

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Broadcast Localism	)	MB Docket No. 04-233
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To: The Secretary

**COMMENTS IN RESPONSE TO THE  
REPORT ON BROADCAST LOCALISM  
AND NOTICE OF PROPOSED RULEMAKING**

Florida Public Radio, Inc. ("FPR") hereby submits the following comments in response to *Broadcast Localism*, MB Docket No. 04-233, Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07-218 (rel. January 24, 2008) ("*NPRM*"). While the NPRM may have been inspired by the best of intentions, FPR respectfully submits that much of what is proposed there is badly misguided.

**FCC: Content Police vs. the First Amendment**

As a regulatory agency of Congress, the Commission's role in allocating and policing spectrum is not in question. However, the NPRM proposes regulation that infringes upon rights protected by the First Amendment to the U.S. Constitution. On its face, the NPRM's proposal to *mandate methods* for determining content exerts a chilling effect on the exercise of the rights of freedom of speech and of the press. Former FCC Chairman Mark S. Fowler stated in the L.A. Times, 5/1/2003: "The perception of broadcasters as community trustees should be replaced by a view of broadcasters as marketplace participants." Yet, what do we have in NPRM 04-233? We have government, via the FCC, inserting itself into how and how much certain speech is to be

printed (*broadcast*). Perhaps the political whims of the day are driving these draconian proposals. If so, no such influence can constitutionally justify such a breaching of the First Amendment, especially when that constraint is placed upon broadcasters, but upon no other members of the media, whether print or electronic.

Government authority to mandate methods by which the electronic press will choose the content of its speech does not exist. The NPRM fails to present constitutional authority that would empower it to assume more “hands on” control over the electronic press than it already has. In its regulatory role, the FCC should impose rules and policies that, to every degree possible, respect and promote freedom of the press. However, the NPRM meddles in the speech and entertainment choices of the licensee.

The FCC of the 1980’s understood much better its role as a regulator of speech. Through deregulation, it removed much of its grip over the speech of broadcasters. As encouraged by then President Ronald Reagan, the *marketplace* is the preferred regulator of speech, not the government. When a newspaper fails to provide content that the public desires, the marketplace will force it to make its content more responsive to consumer demand. Likewise, a radio or TV station that fails to provide meaningful content desired by the public will face marketplace pressure to improve itself. If it fails, the spectrum it occupied will be assigned to others, more attuned to public demand.

No longer a scarce media, there are just short of 14,000 licensed radio stations in the United States. Adding LPFM licenses brings it to nearly 15,000. Scarcity of spectrum is no longer a valid justification for adding more layers of content regulation that apply in a most discriminatory fashion to broadcasters, and broadcasters alone.

Although the NPRM does not mandate content in specific terms, it ordains a methodology that will force the creation of certain content. The proposed advisory panel members can request speech that, at license renewal, the FCC can deem to not have been properly respected. Such a newly imposed “performance measuring stick” is contrary to the principle of free speech and a free press.

The NPRM’s prescriptions regarding the *manner* in which content is compiled, as well as *how much time* is given to advisory panel issues, create a danger of disastrous and unintended consequences. Consider, for example, the impossible situation that would be created when a licensee feels compelled to comply with an advisory panel member’s demand for the presentation of a viewpoint that is contrary to the licensee’s own deeply held moral or religious principles.

It is unthinkable for the government to require that a newspaper be responsive to a citizen panel or lose its right to its printing press; it is similarly unthinkable for the government to impose such a requirement on an isolated segment of the electronic press (broadcasters).

The current licensee requirement to maintain an Issues/Programs list is, in and of itself, a step onto a slippery slope. Broadcasters do not complain about it because it replaced a much more oppressive requirement: the *program log* system. Eliminating the Issues/Programs list would be a constitution-friendly action on the part of the FCC. But at a minimum, all aspects of the NPRM that extend the Commission’s control over program content must be discarded.

Instead of the repressive action proposed in the NPRM, the Commission should make an effort to educate the citizenry that its primary responsibility is to be the *spectrum*

*allocation authority* in this country, not the speech, program, and entertainment content police.

### **The Proposed 24/7 Denies the Current State of Technology**

The NPRM proposes the requirement of a staff member present for all on-air hours, AKA “24/7.” The FCC’s thinking here is that a human’s reaction to an Amber Alert (or other alert) is more reliable than electronic technology. Such a rule will, without question, close the night operations of our (FPR’s) eight stations and untold numbers of other small-budget stations, both commercial, and noncommercial.

When has the reliability of equipment that transmits alerts to the public come to be questioned, and by whom? What study of technology versus human involvement has brought the authors of the NPRM to lose faith in state-of-the-art technology? Electronics today provides an abundance of trustworthy equipment for performing relay switching of EAS audio. The existing rule requiring weekly tests insures the functionality of EAS equipment. In the case of the Minot, ND train derailment, it was a county employee, not a piece of malfunctioning technology, which failed to activate the EAS alert. Had the local government official initiated an alert, the station’s EAS *would* have fulfilled its function, *with* or *without* a human present.

Does not our own highway traffic light technology teach us that we routinely trust electronics in matters of health and safety? Thousands of busy intersections depend on unmanned technology to keep the green lights from being lit at the same time. Who would say that a human could be better trusted to perform this public safety function of controlling traffic lights? And how much more a waste of resources would it be to have a

human attending the electronics of every traffic light-controlled intersection? This is akin to what is being proposed by the NPRM's "24/7" rule.

As in the case of traffic light technology, the public is made safe by the technology that governs the EAS alerts at broadcast and cable facilities today. Yes, it can be made better, and such an effort is indeed ongoing, but requiring a human attendant *does not* make it better.

A far more effective change in the EAS system would be to require that the two-minute time-out (currently built into the units), become a floating end-of-message (EOM). This change would allow the LP's (local primaries) to have such time as needed for stating, repeating, and amending the emergency message without the two-minute constraint.

### **Unintended Consequence of 24/7**

There are hundreds of stations, usually NCE's, and commercial stations, as well, which serve small markets. The vast majority of these stations do not generate sufficient revenue to support the hiring of additional staff for overnight operations.

The NPRM reflects the government's erroneous and out-of-touch thinking that "one size fits all." Lower-rated stations with narrowcast formats that don't mirror the formats of the higher-rated stations have commensurately smaller budgets. Hundreds of these stations, commercial and noncommercial, will be forced by economics to go off air for overnight hours. Hence, the unintended consequence: hundreds of dark (*i.e.*, off air) stations during an EAS alert. This means that *no* alert messages will be broadcast on these stations. It is reasonable to conclude that *every* member of the citizenry would find it preferable to have their local station(s) "on air," albeit unattended, so as to transmit an

electronically switched EAS alert, over being “off air” with *no* alert transmitted. The 24/7 aspect of the NPRM must be rejected by the Commission.

**Main Studio Location**

It is suspected that the NPRM is meant to be remedial for what has been described as too much accommodation to the consolidated group owners. The main studio location aspects of the NPRM impose costly rule changes on them. However, in view of the ease of communication and transportation afforded by the current state of the highway system, the electronic mail system, the world wide web, and the Postal Service, the main studio proposals are unnecessary and without merit.

Respectfully submitted,

FLORIDA PUBLIC RADIO, INC.

By: \_\_\_\_\_  
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President