**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, DC 20554**

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| In the Matter of | ) | |
| | ) | |
| Sponsorship Identification Rules | ) | MB Docket No. 08-90 |
| and Embedded Advertising | ) | |
| | ) | |

To: The Commission

# Comments of National Public Radio, Inc.

## Introduction

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, National Public Radio, Inc. ("NPR") hereby submits its Comments in response to the Commission's Notice of Inquiry and Notice of Proposed Rulemaking in the above-captioned proceeding.[1]

NPR is a non-profit membership corporation which produces and distributes noncommercial educational ("NCE") programming through more than 800 NCE public radio stations nationwide. In addition to broadcasting award-winning NPR programming, including *All Things Considered*, *Morning Edition*, and *Talk Of The Nation*, NPR's Member stations originate significant amounts of news, information, and cultural programming. NPR also operates the Public Radio Satellite System, which enables distribution of some 500,000 hours of programming annually to and by public radio stations, and provides representation and other services to its Member stations.

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[1] In the Matter of Sponsorship Identification Rules and Embedded Advertising, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd 10682 (2008) [hereinafter "NOI/NPRM"].

## Summary

This proceeding concerns the practice of integrating or "embedding" commercial products and services into broadcast television programming. The NOI/NPRM generally inquires whether stations should be required to broadcast additional disclosures of those practices. The NOI/NPRM does not differentiate between commercial and NCE radio stations, however, even though there is no indication that NCE radio stations and program producers are engaged in these commercial practices. Because the sponsorship identification rules apply to all broadcast stations -- commercial and NCE, television and radio -- NPR is concerned that, unless clarified, new disclosure requirements could be applied to NCE stations with potentially significant adverse consequences.

As we demonstrated in the broadcast localism proceeding,[2] NCE radio stations have a long history of providing exemplary public service founded on serving the informational and cultural needs of the American people.[3] Imposing new regulatory requirements more properly directed at commercial stations could impose significant regulatory burdens on traditionally under-resourced NCE radio stations. As in the broadcast localism proceeding, therefore, absent a clear factual basis for imposing new regulatory requirements on NCE radio stations, the Commission should take to care to avoid imposing any new disclosure requirements on such stations.

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[2] In the Matter of Broadcast Localism, Report and Notice of Proposed Rulemaking, 23 FCC Rcd. 1324 (2008).

[3] Comments of National Public Radio, Inc., In the Matter of Broadcast Localism, Report and Notice of Proposed Rulemaking, MB Docket No. 04-233, at 6-16 (filed Apr. 28, 2008) [hereinafter "NPR Localism Comments"].

## Discussion

### The Commission Should Clarify That Any New Disclosure Requirements Do Not Apply To Public and Other Noncommercial Educational Radio Stations

The purpose of this proceeding is to address a clearly commercial practice -- embedded advertising -- and, in particular, "the relationship between the Commission's sponsorship identification rules and increasing industry reliance on embedded advertising techniques."[4] As the NOI/NPRM explains, "embedded advertising" refers to two specific practices: (1) product placement, which is "the practice of inserting 'branded products into programming in exchange for fees or other consideration,'"[5] and (2) product integration, in which a commercial product is integrated into the dialogue and/or plot of a program.[6] Examination of these practices is important, according to the NOI/NPRM, because "the sponsorship identification rules protect the public's right to know who is paying to air commercials or other program matter on broadcast television and radio and cable."[7]

As the Commission develops the record in this proceeding, it should remain mindful that, while embedded advertising is a commercial practice, the Commission's sponsorship identification rules apply to all broadcast stations, including NCE radio stations. Therefore, as the Commission considers rules to assure the proper identification of embedded advertising, NPR cautions the Commission to avoid adopting rules that would disrupt NCE radio programming, interfere with longstanding NCE radio station fundraising activities, or have other adverse consequences for NCE radio broadcasting.

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4 NOI/NPRM, 23 FCC Rcd at 10682.

5 Id. at 10682 n.2 (citation omitted).

6 Id.

7 Id. at 10682.

As a threshold matter, NPR agrees that, for both NCE and commercial broadcast stations, sponsorship identification serves the important function of alerting the public to the identity of an entity that is funding a program so that the public can make a fully informed assessment of the message being conveyed.[8] Of particular importance to NCE radio broadcasters, however, sponsorship identification also allows program producers and stations to attract business support, thereby sustaining NCE services financially without threatening its underlying noncommercial nature.[9] Indeed, businesses contributed approximately 20 percent of the total revenue received by public radio stations in FY2006.[10]

Applying rules targeted at embedded advertising to NCE radio stations could have many adverse consequences. First, rules requiring additional and more prominent disclosure, such as "concurrent disclosures," could interfere with NCE radio programming, even though NCE stations and producers are not engaged in the type of practices described in the NOI/NPRM.[11]

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[8] In re Applicability of Sponsorship Identification Rule, 40 FCC 141, 141 (1963) ("With the development of broadcast service along private commercial lines, meaningful government regulation of the various broadcast media has from an early date embraced the principle that listeners are entitled to know by whom they are being persuaded. Thus, as far back as the Radio Act of 1927 and continuing with Section 317 of the Communications Act of 1934 there has been an unvarying requirement that all matter broadcast by any station for a valuable consideration is to be announced as paid for or furnished, and by whom.").

[9] See In The Matter Of Commission Policy Concerning The Noncommercial Nature Of Educational Broadcasting Stations, Memorandum Opinion and Order, 90 F.C.C.2d 895. 896-97 (1982).

[10] Corporation for Public Broadcasting, 2006 Public Broadcasting Revenue Report at 2, *available at* http://www.cpb.org/stations/reports/revenue/2006PublicBroadcastingRevenue.pdf. Foundations were responsible for an additional 7.5 percent of public radio station revenue. Id.

[11] Among other things, the NOI/NPRM inquires about so-called "concurrent disclosure," which would involve disclosure concurrently with any product placement and/or integration. NOI/NPRM, 23 FCC Rcd at 10688, 10690. See also id. at 10690 ("Would concurrent disclosures be more or less disruptive to radio programming.").

For instance, if a station utilizes equipment, supplies, or services that have been donated or subsidized by a third party supplier or contributor, a concurrent disclosure obligation could require the station to broadcast a substantial number of additional sponsorship identification announcements. The interruption of programming to accommodate such announcements could produce substantial broadcast "clutter," intruding on the type of comprehensive, long-form programming for which public radio broadcasting, in particular, is renowned. The additional disclosures may also interfere with the financial support NCE radio stations and program producers are able to generate through existing enhanced sponsorship identification practices.

Second, and as a related matter, many NCE radio stations receive and distribute donated or subsidized goods and services for various station-related purposes, and those activities could also trigger new disclosure obligations. During fundraising campaigns, for instance, stations typically offer "premiums" to encourage listeners to pledge financial support to the station. Likewise, stations are often given tickets to music performances and other events to use in broadcast contests or other station promotions. In addition to generating more "clutter," a concurrent disclosure obligation could tend to promote the premium or event itself, inducing violations of the advertising prohibition[12] and otherwise detracting from the important fundraising task.

Finally, the NOI/NPRM inquires whether "a radio hosts' personal, on-air endorsements of products or services that may have been provided at little or no cost to them" should be presumed to have been provided in exchange for on-air mentions of the product," thus triggering an obligation to provide a sponsorship announcement.[13] Many NCE stations and program

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[12] See 47 U.S.C. § 399b.

[13] NOI/NPRM, 23 FCC Rcd. at 10692.

producers work closely with music venues to provide access to music performances to their listeners. For instance, a station music host may present a live concert broadcast, having been admitted to the event "at little or no cost" to him or her. It is not clear how the suggested presumption would be rebutted, and the net result may be a real or perceived need to provide substantial additional sponsorship announcements, the broadcast of which may suggest to listeners that commentary offered by the host is biased.

With respect to all of these adverse consequences, there is no suggestion that NCE stations and program producers are engaged in the commercial practices at issue in this proceeding or other inappropriate practices. Much like the broadcast localism proceeding, new regulatory obligations should not be imposed on NCE stations absent a clear factual record demonstrating a compelling need for such requirements.[14] Otherwise, the likely consequence will be the imposition of new regulatory burdens on stations that provide exemplary public service and that can ill afford the cost of regulatory compliance. Accordingly, as the Commission pursues the matters raised in this proceeding, NPR urges it to proceed with care and avoid imposing any undue burdens on NCE radio stations.

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[14] See NPR Localism Comments at 5-6 (filed Apr. 28, 2008) ("First, any regulatory initiative to promote localism must consider public broadcasting separate and apart from its commercial counterpart. Second, the factors that define public broadcasting have a special bearing on localism. Finally, before imposing any new regulatory obligations on public broadcast stations, the Commission must carefully consider the need for each requirement and any corresponding burden.").

## Conclusion

NPR urges the Commission to carefully consider the potential applicability of any rules it may adopt and avoid imposing any new disclosure requirements on NCE radio stations and program producers.

Respectfully submitted,

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