, WHYI-TV. Its city of license is Wilmington, and it is a public television station.

WHYY-TV was not always on Channel 12. In fact, it started out on a UHF channel in Philadelphia. But, in the 1960's, when the commercial station operating on Channel 12 in Wilmington ran into problems, WHYI beat out the competition for the VHF license.

It was no secret that WHYI made this move, not because it wanted to relocate from Philadelphia to Wilmington, but because it wanted to move from a UHF channel to a stronger VHF channel with greater viewership. But this move, nonetheless, was tied to a promise that the station's primary duty was to serve the interests and needs of the people of Wilmington, its new city of license. Unfortunately, it has been a near-constant struggle for our community to get the attention promised.

When its license was first granted, WHYI agreed to present 16-1/2 hours per week of Delaware-oriented programming. By the time its license came up for renewal in 1978, though, it was providing less than 3-1/2 hours per week. As renewal of its license was challenged, WHYI added some additional Wilmington-oriented programming.

Nonetheless, the FCC conditioned the grant of its license on demonstrating a commitment to local programs broadcast from Wilmington, rather than Philadelphia.

WHYY was again chastised for failing to serve Wilmington during its 1983 license-renewal proceeding. The criticisms touched on such issues as the location of its main studio; its station log, staff, and management; the production of non-network programming; and the amount of locally-produced programming focused on Delaware. The FCC ordered WHYY to base personnel in Wilmington capable of addressing the many failures.

With the diminishing of FCC oversight of broadcasters' responsiveness to local needs, WHYY's service to Wilmington diminished as well. Its main studio has long been in Philadelphia, and the web sites for both the Corporation for Public Broadcasting and the Public Broadcasting Service list it as a Philadelphia station. In June this year, WHYY announced it was closing and putting up for sale its studio in Wilmington, closing its news bureau in Dover, and eliminating most of the 16 employment positions in Delaware. In short, it is virtually leaving our state and its city of license.

WHYY's programming decisions also mock its community of license. Gone is the daily late-afternoon report that focused on issues of interest to those living in and around the Wilmington area. Today, Delaware's only VHF station has committed to producing merely a single 30-minute weekly program focused on our state. That program is scheduled to air at 10:00 p.m. on Fridays and be rebroadcast over the weekend.

And, if you look at the listing of locally-produced programs that are touted on WHYY's web page, you would be hard pressed to find programs focused on Wilmington.

WHYY has had the audacity to rationalize its cut in local programs by saying it will provide more Delaware-focused stories on its Philadelphia-licensed FM radio station and online. This is not an acceptable substitute. This plan leaves entirely un-served those who look to television for information about their local community. Reporting through other media is not the same as reporting on television, and to do so WHYY does not need a TV license.

The people of my state feel short-changed, and they should. Especially because WHYY operates a non-commercial educational television station that receives support from tax revenues as well as individual and corporate donations. The public expects that the licensee will be responsible and attentive to the obligations it holds to its community of license. WHYY has failed in this regard.

Those of us who live in Delaware understand that we are situated in one of those areas in the country where the airwaves are crowded. Also, television channel assignments to major cities in adjacent states have left little room in the spectrum for allocations to communities in our own state. I know other states face this same problem.

The television stations to which Delawareans tune their sets predominately broadcast out of Philadelphia and Salisbury, Maryland. These out-of-state stations, however, owe only a secondary obligation to address the needs of their Delaware viewers.

Mr. President, broadcasting in this country is coming through a significant transition. But the promise that comes with digital transmission should mean states like Delaware – and communities like Wilmington – will receive more attention to their local needs and interests, not less.

The allocation of a channel to a particular community must bring with it some special duty, or else it has no meaning at all.

The FCC needs to reassert its role to insist that licensees – companies that get free use of the public airwaves -- take their responsibilities to serve the public interest seriously. If they do not, we will see more stations like WHYI take advantage of lax policies. We will have more citizens in more communities left with little-to-no locally-produced, locally-focused programming. The complaint filed last week against WHYI's license provides the FCC with a perfect opportunity to give real meaning to a broadcaster's obligation to its community of license. I strongly encourage the FCC to use this chance and act decisively to protect the public interest.