

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

MM Docket No. 87-9

In re

Allowable Costs for
Noncommercial FM Licensees
To Charge Radio Reading
Services

POLICY STATEMENT

Adopted: October 13, 1988; Released: October 28, 1988

By the Commission:

I. INTRODUCTION

1. This *Policy Statement* is intended to clarify the kinds of costs that a noncommercial radio station may properly charge to the operators of a radio reading service to lease the station's subcarrier capacity pursuant to Section 73.593 of our rules.¹ The *Policy Statement* is the outgrowth of the *Notice of Inquiry*² issued last year in the above-captioned proceeding which solicited public comment on the issue of permissible charges to radio reading services. In that *Notice*, we specifically asked commenters to provide us with itemized statements of the charges being assessed by stations for reading service operations. We also asked commenters to identify those types of costs that would not be incurred by the stations but for the provision of the reading services.

2. In response to the *Notice*, thirteen parties filed comments; eight parties filed reply comments; and two parties filed supplemental comments.³ Commenters included the Association of Radio Reading Services (ARRS), which represents over 70 radio reading services, approximately three-quarters of the services in operation, the National Association of Broadcasters (NAB), the Corporation for Public Broadcasting (CPB) and National Public Radio (NPR). Additionally, a number of universities which hold public FM licenses filed joint comments.⁴ The comments clearly indicate that there is substantial confusion as to what costs can legitimately be charged by a public radio station to the operators of a radio reading service. Having carefully reviewed and analyzed the comments, we are issuing this *Policy Statement* in an attempt to eliminate any existing confusion on the matter of the appropriateness of certain charges by noncommercial FM stations to radio reading services.

II. BACKGROUND

A. Radio Reading Services

3. A radio reading service is an aural service provided primarily for the blind and visually impaired through the use of an FM licensee's subcarrier capacity. The FM sta-

tion's subcarrier, which is used to broadcast the reading service, is an *inherent* part of the composite FM baseband frequency.⁵ A specially equipped receiver is required by those using the reading service. There are approximately 112 of these services operating in 40 states. Reading services can provide an alternative form of access to printed materials like newspapers, magazines, and books for those with visual or other physical handicaps that will not permit the holding or reading of printed materials.

B. The Previous Rule

4. Historically, Section 73.593 restricted public radio stations' use of their subcarrier capacity to those services that were consistent with the noncommercial educational purposes of such stations.⁶ This rule specifically identified what types of programs could be offered on a public radio station's subcarrier. One of the permitted uses was for programs intended to serve the special needs and interests of the handicapped. If a station used its subcarrier for any noncommercial educational purpose, it was permitted to charge an amount which could not exceed the sum of the approximate cost of conducting the subcarrier operation (including purchase or lease of equipment, course material, personnel services, etc.), and the general overhead and operational costs attributable to such operations.⁷ Thus, under the version of Section 73.593 in force prior to 1983, the Commission was careful to ensure that public radio stations could be fully reimbursed for the cost incurred as a result of the use of their subcarriers. This meant that public radio stations could recover both their incremental costs⁸ and those portions of their overhead costs⁹ resulting from the noncommercial services they were allowed to offer.

C. The Public Broadcasting Amendments Act of 1981

5. In 1981, Congress passed the Public Broadcasting Amendments Act which amended the Communications Act to give public broadcasters, *inter alia*, the authority to use their facilities for remunerative purposes so long as such profit making activities did not interfere with the station's public telecommunications responsibilities.¹⁰ Anticipating that federal government spending for public broadcasting would be reduced, Congress wanted to ensure that public stations would not be hampered in their independent efforts to generate funds for their operations from nongovernmental sources.¹¹

D. Report and Order in BC Docket No. 82-1

6. In response to the Public Broadcasting Amendments Act, we reexamined the restrictions imposed by Section 73.593 of our rules. In the *Report and Order* in BC Docket No. 82-1,¹² we concluded that the restrictions limiting public FM stations to noncommercial uses of their subcarriers were inconsistent with the spirit of the legislation. Consequently, we amended Section 73.593 to authorize noncommercial FM licensees to use their subcarriers for the same range of remunerative activities as commercial radio stations.¹³ We emphasized in the *Report and Order* that public stations are not required to use their subcarrier capacity. However, we made it clear that if a public station chooses to use its subcarrier for a commercial purpose, it is obligated to accommodate a radio reading service on its other subcarrier or ensure the availability of other subcarrier capacity.¹⁴ We also explained that public stations would not be required "to bear the fixed or operating costs" of the reading services,

but would be expected to provide such services on a "not-for-profit basis."¹⁵ In so doing, we attempted to balance the needs of the stations to receive reimbursement for their services with the public benefit of radio reading services for the handicapped.

7. A year after we issued our *Report and Order*, it became apparent that there was still some confusion over what charges public stations were allowed to recover from radio reading services under our amended rule. Mr. John C. DeWitt wrote a letter on behalf of The American Foundation for the Blind, Inc. asking the Commission to clarify, among other things, whether the not-for-profit charges that public stations passed on to reading services had to be based only on demonstrable incremental costs or whether they could also be based on percentages or proportional bases of the station's operating budget. In response, the Mass Media Bureau, in a letter dated December 3, 1984, stated that a "station should not exceed the incremental costs of conducting the radio reading service" but that "the applicable portion of the station's overhead that relates to providing the radio reading service is included in the incremental costs."¹⁶ Even after the Bureau issued this letter, there was still confusion among noncommercial radio stations and reading service organizations as to allowable and nonallowable costs.

E. Petition for Rule Making

8. On May 20, 1986, the Association of Radio Reading Services, Inc. (ARRS) filed a *Petition for Rule Making*, requesting that the Commission impose a mandatory access requirement on noncommercial educational FM licensees to lease their subcarrier capacity to radio reading services and to require that such stations charge only nondiscriminatory, incremental cost-justified rates.¹⁷ ARRS also urged the Commission to issue guidelines that would clarify the term "incremental costs" as initially used in the Bureau letter. In its petition, ARRS stressed that neither the *Report and Order*, nor the rule itself, specified what constituted profit or what costs may be assessed by public stations in determining rates for reading services.

9. Several commenters filed in response to ARRS' petition. Only one commenter strongly favored the imposition of a mandatory access requirement. Other commenters pointed out that ARRS' proposal did not take into account other noncommercial public uses of a station's subcarrier and that mandatory access by reading services would raise serious first amendment issues. Evidence was also presented by commenters which contested ARRS' assertions that our rule amendment had adversely affected the growth of reading services. The comments also revealed a great disparity in the amount that public stations charge radio reading services.

F. Memorandum Opinion and Order and Notice of Inquiry

10. On the basis of the record developed, we issued, on January 16, 1987, a combination *Memorandum Opinion and Order* and *Notice of Inquiry* in the proceeding.¹⁸ In the *MO & O* portion of the item, we rejected a proposal to amend Section 73.593 of our rules to require that noncommercial FM radio licensees accommodate radio reading services. The record, however, was not adequate to allow us to respond to ARRS' request for a clearer definition of incremental costs, and we determined that it would be inappropriate to attempt to resolve specific cost issues without a further record. In particular, we recog-

nized the need to clarify what portion of general overhead costs can be appropriately allocated to a radio reading service. Accordingly, we issued the companion *Notice of Inquiry* now before us so that we could determine the actual cost of operating a radio reading service and proffer guidance concerning which costs could be passed on to the reading services. The *Notice* asked commenters to explain the apparent cost disparities in charges to radio reading services and to indicate whether our imposition of a particular method of calculating costs would be beneficial.

G. Comments

11. The commenters responding to the *Notice* divided fairly evenly into two groups—the radio reading services and the noncommercial FM stations. Generally, the radio reading services challenged the legitimacy of some or all of the costs charged by the stations; some services provided detailed information on costs or attached itemized bills to substantiate their allegations. On the other hand, the public stations defended their methods of calculating costs and asserted that the rates they charge reading services do not generate profits. Generally, public stations urged the Commission to rely on their discretion in determining costs, asserting that they are in the best position to determine the actual cost to their stations of operating a reading service.

12. *Reasons Given for Cost Disparities.* In our *Notice*, we requested an explanation for the wide disparity in the costs charged to reading services by public radio stations. The comments indicated that the disparities in costs charged are the result of a number of factors. First, noncommercial radio stations may use different methods to determine what to charge a radio reading service. Stations can charge flat, monthly, or hourly rates and the stations often differ in the manner in which these rates are set, e.g., some stations merely discount the rate charged by commercial stations for use of their subcarrier. Second, some stations charge reading services not only for the use of the subcarrier capacity, but also for a variety of other costs including transmission costs, personnel, maintenance and rental of space for housing subcarrier equipment. Third, some disparities can be traced to the fact that the equipment and labor costs associated with the implementation of the reading service vary from station to station.¹⁹ For example, the need for and the cost of capital equipment to activate the subcarrier can vary widely depending on the state of the existing technical facilities at a given public radio station. Fourth, cost differentials can result from stations charging less than the maximum allowable costs under our rules. Finally, stations differ in whether, and to what extent, they charge radio reading services separately for the numerous types of optional or ancillary services²⁰ that a station may offer to a reading service, e.g., production personnel, studio time, or customer support.

13. *Incremental Costs.* A review of the comments reveals that most of the costs which can be potentially passed on to radio reading services fall into the category of either incremental costs or overhead costs. Incremental costs are typically thought to mean the costs that a noncommercial station would not incur *but for* the provision of subcarrier capacity to a reading service. For a definition and discussion of overhead costs, see ¶ 14. Most commenters have agreed that it is appropriate to pass on these incremental costs to reading services. However, there is some disagreement as to exactly which costs are "incremental."²¹

14. The reading services who commented offered varying descriptions of these costs which perhaps reflect the different types of services furnished by each station. Most reading services agree, however, that the following would be included in the category of incremental costs:

- 1) The cost of electrical power consumed by the subcarrier equipment used by that reading service.²²
- 2) A prorated portion of maintenance and repair costs of subcarrier equipment.²³
- 3) A prorated portion of purchase and installation costs of subcarrier equipment, if the station does not already own this equipment.²⁴

In addition, there was general agreement among most commenting reading services that the following should *not* be included in a definition of "incremental costs":

- 1) The cost of transmitting the subcarrier's signal from the station's studio to its transmitter.²⁵
- 2) "Interference prevention" costs.²⁶
- 3) Lost opportunity costs resulting from accommodating a reading service instead of a fully remunerative lessee.
- 4) Check processing or similar fees, unless these same fees have been imposed on the radio stations by their banks.²⁷

15. *Overhead Costs.* The stations differ with the reading services on whether they are allowable,²⁸ with most stations preferring a definition which would allow a proportional charge for such costs. More specifically, they assert that these overhead costs should be chargeable to the reading service only to the extent that the reading service "draws on or shares existing personnel, services or facilities of the station."²⁹

16. As indicated above, there was substantial disagreement among the commenters regarding the treatment of overhead costs. Overhead costs are generally understood by the commenters to be the basic costs of operating the public station, which would include salaries, rent, maintenance, etc. In responding to our request for information about actual charges, most of the commenters focused on this issue of the allocation of overhead costs between the stations and reading services. Several reading services contest the legitimacy of charging overhead costs. For example, Written Communications Radio Service (WCRS), an Ohio radio reading service, disputed the validity of numerous overhead costs charged to it by WKSU, Kent State University's noncommercial FM station.³⁰ Specifically, WCRS contested the allocation by WKSU of a percentage of the salary of each station employee to their reading service,³¹ a \$20.00 a month charge to process their monthly reimbursement checks for the telephone bill, 2% of the station's annual electric bill, an annual \$100 fee for renting a rack that holds the subcarrier monitoring equipment and an annual \$1,300.00 legal fee.³²

17. WKSU claimed that complaints of WCRS stemmed from its basic disagreement with allowing *any* overhead costs to be charged to its operations. WKSU and the Joint Commenters insist that overhead costs are properly

chargeable to the reading services, but only to the extent that the reading services draw on or share a station's existing personnel, services or facilities.³³

18. The controversy concerning the recovery of overhead costs is specifically illustrated in the area of transmission costs. Several reading services object to being charged for transmission of the subcarrier signal between a public station's studio and its transmitter[s].³⁴ First, they argue that the subcarrier signal is an inherent part of the FM signal once the subcarrier has been activated. Consequently, the subcarrier signal is transmitted simultaneously with the station's main signal. The reading services stress that the signal delivery system is an integral part of the broadcasting system and is in operation regardless of whether or not a radio reading service uses it. The West Virginia Broadcasting Authority (WVEBA), on the other hand, argues that this proceeding should be strictly confined to the costs that can be recovered for the use of the subcarrier and therefore contends that the question of the charges that it passes on to the West Virginia Radio Reading Service (WVRRS) for the use of its microwave transmission system are outside the scope of the *Notice*.³⁵ Nevertheless, WVEBA defends its charges as proper.³⁶

19. In addition to questioning the specific types of overhead charges being passed on to them, several of the reading services challenged the legitimacy of charging for these overhead costs on an hourly basis. They contend that hourly charges were developed on the basis of fixed yearly costs for electricity or dedicated telephone lines. These costs are generally computed on the assumption of continuous twenty-four hour a day service or availability. Those reading services that operated for a limited number of hours during the day stated that, when they wanted to increase their hours of operation, they were required to pay a predetermined hourly rate for each additional hour. Consequently, they assert that they are being charged twice for service costs which do not vary with the number of hours that the reading service is operating.

20. *Suggestions for Clarifying Recoverable Costs.* The commenters were unanimous in requesting that the Commission provide some form of guidance to the parties concerning legitimately allowable charges under Section 73.593. The commenters made a variety of suggestions aimed at clarifying legitimately recoverable charges. The Corporation for Public Broadcasting (CPB) and the majority of reading services urged the Commission to delineate recoverable cost categories. They believe that such illustrative lists will provide a simple reference point for rejecting or accepting certain types of charges. Additionally, some of the reading services recommended that the Commission develop a list of costs that can not be charged to the radio reading services. A number of reading services suggested that the Commission require itemization of incremental costs in order to document the exact nature of the additional costs that are attributed to reading service operations. Other commenters suggested that stations should bill reading services separately for transmission related charges, ancillary services and repairs. Many reading services suggested abolishing hourly charging as a method for calculating appropriate charges in order to preclude stations from passing on fixed yearly operating costs more than once. The reading services offered these suggestions to encourage precision in ascertaining the actual costs that are directly attributable to reading services' operations.

21. The stations argue that such precision, particularly with regard to overhead costs, is impossible. Furthermore, the stations stress that by insisting on such precision, especially in calculating a portion of overhead costs, the reading services are really trying to avoid paying their fair share of the basic operating costs. The stations urge the Commission to defer to their discretion and their good faith estimates of costs that are allowable within the Commission's not-for-profit standard. They assert that they are in the best position to make the determination of the proper charges to the lessees of their subcarriers. Furthermore, they contend that we should intervene only where there is clear evidence of abuse of our standards.

22. Several stations argue that the Commission should also defer to their discretion as to how they charge -- *i.e.*, whether their charges are based on hourly, monthly or flat rates. In contrast, other stations, as well as the NAB and CPB, advocate pricing or accounting guidelines to address the issue of the method used to compute charges.³⁷ They believe that such guidelines will provide adequate parameters within which they can make their pricing determinations, yet still provide sufficient flexibility to negotiate contracts which would be appropriate in different circumstances. These same parties oppose imposing a universally applicable formula for calculating costs because they believe that such a solution would be too rigid to encompass the myriad of unique arrangements between stations and the reading services.

III. DISCUSSION

23. We are persuaded from the record that there is confusion regarding allowable and nonallowable charges for providing radio reading services under our not-for-profit standard. We are issuing this *Policy Statement* to provide clarification of allowable costs under the not-for-profit standard inherent in Section 73.593. In the following discussion, first, we will define incremental costs. Second, we will address the difficult issue of allocating general overhead costs between reading services and public stations. Third, we will provide examples of nonallowable costs under Section 73.593.³⁸

24. *Incremental Costs.* If a station decides to charge a radio reading service for use of its subcarrier capacity, the station may recover the actual incremental costs of providing that service. By "incremental costs" (in the context of this proceeding), we mean those additional out-of-pocket costs that are caused by the operation of the reading service. Clear examples of such costs are the capital cost of the equipment needed for and used in the provision of the subcarrier signal to the radio reading service and any modification to a microwave system or a station's transmitter necessitated in order to so deliver the subcarrier signal. Other examples include the additional cost of the power necessary to operate the subcarrier and associated equipment, and any specific repairs related to subcarrier equipment or operations. Of course, if the station uses a single subcarrier during certain hours to provide radio reading services and during other hours to provide some other, profit-making service, then the radio reading service should be charged a fraction of the total subcarrier equipment and electricity cost and other related costs. The costs of ancillary services or products that the station may choose to provide to the reading services may also be treated as incremental costs and are also recoverable.³⁹

25. A similar incremental cost standard was embodied in the previous version of the rule. In using that standard in the original rule, we contemplated that a public station should be compensated for any out-of-pocket expenses incurred in allowing one of the permitted uses on its subcarrier.⁴⁰ In other words, the station should be no better or worse off than it was before leasing the subcarrier. When we carved out a priority for reading services in Section 73.593, we intended that reading services continue to operate under this same not-for-profit standard.⁴¹

26. *Overhead Costs.* We recognize that the question of apportioning general overhead costs provides the most troublesome area for the parties to resolve. It should be clear from our definition of incremental costs that any costs which are directly attributable to the reading service are recoverable.⁴² We do not wish to disallow reimbursement for such costs, since that might create the incentive for public radio stations to decline to provide reading services altogether, if to do so would cause them to incur losses. Refusal to offer reading services would force them to refrain from offering their subcarriers to paying subscribers as well. Overhead costs, such as salaries, rent and maintenance that are incurred by the station in the absence of the radio reading service and that are not increased when the station provides a subcarrier to the radio reading service, would not be allowed. As previously noted, some reading services concede that partial reimbursement for fixed overhead or salary costs should be allowed. Moreover, most stations prefer a definition which would allow a proportional charge for such costs only to the extent that the reading service "draws on or shares existing personnel, services or facilities of the station." Paragraph 13, *supra*. With these views in mind, we will permit stations to recover only those fixed overhead costs which are attributable to the provision of a reading service and can be so justified by the radio station.⁴³ To more closely determine such attributable costs, we suggest that both parties attempt to foresee the nature of those fixed overhead costs that might appropriately be charged to radio reading services and that they explore the possibility of including itemized charges or an explicit provision for these costs in their contracts. Another option would be to negotiate a completely separate billing.

27. *Nonallowable Costs.* Several of the reading services and ARRS urged us to designate certain costs as nonallowable. For example, WCRS suggests that fees for check processing, rental of space for the subcarrier equipment, general salaries, legal fees and transmission links like those between the station and transmitter charged by Kent State be included in this category. We consider all but the last item to be general overhead costs and therefore the parties should be guided by our previous discussion of this area. We note further that it would be improper for the station to charge any sort of fees such as check processing or similar fees to the radio reading service unless such fees are routinely charged to the station by the bank which processes those checks or unless those fees can be justified as related to the incremental cost of processing payments made by the radio reading service.

28. With regard to the costs for the transmission links between the station and the transmitter, we believe that such costs generally cannot be passed on to the reading service unless there is evidence that the reading service creates an incremental cost burden on such links. Technically, a subcarrier is an inherent part of the FM bandwidth used by the public radio station. Once the reading

service has paid for the capital equipment necessary to activate the subcarrier -- including additional channels for microwave systems if necessary -- the actual transmission of the subcarrier signal, in most cases, would not cost the station any more than it pays to transmit its own signal. However, to the extent that the existence of the subcarrier decreases the quality of the station's signal or increases the possibility of interference to the transmission links, then any costs which the station incurs to correct those problems are properly chargeable to the radio reading service.

29. Another type of cost that is generally not recoverable is lost revenues from an actual or potential alternative lessee. Under normal circumstances, a broadcasting station, whether commercial or noncommercial, can view the opportunity cost of using a subcarrier for any particular purpose as the revenue it has given up by not using the subcarrier for its most profitable alternative use. This principle is not applicable here, however, where the public radio stations are restricted by our rules in the use of their subcarrier capacity. In the *Report and Order* adopting the current version of Section 73.593, we determined that any station that wishes to lease its subcarrier capacity must first accommodate interested radio reading services itself or ensure the availability of other subcarrier capacity.⁴⁴ Thus, under our rule, there is no allowable alternative usage for the subcarrier capacity if it is needed to provide a reading service to its community. Given this policy, it is not appropriate for the station to charge the radio reading service the value of the subcarrier in a profitable alternative usage. If the public station is leasing another subcarrier for remunerative purposes, it will not be permitted to charge the reading service the difference between its remunerative alternative and the reading service's incremental costs. Both the Communications Act and our rules require these stations to fulfill their public telecommunications responsibilities before profiting from the use of their facilities.

30. We have provided the general guidelines discussed above as a framework within which the parties can negotiate private contracts to govern their particular arrangements for services. Such contracts give both parties the flexibility to account for variations in equipment, facilities, services and products involved in providing reading services. We urge the parties to enter into clear contracts outlining their respective cost obligations within the guidelines provided here. These contracts should provide the opportunity to the parties to specify the types of costs that will be recovered by stations from reading services and the method by which these costs are to be estimated.

31. We believe that providing general guidelines as to allowable and nonallowable costs is preferable to establishing cost computation formulas or more rigid cost categories as requested by numerous commenters. First, it is unlikely that the Commission could develop formulas or precise cost categories that would contemplate the wide variety of equipment, facilities, products and services involved in providing reading services. Thus, any fixed formulas or cost categories developed by the Commission would likely be incomplete or overbroad. Second, stations and reading services are in the best position to determine the incremental costs of the reading services in each particular situation. Imposition of rigid formulas or cost categories would remove this needed discretion and force the parties to comply with rules that may be arbitrary or inapplicable to their arrangements.

32. We also believe that general guidelines discussed above are more appropriate than the specific accounting or pricing guidelines recommended by some commenters for a number of reasons. To account for the variability in a station's equipment and facilities, as well as variability in their accounting methods, we would have to devise a range of accounting guidelines from which the stations could choose. For example, with regard to the capital cost of the subcarrier equipment, we would have to devise accounting guidelines that take into account the alternative methods of depreciating capital and amortizing loans. We believe that the resources that would be required to develop said guidelines would be unwarranted. First, it is not clear that the scope of the problem requires such an expenditure of resources. The CPB study⁴⁵ suggests that most stations and radio reading services are not disputing allowable costs. For those that are, we believe that the general guidance offered in this *Policy Statement* will provide the parties with a sufficient basis on which to resolve any disagreements. Finally, we are reluctant to promulgate detailed accounting regulations because we believe it is an unnecessary intrusion into the parties' discretion.

33. Authority for this action is contained in Sections 4(i), 303, 307(b) of the Communications Act of 1934 as amended. In addition, the proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

34. Accordingly, IT IS ORDERED, THAT this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX 1

Comments

Alaska Information Radio Reading
and Education Services
Association of Radio Reading Services
Bible Broadcasting Network, Inc.
Brown Broadcasting Service, Inc.
Corporation for Public Broadcasting
Joint Comments (Arizona Board of Regents,
Board of Visitors of James Madison
University, Kent State University,
Ohio State University, WSKG
Telecommunications Council)
KJZZ/Sun Sounds Station
National Public Radio
Ohio Radio Reading Service
West Virginia Educational Broadcasting

Authority

Written Communications Radio Service
West Virginia Radio Reading Service
(West Virginia Library Commission)
Youngstown Radio Reading Service

Reply Comments

Association of Radio Reading Services
Corporation for Public Broadcasting
WKSU-Kent State University
National Association of Broadcasters
National Public Radio
Summit County Society for the Blind
West Virginia Educational Broadcasting Authority
West Virginia Radio Reading Service
(West Virginia Library Commission)
[filed two replies]

Supplemental Comments

Corporation for Public Broadcasting
Written Communications Radio Service

FOOTNOTES

¹ Section 73.593 reads as follows:

The licensee of a noncommercial educational FM station is not required to use its subcarrier capacity, but if it chooses to do so, it is governed by Sections 73.293 through 73.295 of the Commission's Rules regarding the types of permissible subcarrier uses and the manner in which subcarrier operations shall be conducted; Provided, however, that remunerative use of a station's subcarrier capacity shall not be detrimental to the provision of existing or potential radio reading services for the blind or otherwise inconsistent with its public broadcasting responsibilities.

² *Amendment of Part 73, Subpart C of the Commission's Rules to Require Licensees of Noncommercial FM Stations to Accommodate Requests by Radio Reading Services to Utilize Their Subcarrier Capacity on an Incremental Cost Justified Basis*, 2 FCC Rcd. 680 (1987) (*Memorandum Opinion and Order and Notice of Inquiry in MM Docket 87-9*) [hereinafter either *MO & O* or *Notice*].

³ A list of the parties filing comments may be found in Appendix I.

⁴ The Arizona Board of Regents, James Madison University, Kent State University, Ohio State University and WSKG Telecommunications Council filed joint comments [hereinafter *Joint Commenters*].

⁵ Generally, FM licensees have two subcarrier channels available for use although it is technically possible to have more. Commission rules permit an FM licensee to authorize independent groups to use the station's subcarrier capacity. Section 73.295 of the rules outlines the conditions for subcarrier use and provides an illustrative list of permitted services which include specialized foreign language programming, paging and calling, telemetry, and traffic control signal switching. In order to use a station's subcarrier frequency, certain special equipment is necessary, i.e., a subcarrier generator, an audio compressor/limiter, a dedicated broadcast line, and some type of diagnostic equipment which monitors the baseband signal. During monophonic program

transmissions, multiplex subcarriers and their significant sidebands must be within the 20 kHz to 99 kHz range; during stereophonic transmissions, their range is restricted to between 53 kHz and 99 kHz.

⁶ 47 C.F.R. § 73.593 (a)(1)(iii) (1982).

⁷ *Id.*

⁸ As we explain further below in paragraph 13, by incremental costs we mean those additional costs caused by the provision of the radio reading service's use of the subcarrier.

⁹ By overhead costs we mean the basic costs of operating the station, such as salaries, rent and maintenance that would not be changed by the existence or nonexistence of the radio reading service.

¹⁰ Omnibus Budget Reconciliation Act of 1981, Pub. Law No. 97-35, § 1231, 95 Stat. 357, 731 (codified at 47 U.S.C. § 399B (1982)).

¹¹ 127 Cong. Rec. S 9037-38 (1981) (colloquy between Sen. Schmitt and Sen. Packwood); see also S. REP. No. 98, 97th Cong., 1st Session (1981).

¹² See *Amendment of Sections 73.593 of the Commission's Rules*, 48 Fed. Reg. 26608 (June 9, 1983), 54 RR 2d 25, 35 [hereinafter *Report and Order*].

¹³ *Id.* at 26614.

¹⁴ *Id.* We provided some general guidelines for stations in accommodating radio reading services but left the implementation to each station's discretion. *Id.* n. 31. In addition, "ensuring the availability of other subcarrier capacity" could mean that the non-commercial radio station has assured the availability of another radio station's subcarrier for use by radio reading services.

¹⁵ *Id.* n. 32.

¹⁶ Letter from Chief, Mass Media Bureau to John C. DeWitt (December 3, 1984) [hereinafter *Bureau letter*].

¹⁷ The petition was placed on public notice on July 14, 1986 (Report No. 1605).

¹⁸ See n. 2, *supra*.

¹⁹ ARRS and other reading services assert that the actual cost variations, resulting from differing equipment and operating costs in different markets, do not correlate with the variations in the fees being charged. Reply Comments of ARRS at 3.

²⁰ By "ancillary services" we mean services provided by the station that are in addition to the minimum services necessary to make a subcarrier available to the radio reading service. Examples of ancillary services include advertising assistance, the transmission link from the reading service's separate studio to the station's facilities, and use of studio space. Some stations provide ancillary services and some do not. Of those stations that do provide ancillary services, some explicitly charge for those services and some do not. In the main, the commenters agree that because these services are optional, their procurement should be the subject of a separate contract between the reading service and the noncommercial station. See, e.g., Reply Comments of ARRS at 7 n.5.

²¹ Joint Comments at 3; Reply Comments of West Virginia Educational Broadcasting Authority at 1; Reply Comments of Kent State University at 3; Comments of National Public Radio at 2.

²² Reply Comments of ARRS at 6; WCRS Complaint Letter at 1, see *infra*, note 30; Comments of Youngstown Radio Reading Service at 2 (asserting that "[i]t is estimated that 75 watts of power is all that is required to completely operate the SCA programming. On an average figure of 11c per kilowatt hour this totals to an annual electrical charge of approximately 75.00").

²³ Joint Commenters at 6; Reply Comments of ARRS at 6.

²⁴ Reply Comments of ARRS at 6.

²⁵ Reply Comments of ARRS at 7.

²⁶ NPR, in their Comments (at 5) claims that spectrum analyzers costing 6,000 to 15,000 and specially trained personnel are needed to control subcarrier channel interference with the main channel. However, ARRS, in its Reply Comments (at 7), disputed this claim. They assert that:

[s]ubcarrier frequencies do not, in fact, *cause* interference with main channel signals. A station maintained in accordance with good engineering practices will not experience interference to either the main or subcarrier signals. Thus, costs related to monitoring or repairing interference would be incurred in any event, and are not the fault of the SCA user.

²⁷ Reply Comment of ARRS at 9.

²⁸ ARRS and other reading services would have the FCC prohibit stations from charging for any overhead costs not occasioned *exclusively* by the reading service's use of their subcarrier.

²⁹ Joint Commenters at 6.

³⁰ WCRS filed a complaint against WKSU-FM at Kent State University concerning these charges. This complaint, which was filed on April 10, 1985, remained pending, awaiting the resolution of the cost issues in this proceeding, until September 6, 1988, when the Commission received a letter from WCRS stating its intention to withdraw its complaint due to the resolution of differences between itself and WKSU-FM. In that letter, WCRS also withdrew its comments of June 16, 1987, and its council's reply dated, July 8, 1985.

³¹ Included were percentages of the salaries of the Director of Engineering (5% or 1,276.00), the Operations Coordinator (3% or 662.00), the Business Manager (1% or 197.00), the Secretary (.5% or 86.00), and the Board Operator (33 1/3% or 6,552.00).

³² Comments of Written Communications Reading Service (WCRS) at 4-19.

³³ Reply Comments of WKSU-Kent State at 4.

³⁴ See Comments of the West Virginia Radio Reading Service at 7.

³⁵ Reply Comments of WVEBA at 3-4.

³⁶ WVEBA charges WVRRS the same price that it charges other non-profit groups for the use of its facilities. These charges are based on fixed charges that it established for use of its microwave system. WVEBA argues that WVRRS is not obliged to use its microwave system but can use telephone company lines to deliver the reading service's subcarrier signal.

³⁷ Precise guidelines were suggested in the following areas: the actual cost bases for pricing, the frequency with which such bases should be recalculated, allowable methods for allocating costs of jointly and concurrently operated facilities and allowable methods for calculating cost overhead rates. See Comments of CPB at 7-8.

³⁸ A CPB survey conducted in connection with this proceeding demonstrates that many stations offer their subcarriers to independent groups at no charge. Of the 295 public radio stations that responded to CPB's survey, 83 reported that they use one or more subcarrier channels for reading services. Of these 83 stations, 32 operate their own reading services, and 21 offer their facilities to independent groups at no charge. CPB Comments at 4-5. Although we are providing cost guidelines in this *Policy Statement*, we wish to emphasize that a public station is not required to charge a reading service for the use of its subcarrier or any ancillary services it provides.

³⁹ Ancillary services are not services that must be provided by the station as a consequence of providing the subcarrier. Rather, ancillary services are additional services that the station and the radio reading service agree will be provided, even though the radio reading service could use the subcarrier without using these added services. Given the non-essential nature of these ancillary services, FCC guidelines in this area are inappropriate and whatever steps the parties decide to take to provide such services is purely within their discretion.

⁴⁰ In former Section 73.593, several noncommercial educational uses were permitted, including programs for the aged, ethnic minorities, and professional groups. See 47 C.F.R. § 73.593 (1981).

⁴¹ 47 C.F.R. § 73.593.

⁴² This *Policy Statement* supercedes the Bureau letter of December 3, 1984.

⁴³ This might include, e.g., a station engineer who verifies the reliability of the technical installations, including the subcarrier's operation. Under these circumstances, a portion of the engineer's salary may be reasonably allocated to reading service subcarrier usage. Similarly, rent, administration, management and other appropriate costs attributable to reading service can be recovered if justified and segregable from other fixed overhead costs.

⁴⁴ See n. 14, *supra*.

⁴⁵ See n. 38 *supra*.