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March 6, 2008

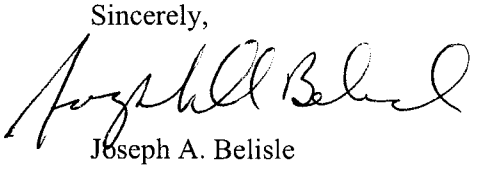
Office of the Secretary
Federal Communications Commission
Washington DC 20534

Re: Written Ex Parte Presentation
Advanced Television Systems
MB Docket No. 87-268

Ladies & Gentlemen:

The attached Comments of Landmark Baptist Church were filed today in the FCC's Broadcast Localism proceeding in MB Docket No. 04-233. The Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 08-218, released January 24, 2008 covered subjects being considered in several rulemakings and in commenting on these matters, Landmark Baptist Church discussed subjects under consideration in MB Docket No. 87-268. For this reason, a copy of the Church's Comments is attached for inclusion in this proceeding.

Sincerely,



Joseph A. Belisle
Counsel for Landmark Baptist Church
of Haines City Florida Inc.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Broadcast Localism	)	MB Docket 04-233

To: The Commission

COMMENTS OF LANDMARK BAPTIST CHURCH

Respectfully submitted,

Joseph A. Belisle
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SUMMARY

Landmark Baptist Church of Haines City Florida, Inc. ("Church") disputes the central premise underlying the Report on Broadcast Localism and Notice of Proposed Rule Making ("NPRM"). Broadcasters do, in fact, communicate with the public concerning local needs and interests. A government-imposed public relations campaign will not improve the ability of broadcasters to provide programming service to local communities. Instead it will divert resources from local programming efforts and unduly interfere with constitutionally protected speech.

The Church opposes proposals (a) to establish minimum amounts of government-mandated programming as a condition of license renewal; (b) to require each station's main studio be located within its community of license; (c) to require stations to file reports with the government concerning all of the programming they broadcast; (d) to condition licensees' use of the internet upon posting government-mandated materials on stations' web pages; (e) to require broadcasters to consult with government approved community advisory boards; (f) to require staffing of main studios at all times stations are operating; and (g) to limit the use of voice tracking and national playlists.

The Church supports (a) efforts of the FCC, itself, to inform the public of its processes and to serve as a resource to persons seeking to participate in FCC processes and (b) proposals to expand the FM band to foster LPFM service.

The Church urges the Commission to respect individual liberties, freedom of speech and freedom of religious expression. It asks the Commission to recognize the value of the free market in serving the public's informational needs, and to refrain from

government interference in broadcasters' programming decisions, especially the programming decisions of religious broadcasters.

COMMENTS OF LANDMARK BAPTIST CHURCH

Landmark Baptist Church of Haines City, Florida, Inc. (the "Church") submits the following comments in response to the Report on Broadcast Localism and Notice of Proposed Rulemaking, MB Docket No. 04-233, FCC 08-218, released January 24, 2008 (the "NPRM").[1] In the Church's view, the present proceeding springs from the false premise that stations do not engage in public dialogue regarding community needs and interests and that, for this reason, the public is not aware of local issue responsive programming stations have aired. The fact is that anyone who listens to a religious station, such as WLVF AM or FM, for even a modest interval is soon well aware of that station's strong programming commitment to the moral and spiritual needs of its service area.

Religious stations' primary purpose for broadcasting is to instruct their listeners in the true path to salvation and inspire in them the moral strength, the devotion to God and the love of neighbor that will make them better men and women. There is no higher public interest than this and there is absolutely no need to adopt any regulation or policy that limits, obstructs, impedes or burdens a religious broadcaster in fulfilling its educational and inspirational mission.

Having posited the existence of an extremely unlikely problem, i.e., a failure of broadcasters to communicate with the public,[2] the NPRM proceeds to discuss a public relations

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[1] The Church is the licensee of Stations WLVF AM and FM, Haines City, Florida. These stations serve the public interest and fulfill the teaching mission of the Church by providing religious programming to the Lakeland-Winter Haven, Florida Arbitron Metro Market.

[2] How can anyone be under the impression that broadcast stations fail to communicate? Communication is the one activity all broadcast stations perform. Isn't it far more likely that members of the public, for their own reasons, fail to appreciate the messages being communicated?

campaign to impress upon the public the value of broadcasting service. These public relations efforts include:

- Elimination of the current issues/programs lists in favor of reinstating the formal ascertainment process.
- Creation of advisory boards whereby stations regularly meet with community leaders and individuals from all sectors of the community.
- Adoption of measures to increase public awareness of existing localism requirements with Commission-sponsored public service announcements, including an 800 number where consumers can find more information.
- Providing for improved access to station decision-makers by the leadership of all local community groups.
- Imposition of the requirement that the current issues/programs lists be placed on a station's website and the use of a standardized form for the reporting of such information.

The Church submits that the public relations measures advocated in the NPRM elevate form over substance. There is absolutely no reason to require that a station's programming decisions be based upon the ritualistic processes advocated in the NPRM. Indeed, these processes are a burden upon, and an unwarranted intrusion into, protected speech. After all, the NPRM is not concerned with controlling the selection of entertainment programming on stations. It seeks, instead, to control the process by which news, public affairs, political and other non-entertainment programming serving the public is selected. With the inclusion of religious programming, these types of programs are the most sensitive types of speech in which a station

can engage. The government should not intrude into the process of selecting these programs. There is no legitimate government interest that justifies such a burden on protected speech.

Behind the NPRM's push for its localism program is the assumption that the FCC makes licensing decisions based upon the amounts and types of programs presented on broadcast stations. We know this is not true in the case of initial licensing decisions, because the FCC simply sells each broadcast channel to the highest qualified bidder. We also know that, even in the halcyon days of the promise versus performance renewal analysis and comparative renewal proceedings, the FCC granted renewal applications of broadcast stations that presented almost nothing but entertainment programming. See Simon Geller, 102 FCC 2d 1443 (1985). So the Church submits that, unless the FCC is ready to depart radically from the precedent and practice that existed before deregulation of radio, the measures the NPRM advocates will not create more government-approved programming. Certainly there is no reason to believe that the NPRM's new, radical version of localism is more likely to provide "good" programming than the present free-market approach to providing programs serving community interests and needs.

In this connection the Church submits that, central to the NPRM's "localism" agenda is the conclusion that the free market does not provide "consumers" with the information the FCC believes they need. To remedy this perceived failure, the NPRM proposes a regime under which each broadcast station must assess and address each and every need of each and every group in its service area.

The NPRMs underlying assumption that each broadcast station in each market must be all things to all people is the negation of the free market. In a free market, each commercial station is free to maximize profits by finding and filling unserved needs, i.e., by broadcasting the

most attractive programming it can, in hopes of attracting the largest possible audience and revenues. This is a perfectly sound system for identifying and serving programming needs.

The Church is at a complete loss to understand why the FCC, an agency of the United States Government, has no confidence in the ability of a free market in a free society to provide the public with the programming it wants and needs. The FCC should have a little faith in the ability of broadcasters to do their jobs. It is their neck on the line if their programming decisions fail, not the community advisory boards'.

Turning to the specific "Issues for Commission Action" identified in the NPRM, the Church objects to renewal application processing guidelines requiring minimum amounts of government-mandated programming as a condition of obtaining license renewal by delegated authority. This is nothing more than a veiled threat to punish stations which don't meet unstated programming minimums.[3]

It is remarkable that the NPRM keeps licensees in the dark concerning the actual standards that will be used in judging the adequacy of their broadcast speech. Query whether the programming performance that supported license renewal in Simon Geller will continue to suffice to support license renewal under the new localism standard?[4] If Simon Geller will still apply, why is the NPRM proposing an elaborate ascertainment process? Why not just tell everyone to broadcast 18 public service announcements per week?

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[3] Under the NPRM's procedures, failure to meet stated programming minimums trigger referral of a renewal application to the full Commission. The NPRM provides no guidance on standards that the full Commission would ultimately use to determine programming adequacy.

[4] During the license period 1972-1975, Simon Geller's station broadcast no programming in response to ascertained community needs. Virtually all of the station's programming was devoted to symphonic music. The station did, however, broadcast 18 public service announcements per week.

With respect to the NPRM's proposal to re-institute the pre-1987 requirement that main studios be located within a station's community of license, the NPRM suggests that this arrangement is justified by Section 307(b) of the Communications Act. However, Section 307(b) simply imposes upon the Commission the responsibility of making a fair and equitable distribution of radio service among the several States and communities. It says absolutely nothing about studios, main or otherwise. The Church submits that if Congress intended main studios to be a central theme of Section 307(b), some variant or equivalent of the word "studio" would appear somewhere in the statute. Moreover, it is wholly illogical to assume that there can be any correlation between the location of a main studio and the quality of a station's programming service. The NPRM's proposal to reinstate discarded main studio regulations should be rejected.

Among the various bad policy proposals advanced in the NPRM, few are as oppressive as the plan for "enhanced disclosure" of programming aired by broadcasters. Even prior to radio deregulation, when broadcasters were required to keep programming logs, these logs were not part of public inspection files and were not turned over to the government en masse. However, the Standardized Television Disclosure Form (FCC Form 355), which the NPRM suggests could be applied to radio, requires broadcasters to report to the government on each minute of programming they broadcast. Among other things, Form 355 requires broadcasters to report on each individual segment of their national news programming, local news programming, local civic affairs programming and local electoral affairs programming. They must also provide detailed information concerning independently produced programming, local programming, public service announcements, paid public service announcements, programs to "Underserved Communities," religious programming, emergency programming, captioned programming,

overall programming and various contractual programming arrangements. The form is replete with vague and irrelevant inquiries, such as the request to identify the "main programming focus" of a broadcast channel; the request that stations state whether they are "independent"; and the strange question distinguishing between "publicly held" and all other types of broadcast ownership. Licensees are required to report this monumental amount of irrelevant information under a certification that contains the warning that false statements on the form are punishable by fine and/or imprisonment and/or revocation of license. Any errors or omissions in completing this monstrous form (or even disagreements in interpreting the form's inquiries), will provide station opponents in licensing proceedings with an opportunity to claim that broadcast licensees deceived the Commission concerning material matters bearing on licensee qualifications. The whole form is an invitation to lengthy FCC litigation.

Perhaps the most tragic aspect of FCC Form 355 is that any time a television program director wants to present news, public affairs or other types of public interest programming, he or she is required to report to the government. This is a completely unnecessary and offensive intrusion into and burden upon free speech. Form 355 is simply regulation for regulation's sake. It should not be required of TV stations and its use should certainly not be extended to radio.

The Church also submits that the cost of complying with the enhanced disclosure regulations could be a crushing burden upon radio broadcasters. The Church's stations have fewer than five full time employees. They have no computer software or other processes that are readily adaptable to a system of categorizing all segments of station programming and collecting the vast amount of data required by FCC Form 355. Ironically, the resources that must be devoted to compiling the programming information for the enhanced disclosure initiative are

station resources that will no longer be devoted to providing the public with actual programming.

The Commission's "enhanced disclosure" initiative goes beyond the requirement that licensees categorize and report on every minute of programming presented on their stations. It includes a special measure of oppression for broadcasters who communicate on the internet. Any station that has a web site is required to publish its public inspection file on the worldwide web, apparently because localism is world wide. The requirements don't end there. The public inspection file portion of the website must be designed to meet specific criteria developed by the W3C/WAI Working Group.

The Church objects to the FCC requiring anything at all as a condition of its communicating on the internet. Everyone in the world, except United States broadcasters and citizens of China, are free to communicate on the internet without interference from the government. Any "broadcasting" requirement that conditions or limits the ability of a broadcast licensee to communicate in any non-broadcast medium of communication is an unjustifiable restraint on freedom of speech. In the case of the Church, it is a restraint on freedom of religious expression, as well.

The NPRM proposes to require broadcasters to consult with community advisory boards in order to develop programming for their stations. The Commission will, of course, need to be sure that each community advisory board is composed of the 'right' people. Otherwise how will broadcasters know how to produce the 'right' programming? The NPRM's community advisory board proposal is nothing more than the re-imposition of the old community leader interview

requirement from the 1976 Renewal Ascertainment Primer[5], under the guise of a committee meeting.[6]

Once again the Church objects to having its program selection process burdened by government-mandated public relations requirements. While there is nothing wrong with consulting with members of the community in developing programs for a broadcast station, it is very wrong for the government to impose a specific consulting process and to oversee who is consulted and how. In this connection the Church notes that many religious broadcasters are, in fact, local churches with local congregations. Churches ministering to these local congregations are acutely aware of the problems affecting the local community. They live the problems. They are active participants in the solutions. No one has to convene a committee to tell a local church what is happening in its community. There is absolutely no reason for the government to intrude into the Church's programming decision-making process and the Commission should reject the NPRM's proposals regarding community advisory boards.

The Church supports the NPRM's decision to re-write "The Public and Broadcasting". The FCC's website provides the public with a significant amount of useful information, both on broadcasting in general and on each specific broadcast station. Efforts of the FCC, itself, to make its process more understandable and to permit interested persons to use its website and to participate in its functions can only improve government responsiveness to the public.

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[5] See Ascertainment Guidelines, 35 RR 2d 1555, 1583-1591 (1976).

[6] It may actually be easier to conduct the community leader interviews separately or in small groups than to try to schedule a meeting of leaders representing each of the numerous groups the FCC deems significant in a community.

The Church is a radio licensee and takes no position on issues of Television Market Definitions/Cable Broadcast Carriage, other than to note that local broadcast stations rely on revenues from their local markets to support their operations and that any government action that distorts competition in a local broadcast market will adversely impact revenues that could otherwise be available to support local programming.

The Church supports AM use of FM translators and has filed comments to that effect in MB Docket No. 07-172.

In the area of political programming, the Church, like other non-commercial educational broadcasters, has significant limitations on its activity. Certainly, there is no need for non-commercial stations to provide enhanced disclosure of political programming.

With respect to underserved audiences, the Church submits that the economic incentives of a free market with numerous broadcast and non-broadcast media sources are the best hope for producing and disseminating information serving the needs of any specific group of people. It would be wrong to underestimate the commonality of interests that unite people across all categories. It is always possible to subdivide any community into small groups of persons with narrow common interests or traits and to claim those persons constitute an underserved group. If the government is truly concerned that a specific group of people is being not being served by broadcast stations (not enough French Canadian programming in San Antonio, for instance), it could address this deficiency directly by providing more funds to National Public Radio or Corporation for Public Broadcasting to meet the specific need.

With respect to disaster warnings, the Church supports responsible efforts to make emergency information available to all broadcast listeners/viewers. The Commission's policy in this area should set realistic goals and leave broadcasters a measure of flexibility in determining

how to achieve these FCC-mandated results. In this connection, the Church notes that the NPRM's proposal to have broadcast studios staffed continuously is not necessary to insure prompt emergency warnings from the emergency alert system. What is truly important in an emergency situation is that stations broadcast warnings, not that a particular station employee be present at a particular place at the time the warning is broadcast.

The Church's stations are not television broadcast network affiliates and the Church has no views on the appropriate balance of programming power between networks and affiliates.

With respect to sponsorship identification matters and payola, these are matters governed by statute and existing FCC rules, whose requirements are well known to broadcasters. While the NPRM discusses voice tracking and national playlists along with sponsor identification and payola, these practices seem relatively harmless and are unrelated to sponsor identification/payola issues. In this connection, the Church recommends that the Commission show a modicum of consideration for individual liberty. If a person is engaged in a legal practice (voice tracking, for instance) and that practice causes no apparent harm to anybody, the FCC should consider the practice to be an activity protected by a person's individual right to liberty.

The Church believes that the FCC's license renewal process can be improved and that the FCC can take steps to foster more meaningful public participation in that process. Unfortunately, the enhanced disclosure and renewal application processing guidelines proposed in the NPRM are not steps likely to achieve these goals. The revised edition of "The Public and Broadcasting", however, should be used to explain the broadcast renewal standard set out in Section 309(k) of the Communications Act. This explanation could provide the public with guidance on the types of renewal objections that are not generally considered meritorious, e.g. disputes arising out of private contractual matters, objections to programming format decisions,

allegations of unadjudicated non-broadcast misconduct, etc. If the revised "The Public and Broadcasting" dissuades persons from filing meritless renewal challenges, it will save the Commission and its licensees the considerable time and effort currently devoted to addressing meritless license renewal filings.

In this connection, the Church submits that any programming-based evaluation made in connection with license renewal should be limited solely to the licensee's compliance with the following specific program-related statutes and regulations:

(a) Prohibitions on fraud by radio;

(b) Prohibitions on broadcast of obscene or indecent matter;

(c) Sponsor identification requirements/payola prohibitions;

(d) Political broadcasting requirements;

(e) Children's television requirements;

(f) Minimum hours of operation;

(g) Program captioning requirements;

The standards for these requirements are well known and are sufficiently definite that licensees can perform the duties expected of them. Generalized programming-type inquiries are an unwarranted burden on free speech. They are also inconsistent with the requirements of Section 309(e) of the Communications Act that matters in issue in FCC proceedings be specified with particularity and not include issues or requirements phrased generally.

With respect to the matter of fostering LPFM development, the Church opposes lessening interference protection for full power FM stations. However, the conversion of analog television to digital operations presents the Commission with opportunities to expand to the FM band into the frequencies presently occupied by TV Channel 6. A proposal made by John J. Mullaney of

Mullaney Engineering Inc. in the DTV rulemaking in MB Docket No. 87-268 explains how this might be accomplished.[7] New FM spectrum could allow the expansion of LPFM service into many communities where LPFM frequencies are presently unavailable. This could all be accomplished without increasing interference to existing FM stations.

In conclusion, the Church wishes to emphasize that it supports actions to be taken by the FCC, itself, to foster public knowledge of its services and public participation in government processes. The FCC has developed an informative website that contains virtually all of the information an interested member of the public might need to participate in proceedings with respect to any individual station or group of stations or any rule making initiative. The creation of a new version of "The Public and Broadcasting" could contribute materially to public understanding of the resources that the FCC, itself, makes available to persons seeking knowledge of its licensees and participation in its processes. While these efforts might seem to be separate and apart from efforts of broadcasters to inform the public of FCC activities and procedures, they are, in fact, completely funded by broadcasters. That is because all operations of the FCC, including any outreach activities undertaken by the FCC, are fully funded by the regulatory fees and other assessments levied upon FCC licensees.

The Church also wishes to emphasize in its conclusion that religious broadcasters share a special public service mission that should be carried out without undue interference from the government. Government–imposed procedures that burden the programming decision-making process of religious broadcasters and government-imposed conditions to religious broadcasters

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[7] See Petition for Reconsideration and/or Comment, filed October 26, 2007 in MB Docket No. 87-268 by Mullaney Engineering, Inc.

engaging in religious speech over the internet, a non-broadcast medium of mass communication, are completely inconsistent with the organizational principles of the United States Government and should be avoided at all costs.

Respectfully submitted,

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