Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF THE COMPETITIVE ENTERPRISE INSTITUTE

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Introduction

In 1987, the Federal Communications Commission (FCC) relaxed rules requiring broadcasters to operate their main studio in their communities of license. The FCC is now considering reverting to the rules of two decades ago, forcing companies to maintain a physical presence in each city in which they broadcast. This, despite massive technological evolution that has made it possible—and more efficient—for stations to locate studios in remote locations without sacrificing a focus on community content.

Every few years, all radio and television stations must renew their broadcast licenses with the FCC. Proposed rules would place broadcasters under intense scrutiny at the time of renewal, with the FCC able revoke stations' licenses if they cannot demonstrate a commitment to localism. This procedure would apply to all stations, even those which focus on entirely different genres such as music or sports.

The FCC may also require stations to convene each quarter permanent advisory boards in each community, composed of local officials who would review content and would advise broadcasters as to which local issues deserve focus.

Finally, the FCC is pondering adding new disclosure requirements which would mandate that broadcasters file quarterly reports with detailed information explaining how programming has addressed community concerns. Like all disclosure rules, these forms are cumbersome and time-consuming, and would force editorial staff to think twice before airing a program that might skew reporting statistics to the detriment of the station.

Rather than pursuing additional levels of bureaucratic oversight or reverting to decades-old regulatory regimes, the FCC should pursue aggressive deregulation of the terrestrial radio marketplace. By allowing more broadcasters to compete—especially low-powered stations—the marketplace will cater to local news and civic programming as it has shown to be a profit maker for local broadcasters. The FCC should pursue this deregulation as part of a wider agenda to create a true marketplace for spectrum, one in which broadcasters of all types have true property rights in the airwaves.

Localism is on the Rise, Both in Broadcast & Other Mediums

The main thrust of this new round of regulation is the creation of new rules to force broadcasters—both in television and radio—to carry more programming covering local issues. In a media market as rich and diverse as today's such rules make little sense. In fact, forcing all broadcasters to focus on local issues will detract from the diversity of media and the quality of local news coverage.

Contrary to the arguments of supporters of the new rules like Free Press, an advocacy group which seeks to reform the media through regulation and ownership restrictions, coverage of local news is at an all-time high in the United States. As former FCC Chairman Michael Powell stated in 2004, Americans today "have access to more local content than at any time in our nation's history." This is due in part to local television news programs becoming flagship shows for many stations, a trend that the FCC has noticed:

> *Local newscasts have become the staple of any successful local broadcast television station, demonstrating that serving the needs and wants of your local community does not just fulfill their public obligations, but also simply make good business sense.*

In addition to this unprecedented level of local broadcast coverage, Americans are seeing the Internet emerge as a new source for in-depth coverage of local, state, and regional news.

Thanks to the Internet, local newspapers no longer enjoy the virtual geographical monopolies they once did. Today, local newspapers face competition from the top papers in the country, all of which are available online, many in their entirety. This has forced local papers to increase the quality of their local coverage, contributing to the wealth of local information available to today's media consumers.

Citizen-journalists have created today's blogosphere, delivering new content to readers and pressuring elected officials to be transparent in their service of the public. The Internet shattered the entry barriers that once constrained these independent voices, allowing anyone with a computer and broadband connection to share ideas with the entire world.

The old world of media was one that necessitated rationing as access to presses, broadcast stations, or other forms of dissemination of ideas was limited. In a world where anyone can start a website free of charge that can reach an unlimited number of people we no longer need the FCC to ration the airwaves.

Yet despite these developments and its own favorable analysis of the local broadcast news landscape, the FCC and other supporters of "localism" regulations argue that existing reporting on community issues is lacking, contrary to the evidence.

Free Speech Means More Speech

The FCC stepping back from the regulation of political speech helped create the last revolution in broadcast media. By rolling back the so-called "Fairness Doctrine" in 1987, the FCC acknowledged a 1984 Supreme Court decision (FCC v. League of Women Voters, 468 U.S. 364) which found that the rule was "chilling speech."

The result was an explosion in talk radio content beginning most famously with conservative pundit Rush Limbaugh, but also creating new space for left-liberal voices like Thom Hartmann and Al Franken.

The Fairness Doctrine's equal-time mandates were not very different from the proposed local news coverage mandates of the localism debate. Both sets of rules interfere with the editorial process, both control and compel speech, and neither passes Constitutional muster.

Events of national and international importance do not occur in accordance with regulators' preconceived notions of how much coverage ought to be allotted to them. Local news outlets should not be wary of reporting on wars overseas, famine in the developing world, or other non-local issues they deem important for fear of neglecting to comply with bureaucratic dictates.

Ultimately, editorial decisions—which are acts of speech and protected under the First Amendment—should be made by a station's editorial staff, not by officials in Washington.

Specialization & Quality News Coverage

A revolution also occurred in cable television in 1980 when CNN began operations as the first 24-hour news network—a much needed additional voice to a landscape long dominated by the traditional big three networks. CNN is now joined by other cable news outfits, including local news channels in some cities, further increasing consumer choice in news.

Were the logic of localism applied to the cable industry, it's likely that CNN wouldn't exist. Instead, every cable channel would by law have to carry news coverage and keep extensive records to prove they had done so. Rather than enjoying specialized stations staffed by professional journalists, consumers would instead view news programming shimmied in between home repair shows and celebrity dancing competitions.

This would make little sense for the same reasons localism mandates make little sense in the broadcasting world.

As audience preferences have grown increasingly diverse, broadcasters have responded by creating a vast array of choices. This is most evident in radio, where some stations deliver genre-specific music or sports commentary, while others mix syndicated content with local news programming.

Specialization increases the quality of news. Forcing a local light rock station or jock-talk outfit to cover city council meetings will do little to offer consumers real, substantive choice.

Ownership Rules

Broadcasters face a tough road ahead as competition with new media—news websites, blogs, and online video sites such as YouTube—intensifies, and many radio and television stations have already been forced to shut down as profit margins have waned. Additional FCC rules imposing artificial costs on broadcasters will only hasten radio's demise. If local stations are to remain in business, they must be given a free hand to decide where to locate studios and broadcast towers.

Stations are also fighting back against increased competition from other media sources by consolidating and cutting program production costs. Rules proposed by the FCC to curtail the freedom of broadcasters to become more efficient in order to compete in this quickly evolving media landscape places them at further risk of insolvency.

Though this has led to the proliferation of top 40 stations, other stations continue to create community-driven content and offer unique musical programming. The General Accounting Office (GAO) cites survey data indicating that programming diversity is on the rise thanks to consolidation:

> *Owning multiple stations in a local market allows a single owner to program its stations with diverse formats to reach a larger share of local listeners.*

Localism ownership rules are also bundled with rules requiring ownership of radio and television stations by racial minorities and women. Many have attempted to validate their concerns over ownership diversity by referencing the same March 2008 GAO study cited above which focuses on media ownership. While the report does cite third party studies performed by groups like Free Press, the report also states that the FCC's data is severely lacking due to many problems in the collection and archiving of ownership information.

The FCC does not require sole proprietors, limited partnerships, or non-profits to report on ethnicity of owners—leaving one to wonder how it assesses this information at all. Excluding these legal entities from data collection leaves only incorporated radio stations in the group required to file FCC Form 323, which contains information on race and gender.

But how does one determine the sex or ethnicity of a *corporation*? Clear Channel Communications, one of the nation's largest owners of radio stations, has issued nearly 500 million shares of stock. Has Clear Channel polled every share holder about his or her race or gender? And what would that contribute to the quality of broadcasting, anyway?

Ownership rules based on sex and race shouldn't be adopted until the FCC has a factual basis for doing so. Before any rules are changed, the FCC should clean up its act when it comes to collecting and organizing ownership data. But even if the commission had adequate information on which to make such judgments and found diversity in ownership to be lacking, it should pursue race-neutral and gender-neutral means to increase diversity in broadcast media ownership before adopting any race-based or gender-based rules.

The Real Solution: Liberalization

The GAO report does shed some light on the topic of why it is hard for anybody—women, minority, or otherwise—to enter the broadcast market. The most significant factor among those cited by the GAO is the immense capital investment required to enter the broadcast industry. Yet the GAO fails to mention that the number of licenses granted—and therefore the number of stations that can broadcast—is made artificially low by FCC rules such as minimum power requirements and convoluted, outdated interference protections. From there, the law of supply and demand takes over, making stations more expensive.

By setting a minimum bar for broadcast power too high, the FCC ensures that only those with tremendous amounts of capital can transmit their message over the air. These rules make broadcast stations artificially scarce. A good first step for the Commission as part of a broader effort to bring more voices to the airwaves would be to immediately allow low-powered FM stations to begin broadcasting.

Similarly, the lack of property rights and the inability to transfer ownership of the right to broadcast on an assigned frequency has created additional scarcity in radio. There is plenty of room on the dial for more voices if only the FCC would allow spectrum real estate to be fully utilized.

Were the FCC to also lift restrictions on use for specific portions of the spectrum, digital technologies could be used to bring an unprecedented amount of diversity to broadcasting. Just as digital television uses scarce spectrum much more efficiently, audio transmissions in digital formats would free up spectrum for new uses such as wireless internet and mobile telephony services. These new services, however, will emerge much more slowly—if at all—if we are unable to adapt laws crafted in the early 20th century to fit the technologies of the 21st century.

Rather than force existing radio and television stations to follow speech codes or create systems that favor certain races or one gender over another, the FCC should allow the broadcast market to grow—moving toward a system of property rights is the best way to ensure that growth. Increasing the number of voices on the air should be the Commission's ultimate goal, not dividing up a pie that it has needlessly made too small to go around.

Liberalizing the spectrum would allow for far more wireless media outlets to emerge, promoting consumer choice and high quality content through competition.