

The *Localism NPRM* notes that the FCC is considering reversal of its repeal in 1995 of rules requiring stations to maintain personnel on-site during all hours of operation.⁴ As NYT Radio noted in its attached comments submitted in response to the *DAB NPRM*, it does not believe that the record in that proceeding or realities in the industry warrant revisiting that repeal. Similarly, NYT Radio does not believe that the record in the *Localism* proceeding or general television station operations demonstrate a need for mandates on this issue.

Nonetheless, if the FCC does decide to regulate again in this area, it should consider the alternative that NYT Radio offers in the attached comments -- its proposal for a rule similar to Section 73.1870's requirement of designation of a Chief Operator. This new rule would require stations to designate a Chief Programming Officer ("CPO"), an employee whose duties would require ensuring that important local emergency information is broadcast as necessary. The new rule, however, would not mandate that the CPO be physically present at the station. This alternative would allow stations to take advantage of current communications technologies -- text messaging, email, telephone, voicemail, and other means -- to meet community needs without imposition of a costly and outdated requirement not mandated by the record and no longer in keeping with technical capabilities.

⁴ *Amendment of Parts 73 and 74 of the Commission's Rules To Permit Unattended Operation of Broadcast Stations and To Update Broadcast Station Transmitter Control and Monitoring Requirements*, Report and Order, 10 FCC Rcd 11479 (1995).

NYT Radio has always shared the FCC's commitment to ensuring that all licensees provide timely service to their communities in the event of an emergency, and the proposal set forth in the attached comments would work equally well for either radio or television.

Respectfully Submitted,

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

In the Matter of)
)
Digital Audio Broadcast Systems) MM Docket No. 99-325
And Their Impact on the Terrestrial)
Radio Broadcast Service)
)

COMMENTS OF THE NEW YORK TIMES RADIO COMPANY

The New York Times Radio Company (“NYT Radio”), licensee of WQXR-FM, New York, New York, by its attorneys, hereby submits its comments in response to the *Second Further Notice of Proposed Rulemaking* (“NPRM”) in the above-captioned proceeding.¹ The NPRM sought comment on, *inter alia*, whether the Commission should revisit its repeal, more than a decade ago in 1995, of rules requiring stations to maintain personnel on-site during all hours of operation.²

NYT Radio shares the Commission’s commitment to ensuring that all licensees provide timely service to their local communities in the event of any emergency. NYT Radio also recognizes that in some cases emergencies may arise that do not trigger initiation of the

¹ *Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Broadcast Service*, Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking, 22 FCC Rcd 10344, 10391 (2007). NYT Radio acknowledges that its comments in this docket are late-filed, and it is, therefore, simultaneously also submitting a request for acceptance of these late-filed comments.

² *Amendment of Parts 73 and 74 of the Commission’s Rules To Permit Unattended Operation of Broadcast Stations and To Update Broadcast Station Transmitter Control and Monitoring Requirements*, Report and Order, 10 FCC Rcd 11479 (1995).

Emergency Alert System, situations that may still warrant the prompt delivery of timely information to audiences. Mandating, however, that stations be staffed during all hours of operation is not likely to achieve that goal in an efficient manner. Any such mandate will require licensees to take on the additional cost of one or more employees and could even lead to a reduction in the number of hours that some stations choose to remain on-the-air.

Moreover, NYT Radio is not convinced that the record, as already established in this proceeding, demonstrates the need to reverse the FCC's 1995 decision to allow unattended station operation and adopt a mandate for 24-hour staff attendance at broadcast stations.³ If, however, the FCC decides to regulate again on this issue, NYT Radio submits that, as an alternative to an excessively and counterproductive round-the-clock staffing requirement, the Commission should instead allow stations to designate a Chief Programming Officer ("CPO"), an approach based on the FCC's current rule relating to station designation of a Chief Operator for technical matters.

Section 73.1870, 47 C.F.R. § 73.1870 (2007), of the Commission's rules currently requires that every station designate a Chief Operator, an individual who is responsible for keeping the station's operations within the FCC's required technical specifications. Although the Commission's rules require only that the Chief Operator be on duty for as many hours as necessary to ensure that the station's operations remain in compliance, this individual, often the station's Chief Engineer, is in effect always "on duty" or "on call." Chief Operators monitor station operations 24 hours a day. When something goes awry, they are usually called on to work through operational fixes at all hours of the day or night, talking through problems with

³ To be sustained on appeal, any change from a previous deregulatory path requires clear and compelling evidentiary support and a detailed and persuasive explanation for altering direction. *Greater Boston v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

announcers or other staff at the station and fixing problems either remotely or traveling back to the station's facilities, as necessary, during their "off" hours. Throughout the industry, Chief Operators are able to perform their duties without being physically present at a station's studio or primary transmission facility.

The "Chief Programming Officer" would be responsible for ensuring that important information from local law enforcement, emergency offices, and related institutions is promptly, thoroughly, and accurately presented on-air, at any hour, in a manner that is informative and useful for a station's audience. The CPO should not be required to maintain a constant physical presence at the station but should be required to remain "connected" via telephone, internet, or other appropriate means. Such connections will allow a designated CPO to gather the information necessary to cover emergencies and, as required, produce and direct the delivery of reports for broadcast. Although stations may need to establish new protocols for identifying the circumstances that warrant interruption of regular programming by the CPO, NYT Radio submits that such protocols will allow stations to respond appropriately to emergencies in their communities far more efficiently and effectively than would a codified requirement of round-the-clock on-site staffing.

Rather than Commission reliance on a mandate for 24-hour staffing at the station's premises, NYT Radio suggests that designation of a CPO provides a more practical approach, one that will ensure appropriate interruption of programming and the timely delivery of sensitive information regarding community developments whenever they may occur.

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