

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

MM Docket No. 86-406

In the Matter of

Amendment of Sections 73.1125
and 73.1130 of the Commission's
Rules, the Main Studio and Program
Origination Rules for Radio and
Television Broadcast Stations RM-5480

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: July 11, 1988; Released: August 17, 1988

By the Commission:

INTRODUCTION

1. On April 16, 1987, the Commission adopted its *Report and Order* in the above-captioned proceeding, amending the main studio rules governing television and radio broadcast stations.¹ In the *Report and Order*, the Commission revised the main studio rules to conform their requirements to broadcast station operations in the current marketplace and regulatory environment. Specifically, the Commission amended the main studio location rule to permit broadcast stations to locate their main studios outside their communities of license at any point within their principal community ("city grade") contours,² and eliminated the station program origination rule in its entirety.³ However, to preserve the public's accessibility to the station's public file, the Commission amended its public inspection rules to provide that the licensee maintain the file within its station's community of license.⁴ At the suggestion of numerous parties commenting on the *Notice* in this proceeding,⁵ the Commission also added a requirement that stations maintain a local or toll-free telephone number if community residents will incur toll charges in telephoning the station.

2. Now before the Commission for its consideration are seven petitions requesting reconsideration and clarification of this decision.⁶ The petitions generally raise five issues: (1) whether the Commission should modify its requirement that every station locate its public inspection file in the community of license and maintain a local or toll-free number if community residents would incur toll charges in telephoning the station; (2) whether the main studio has a function in light of the Commission's elimination of the program origination rule and, if so, what is the function and how is main studio defined; (3) whether the Commission should apply the main studio rule to non-commercial educational stations; (4) whether the Commission should modify the main studio location standard; and (5) whether clarification of the principal community con-

tour standard in the main studio location rule is necessary. The positions of the parties and the Commission's decision on these issues is discussed in detail below.

DISCUSSION

A. Public File and Local / Toll - Free Telephone Requirements

3. The first issue raised by petitioners is whether the Commission should modify its new requirements that every station locate its public inspection file in the community of license and maintain a local or toll-free number if community residents would incur toll charges in telephoning the station. At the request of several petitioners,⁷ the Commission granted a limited stay of the revised public inspection file rules on July 16, 1987 to permit those stations that kept their public files outside the community of license, either at the AM transmitter main studio site or at a main studio location authorized by a previous rule waiver, to continue to maintain their public files at those locations pending a decision on this reconsideration.⁸

4. Under the former public file rules, a station was required to maintain the public inspection file at its main studio or any accessible place in the community of license.⁹ Under certain exceptions to the main studio location rule, stations could locate their main studio, and thus their public file, outside the community of license.¹⁰ In this proceeding the Commission relaxed the main studio location rule to permit a station to locate its main studio outside its community of license.¹¹ At the same time, the Commission amended its public file rules to require that a station locate its public inspection file only in the community of license.¹² The Commission also required a station located outside the community of license to maintain a local or toll-free number if community residents would incur toll charges in telephoning the station.¹³

5. Five of the seven petitioners and one commenter objected to the Commission's requirement that stations maintain a public file in the community of license. Petitioners urge modifications of the public file rule ranging from deleting the new requirement to grandfathering licensees that maintained their files outside the community of license on the effective date of the new rules.

6. Petitioners The National Association of Broadcasters (NAB), the Arkansas Educational Television Commission, *et al.* (Arkansas Commission, *et al.*),¹⁴ Greater Media, Inc. (Greater Media) and joint commenters WCKG, Inc. and WVEC Television, Inc. (WCKG) urge the Commission to return to its former public file rules under which a station could locate its file at its main studio, irrespective of the studio's location. The petitioners argue generally that the Commission's new public file rules are more costly to the stations, and disserve, rather than serve the public interest. They assert that one of the same rationales that prompted the Commission to relax the main studio rule -- reduced travel time due to improved transportation systems that may make a studio outside the community as accessible to residents as a facility within the community -- similarly supports permitting a station to maintain its public file at its main studio.

7. They further argue that the Commission's goal of reducing the stations' costs and creating efficiencies will be frustrated because of the costs and burdens involved in maintaining public files at a separate location.¹⁵ In addition, petitioners and commenters variously argue (1) that

members of the public expect the files to be located at the main studio, and will be confused by a separate location; (2) that licensees will have to rely on third parties to maintain the files, who can easily misplace files, and are unable to answer the public's questions regarding the files; (3) that location of the files outside the main studio will inhibit the public from discussing information in the files with the management or may require the public to travel to two different locations to inspect the files and discuss them with management, and (4) that licensees will have problems keeping the files current.

8. If the Commission maintains its amended public file rules, NAB, Pillar of Fire (Pillar), and Knight Communications Corp., Knight Radio, Inc. and Quality Radio Corp. (Knight) urge the Commission to grandfather the location of all existing public files as of the effective date of the new rule. Under this grandfather provision, all licensees who were previously authorized to locate main studios, including their public files, outside the community of license would be permitted to continue to maintain the public files at their existing location.

9. In support of the grandfather provision, petitioners argue that (1) the new rule will confuse and inconvenience members of the public who are accustomed to inspecting the files at the main studio; (2) relocation of the files will be burdensome and costly for the licensees who have traditionally relied on the former rule to maintain their public files at the main studio; and (3) the rule as it stands will prompt thousands of stations to seek waivers of the rule, imposing a tremendous burden on Commission resources.¹⁶ Moreover, petitioners argue that it is difficult to reconcile the new public file location requirement with the rationale underlying the amendment of the main studio location rule. In this regard, Pillar argues that the Commission "seemingly ignored its recognition of modern accessibility," which supported the decision to relax the main studio location rule, in adopting the new requirement.

10. One petitioner, Arkansas Commission, *et al.*, also requests the Commission to eliminate the requirement that each broadcast station maintain a local or toll-free telephone number, asserting that it is costly and not sufficiently justified.

11. *Analysis.* We have carefully considered petitioners' arguments and we have further evaluated our new public file requirement. We have decided to maintain the public file requirement as adopted in the *Report and Order*, but we will grandfather the location of public files established outside of the community of license pursuant to exception or waiver provisions in former Section 73.1125 (a) prior to the effective date of the *Report and Order*.

12. Petitioners have not persuaded us to modify substantially or to eliminate altogether our requirement that the public file be maintained in the community of license. Contrary to petitioners' assertions, this requirement is not inconsistent with the Commission's relaxation of the main studio location rule. We determined that public files must be maintained in the station's community of license to "[t]o assure meaningful public participation in our licensing process."¹⁷ Notwithstanding the Commission's deregulatory measures, public participation continues to play a significant role in the licensing process. For example, although we eliminated extensive applications for license renewal, we continue to rely on public participation in the renewal process, among other enforcement tools, to insure licensee compliance with Commission rules and policies.¹⁸

Similarly, although we eliminated formal ascertainment requirements and quantitative programming guidelines, we still rely on the public to insure that licensees fulfill their obligation of providing programming responsive to the needs and interests of their community of license.¹⁹ The information needed by the public to monitor licensees' performance is kept in the public files.²⁰ Thus, it is important that the public files be physically accessible to all the residents of the station's community of license.

13. Moreover, the question of where the public file should be located raises different issues than the matter of the accessibility of the main studio. In our *Report and Order*, we emphasized that location of the main studio in the community of license was no longer necessary to assure that the station was accessible. A significant factor in this determination was evidence that community residents generally communicate with a station by telephone or mail, neither of which is dependent on location. In contrast, a member of the community cannot review the public files by phone or mail, but must go to where the files are located. Thus, physical accessibility to the files is more important than physical accessibility to the main studio. We therefore believe that we should maintain the requirement that public files be located in the community of license.

14. We recognize that this requirement may impose additional costs and administrative burdens on licensees who chose to locate their main studios outside the community of license. We continue to believe, however, that we must maintain optimal accessibility to the public file within the community of license.

15. For these same reasons, we affirm our requirement that licensees who are located outside the community of license provide a local or toll-free number if community residents would incur charges in telephoning the station. Central to our determination that a main studio outside the community is accessible is the fact that it is reachable by phone. The particular hardships suffered by the single petitioner who raised this issue are best addressed in the context of a waiver application to the Commission.

16. We are persuaded, however, that it is in the public interest to allow licensees who have maintained public files at main studios outside the community of license, pursuant to an exception or waiver under former Section 73.1125(a), to keep their files at their main studios. For these licensees, we had previously determined that it was appropriate, under given circumstances, to permit them to locate main studios, along with public files, outside the community of license. The same reasons that prompted us to allow licensees to maintain main studios and public files outside the community of license prior to amendment of the rule apply equally under the amended rule. The amendment to the main studio rule, which was designed to relax the location requirement, should not operate to impose more stringent requirements on licensees we previously had determined merited relief from the rule.

17. Significantly, accessibility of the main studio (as well as the public files) was a consideration in formulating the exceptions to, and granting waivers from the former rule. Under the AM transmitter site exception (former Section 73.1125(a)), AM stations whose main studio was co-located with its transmitter, and commonly-owned AM/FM stations serving the same community whose main studios were co-located with the AM transmitter could be located outside the community of license.²¹ This exception rested on the determination that "technical considerations

governing AM transmitter site selection usually place such sites in close proximity to the community of license."²² Similarly, accessibility was a factor generally considered by the Commission in determining whether waivers of the main studio location requirement were in the public interest under former Section 73.1125(a)(3).²³ Thus, main studios operating under exceptions to or waivers from the former rule were generally located immediately near the community of license or at a site deemed readily accessible to residents of the community by the Commission.

18. For these reasons, allowing licensees to keep their public files at these studios will address petitioners' concerns without offending the Commission's goal of affording community residents access to the files. We will therefore modify amended Sections 73.3526 and 73.3527 of the Rules to allow stations that have been authorized to locate their main studios outside of the community of license under Section 73.1125(a) prior to the effective date of the *Report and Order* to continue to locate their public inspection files at the main studio.

B. Main Studio Function

19. The second issue presented is whether the main studio has a function in light of the Commission's elimination of the program origination rule and, if so, what is the role of the main studio and how is it defined.

20. In the *Report and Order*, the Commission relaxed its main studio rule to permit a station to locate its main studio outside its community of license at any point within its principal community contour.²⁴ At the same time the Commission eliminated its program origination rule, which required a station to originate a minimum percentage of its programming from its main studio or other points within its community of license.²⁵ The Commission reasoned in part that, due to changes in broadcast technology and marketplace demands, the main studio no longer plays a central role in producing the station's programming. Consequently, the Commission determined that the location of the main studio within the community of license does not necessarily promote better programming.

21. Petitioners Arkansas Commission, *et al.* and Diocese Telecommunications Corporation (DTC), along with commenters Boothbay Harbor Communications, Inc. (BHC), assert that the elimination of the program origination rule makes the role of the main studio unclear. Arkansas Commission, *et al.* specifically assert that since no programming need be originated in the main studio, the main studio need be little more than a local office. They argue further that, "[i]n the absence of an articulated role for the main studio, the significance placed on the location of the main studio is without basis."²⁶ Accordingly, Arkansas Commission, *et al.* urge the Commission to eliminate the main studio rule altogether, at least for noncommercial educational stations.

22. Alternatively, Arkansas Commission, *et al.*, along with Central Valley Communications, Inc. (CVC) and BHC, stress the need for clarification of the role and definition of a main studio. CVC urges the Commission to set minimum requirements for a main studio. BHC asks the Commission for a clear statement as to the continued need, if any, for a licensee to originate programming from its main studio, or to maintain the capability to originate programming.

23. *Analysis.* Contrary to petitioners' assertions, we did not negate the role of the main studio when we eliminated the program origination requirement. While program origination has traditionally been a key function of the main studio,²⁷ it has not been its sole function. As we repeatedly stressed in our *Report and Order* in this proceeding, the main studio is still expected to facilitate the key function of serving the needs and interests of the residents of the station's community of license. We specifically rejected proposals to eliminate the main studio rule or adopt a "service area location standard" which would have permitted some stations to locate their main studio at a distance of over 100 miles from the community of license. Instead, we adopted a location standard for the main studio that would extend additional flexibility to broadcast stations "without affecting the station's ability to meet its local service obligations."²⁸ In sum, it is very clear from the *Report and Order* that a primary function of the main studio was and continues to be, even in the absence of the program origination requirement, to serve the needs and interests of the residents of its community of license. We therefore reject petitioners' request on reconsideration that we eliminate the main studio rule for the same reasons we refused to eliminate the rule in the *Report and Order*.

24. In response to petitioners' request that the Commission clarify the definition of and requirements for a main studio, we offer the following clarification. A station must maintain a main studio which has the capability adequately to meet its function, as discussed above, of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence.²⁹ Maintenance of production and transmission facilities and program transmission capability will allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio.³⁰ A meaningful management and staff presence will help expose stations to community activities, help them identify community needs and interests and thereby meet their community service requirements.³¹ The term "main studio" continues to designate a broadcast station's only studio when no auxiliary studio is maintained. If a licensee has two or more studios that meet the applicable criteria, it may select one (within its community contour) to designate as its main studio.

C. Application of the Main Studio Rule to Noncommercial Educational Stations

25. The third issue raised by petitioners is whether the Commission should apply the amended main studio rule to noncommercial educational stations.

26. In the *Report and Order*, we stated that the main studio requirements "have applied, and will continue to apply, absent waiver to noncommercial educational stations."³² Petitioners Arkansas Commission, *et al.*, noncommercial radio and television licensees, ask us to reconsider this decision to apply the amended main studio location rule to public broadcasters. Citing Commission decisions from 1945, petitioners maintain that the Commission has never imposed main studio and program origination requirements on noncommercial educational FM stations, and that the Commission's application of these requirements to noncommercial television stations has been

"inconsistent, at best."³³ They contend that "persuasive reasons arising out of the nature and mission of public broadcasting" explain "the Commission's previous forbearance in this area," and that these same reasons "require the Commission to reconsider the *Report and Order*."³⁴ Specifically, they assert that the highest quality and most responsive educational programming can generally be provided to an area by a station operating as part of a state or regional network without its main studio. Petitioners argue that through satellite stations in the areas, they increase the reach of public television and radio, and achieve economies of scale that permit them to enhance programming. They contend that if they were required to operate independently equipped and staffed stations at these satellite locations, as required under our main studio location rule, areas would go unserved and resources would be directed away from high quality programming.

27. In the event we determine that the main studio rule applies to noncommercial educational stations, Arkansas Commission *et al.* request us to confirm the validity of waivers obtained by these stations under the former main studio location rule to operate state or regional public television and radio network stations using satellite stations. Petitioners also urge us not to require stations operating under these waivers to create new public inspection files or set up costly toll-free telephone systems. Petitioners argue that such requirements would increase the burdens on currently operating network and satellite stations.

28. *Analysis.* We do not agree with Arkansas Commission, *et al.* that the public interest mandates a blanket exception to the main studio location rule for public broadcasters. Contrary to petitioners' assertions, the Commission had, prior to this proceeding, applied the main studio location requirement to all noncommercial educational stations. In 1979, we consolidated the main studio location requirements governing broadcast stations and placed them in Section 73.1125, a rule that by its terms is applicable to all stations, commercial and noncommercial.³⁵

29. The thrust of petitioners' argument is that in consolidating the main studio requirements into Section 73.1125 the Commission applied these requirements to noncommercial educational FM stations for the first time without proper notice and comment Rule Making. Contrary to this assertion, the Commission has exercised regulatory oversight over the location of main studios of noncommercial educational FM stations since 1947, when the Commission adopted regulations governing the noncommercial educational FM service.³⁶ In any event, there is no question that the Commission affirmed the imposition of the main studio requirement on all noncommercial educational stations in its *Report and Order* in this proceeding.

30. To the extent that there are policy considerations favoring exempting noncommercial educational stations from the main studio location requirement, as petitioners argue, we have traditionally addressed these on a case-by-case basis through the waiver process. In the past, we have recognized the benefits of centralized operations for noncommercial educational stations, given the limited funding available to these stations, and we have granted waivers to state and regional public television and radio networks to operate "satellite" stations that do not necessarily meet the requirements of a main studio.³⁷ These stations, however, have not been permitted to ignore local

service obligations,³⁸ and waivers generally have been granted only upon a showing that the local community would be served. Thus, all waivers issued prior to the *Report and Order* in this proceeding, whether under the waiver provision of the former main studio rule (Section 73.1125 (a)(3)) or pursuant to the original grant of a license, are valid and will remain in effect as long as the stations continue to operate under the terms of the waiver. Moreover, noncommercial educational stations will continue to be able to seek waivers from the main studio location rule either in the permit applications, or under the same "good cause" waiver standard applied under the previous rules.³⁹

31. Finally, for reasons similar to those discussed in paragraph 16, noncommercial educational stations, operating under waivers in effect on the date of the *Report and Order* in this proceeding will not be required to create new public inspection files within the community of license. However, absent a new waiver, such stations will be subject to the local/toll-free telephone number requirement.

D. Modification of the Main Studio Location Standard

32. The fourth issue presented by petitioners on reconsideration is whether the Commission should modify the main studio location standard (1) to equalize its impact on the different classes of FM stations and/or (2) to relax the impact of the rule on noncommercial educational FM stations.

33. As discussed above, we amended the main studio location rule in the *Report and Order* to require that all broadcast stations, absent waiver or exception, locate their main studios within their principal community contours.

34. CVC asks the Commission to revise this standard to permit stations to locate their main studios within 20 miles of their respective transmitters or within the principal community contour, whichever is greater.⁴⁰ CVC asserts that the present rule discriminates against these stations because it allows Class B and Class C FM stations greater discretion in locating their studios than Class A FM stations. CVC notes that the principal community contour of Class A stations extends for approximately 8 miles from the transmitter site, whereas the same contour for Class B stations is approximately 20 miles. Thus, the modification requested by CVC would essentially equalize the impact of the rule on Class A and B stations. CVC maintains that its proposal will further the objectives underlying relaxation of the main studio rule by permitting Class A FM stations "to achieve efficiencies while still serving their markets."⁴¹

35. DTC asks the Commission to revise the location standard for noncommercial educational FM stations to permit these stations to locate their studios anywhere within their 60 dbu contours, rather than the 70 dbu contour applicable to such stations under the new rule.⁴² DTC asserts, in the alternative, that if the Commission is unwilling to accept this 60 dbu contour for the more powerful stations, it should at least allow small Class A noncommercial educational FM stations to locate their main studio within the 60 dbu contour. DTC asserts that the present rule is not sufficiently flexible to permit small noncommercial educational FM stations to benefit from relaxation of the main studio location rule. Furthermore DTC notes that the difference between a station's 70 dbu contour and its 60 dbu contour is "relatively minor,"⁴³ and "should not result in the remote studio location separa-

tions which the Commission feared."⁴⁴ Finally, DTC reasons that this flexibility will not offend the Commission's goals because noncommercial educational stations, which derive their funding from community donations, cannot ignore their community service roles.

36. *Analysis.* Petitioners have not persuaded us to alter our previous determination that the use of the principal community contour as the main studio location standard for all broadcast stations strikes the appropriate balance.

37. In the *Report and Order*, we recognized that the principal community contour standard would afford some licensees greater flexibility than others. We adopted that contour standard, nevertheless, because its use best balances our objectives. As we noted in the *Report and Order*, it will permit co-location of the main studio and transmitter in all cases, while at the same time ensuring that the main studio is located in the primary reception area of the station.⁴⁵ Petitioners may be correct in asserting that, in their particular cases, they could operate their main studios beyond the principal community contour standard and still meet their local service obligations. However, this does not alter our determination that the balance we have struck is appropriate in most cases. If the rule creates inequities in particular situations, the appropriate recourse, rather than modifying the rule to fit particular facts, is for the station to seek a waiver. The "good cause" waiver standard is retained in the amended rule.⁴⁶

38. In sum, all stations, absent waiver or exception, will continue to be required to locate their main studios within the principal community contour.

E. Clarification of the Principal Community Contour Standard

39. The final issue raised by the petitioners is whether clarification of the principal community contour standard, as used in the amended main studio location rule, is necessary.

40. In its *Report and Order*, the Commission stated that the principal community contours for AM, FM and television broadcast stations are found in Sections 73.24(j), 73.315(a) and 73.685(a), respectively. The Commission noted that the daytime contour requirement of Section 73.24(j) will be applicable to AM stations, and the contour in Section 73.315(a) will be applicable to noncommercial educational FM stations.⁴⁷

41. NAB asks the Commission to define the principal community contour standard with greater precision by clarifying whether the main studio must be located within a station's actual or its predicted principal community or "city grade" contour. NAB notes that a station's actual contour may be farther from the station's transmitter than its predicted contour, or vice versa. In clarifying the definition, NAB urges the Commission to permit licensees to choose the contour, either actual or predicted, which gives them the greater flexibility in locating their main studio. NAB asserts that this would be consistent with the Commission's decision to amend the main studio location rule to accord licensees greater flexibility in locating their main studios.

42. *Analysis.* In response to NAB's request, we clarify below the definition of principal community contour as it applies in our amended main studio rule.

43. The Commission's rules provide that the principal community ("city grade") contour is the contour that encompasses the minimum field strength a station is re-

quired to place over its community of license. Every station in the AM, commercial FM, and television broadcast services is required to demonstrate compliance with a minimum field strength requirement in its initial construction permit application or application for change in facilities affecting that contour.⁴⁸ Generally, stations plot only a predicted field strength contour, determined in accordance with our rules, to demonstrate compliance. For these stations, this predicted contour is the applicable principal community contour under our rules.

44. For AM stations, it is possible to establish a principal community contour based on actual, rather than predicted field strength.⁴⁹ If a licensee of an AM station uses actual field strength to establish the station's community contour in its initial construction permit application or application for change of facilities, a contour based on actual measurements is the station's applicable contour under our rules. Unlike AM service, there is no method for locating a principal community contour by actual measurements for FM or television service.⁵⁰ Thus the principal community contour for FM (commercial and noncommercial educational) and television stations is based on the predicted field strength in all cases.⁵¹

45. Since a principal community contour for AM stations can be defined by actual or predicted field strength, a licensee of an AM station may locate its main studio within a contour established by either actual or predicted measurements. If an AM licensee used a predicted contour in its initial construction permit application, but wishes to rely on actual measurements in relocating a main studio under the amended rule, the licensee must comply with Section 73.186 of our rules. Since there is no method for locating a principal community contour based on actual measurements for FM (commercial and noncommercial educational) and television stations, the applicable contour for locating a main studio of an FM or television station under the amended rule is the predicted contour in all cases.

46. This clarification is consistent with our rules and allows licensees the greatest flexibility possible in locating main studios given the constraints in establishing a principal community contour for FM and television services based on actual measurements.

CONCLUSION

47. After carefully reviewing the petitions for reconsideration and clarification, we believe the public interest is best served by implementing the main studio and public inspection file requirements, as adopted in the *Report and Order* and modified herein.

PROCEDURAL MATTERS

48. The requirements contained in this *Memorandum Opinion and Order* have been analyzed with respect to the Paperwork Reduction Act of 1980⁵² 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.

49. The Secretary shall cause a copy of this *Memorandum Opinion and Order*, including the Final Regulatory Flexibility Analysis which is set forth in Appendix B, to be sent to the Chief Counsel for Advocacy of the Small

Business Administration, in accordance with Section 604 of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. Sections 601-612 (1982)).

50. Accordingly, IT IS ORDERED, THAT Part 73 of the Commission's Rules and Regulations is amended as described above and as set forth in Appendix A below.

51. IT IS FURTHER ORDERED, THAT the petitions for reconsideration and/or clarification ARE GRANTED to the extent indicated herein, and in all other respects, ARE DENIED.

52. IT IS FURTHER ORDERED, THAT pursuant to the Administrative Procedure Act, 5 U.S.C. Section 553(d)(1), the amendments to the Commission's Rules and Regulations shall become immediately effective upon publication in the *Federal Register*.

53. IT IS FURTHER ORDERED, THAT the limited stay of the revised public inspection file rules adopted on July 16, 1987 IS RESCINDED.

54. IT IS FURTHER ORDERED, THAT this proceeding IS TERMINATED.

55. Authority for the action taken herein is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, and Section 1.429 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III
Acting Secretary

APPENDIX A

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3526 is amended by revising paragraph (d) to read as follows:

Section 73.3526 Local public inspection file of commercial stations.

* * * * *

(d) *Location of records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed or where such studio is located outside of the community of license pursuant to authorization granted under Section 73.1125(a) of the rules prior to July 16, 1987, or at any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed. The file shall be available for public inspection at any time during regular business hours.

* * * * *

3. Section 73.3527 is amended by revising paragraph (d) to read as follows:

Section 73.3527 Local public inspection file of noncommercial educational stations.

(d) *Location of records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed or where such studio is located outside of the community of license pursuant to authorization granted under Section 73.1125(a) of the rules prior to July 16, 1987, or at any accessible place (such as a public registry for documents or an attorney's office) in the community to which the station is or is proposed to be licensed. The file shall be available for public inspection at any time during regular business hours.

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APPENDIX B

Final Regulatory Flexibility Analysis

1. *Need for and Purpose of this Action.* In the *Report and Order* in this proceeding, the Commission amended its rules to: (1) permit all broadcast stations to locate their main studios within their principal community contours; (2) allow broadcast stations to originate programming from any location; and (3) require broadcast stations to maintain a local or toll-free telephone number and to keep their public inspection files in their communities of license. The Commission concluded therein that these amendments would afford broadcasters more flexibility and permit them to realize greater efficiencies without altering current local service obligations or affecting a licensee's ability to meet those obligations.

In the attached *Memorandum Opinion and Order*, the Commission reaffirmed the amendments adopted in the *Report and Order*, but grandfathered the location of public inspection files that were maintained by stations outside the community of license prior to the effective date of the *Report and Order*. The Commission concluded that this refinement of the order is consistent with the objectives of the earlier decision and will reduce the administrative burden on stations that had located public files outside the community of license prior to the *Report and Order*.

2. *Issues Raised in Response to the Initial Regulatory Flexibility Analysis.* No party to this proceeding raised any issue specifically in response to the Initial Regulatory Flexibility Analysis contained in the *Notice of Proposed Rule Making* or the Final Regulatory Flexibility Analysis contained in the *Report and Order*.

3. *Significant Alternatives Considered and Rejected.* As noted in the Regulatory Flexibility Analysis in the *Report and Order*, the Commission carefully considered the significant alternatives presented in this proceeding before reaching its final determination to revise the rules as adopted therein. The Commission continues to believe

that these amendments, as refined in the *Memorandum Opinion and Order* on reconsideration, provide relief to broadcasters consistent with Commission objectives.

FOOTNOTES

¹ See *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, Report and Order* in MM Docket 86-406, FCC 87-137, 2 FCC Rcd 3215 (1987) [hereinafter *Report and Order*]. The amended rules are published at *Broadcast Services, Amendment of the Main Studio Location and Program Origination Rules for Radio and Television Broadcast Stations*, 52 FR 21684 (June 9, 1987) (codified at 47 C.F.R. Parts 0 & 73).

² See 52 FR 21684 (June 4, 1987) (codified at 47 C.F.R. § 73.1125 (1987)).

³ The former program origination rule was found in Section 73.1130. That rule required that every broadcast station originate more than 50 percent of its non-network programs from its main studio or other points within its community of license.

⁴ See 52 FR 21684 (June 9, 1987) (codified at 47 C.F.R. §§ 73.3526(d) and 73.3527(d) (1987)). In an order adopted on July 16, 1987, the Commission granted a limited stay of the revised public inspection file rules. See *Memorandum Opinion and Order*, FCC 87-248 (released July 17, 1987), summarized, 52 FR 28825 (August 4, 1987).

⁵ See, e.g., Comments of the National Association of Broadcasters (NAB) at 2; Comments of Brown Broadcasting Company at 5; Comments of the Pappas Telecasting Companies at 3; Comments of Western Broadcasting Corporation of Puerto Rico at 6; Comments of May & Dunne, Chartered at 7; and Comments of The Ohio University, The Miami University, Northern Michigan University, Washington State University, and the Ohio Educational Broadcasting Network at 5.

⁶ Petitions for reconsideration were filed by: (1) The Arkansas Educational Television Commission, filed jointly with the Iowa Public Broadcasting Board, Lehigh Valley Public Telecommunications Corporation, Nebraska Educational Telecommunications Commission, South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board, University of Maine System, West Central Illinois Educational Telecommunications Corporation, and WSKG Public Telecommunications Council (Arkansas Commission, *et al.*); (2) Central Valley Communications, Inc. (CVC); (3) Diocesan Telecommunications Corporation, Inc. (DTC); (4) Greater Media, Inc. (Greater Media); (5) Knight Communications Corp., filed jointly with Knight Radio, Inc. and Quality Radio Corp. (Knight); (6) NAB; and (7) Pillar of Fire (Pillar). In addition, the Commission received comments in support of the petitions from Boothbay Harbor Communications, Inc. (BHC) and from WCKG, Inc. and WVEC Television, Inc. (WCKG). No pleadings were filed in opposition to the petitions.

⁷ Requests for a stay of the revised rules were filed by the NAB and Greater Media, Inc. A motion was also filed by Knight requesting a limited stay of the same rules. Although the Commission found that the petitioners had not made the requisite showing to warrant grant of the stay request under the applicable standard, the Commission in its own discretion granted a limited stay of the revised public inspection rules.

⁸ See *Memorandum Opinion and Order*, FCC 87-248 (released July 17, 1987), summarized, 52 FR 28825 (August 4, 1987).

⁹ See former Sections 73.3526(d) and 73.3527(d), 47 C.F.R. §§ 73.3526(d) and 73.3527(d) (1986).

¹⁰ See former Section 73.1125(a), 47 C.F.R. § 73.1125(a) (1986).

¹¹ See *Report and Order*, 2 FCC Rcd at 3218, 3221-22.

¹² *Id.* at 3218, 3222.

¹³ *Id.*

¹⁴ See note 2 *supra*.

¹⁵ For example, Arkansas Commission, *et al.* note that the Nebraska Educational Telecommunications Commission estimates that it will cost \$12,000 annually to maintain separate files for its nine stations, a figure which includes duplication expenses and travel costs to upkeep the files on a monthly basis.

¹⁶ These specific concerns were raised by WCMS Radio Norfolk, Inc. (WCMS) in a request for waiver of the new requirement, a copy of which was submitted by WCMS for consideration in this proceeding. WCMS also asserts that relocation of the file from the main studio might result in less effective access because: (1) station personnel would not be available to answer questions; (2) the custodian of the file might be less diligent than station personnel in maintaining the file; and (3) the possible time delay in getting information to the file.

¹⁷ See *Report and Order*, 2 FCC Rcd at 3218.

¹⁸ See *Radio Broadcast Services: Revision of Applications for Renewal of License of Commercial and Noncommercial AM, FM, and Television Licensees*, 49 RR 2d 740, recon. denied, 87 FCC 2d 1127 (1981), *aff'd sub nom. Black Citizens for a Fair Media v. FCC*, 719 F.2d 407 (D.C. Cir. 1983).

¹⁹ See *Deregulation of Radio*, 84 FCC 2d 968, recon. denied in part, 87 FCC 2d 797 (1981), *aff'd in part and remanded in part sub nom. Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984), recon. denied, 104 FCC 2d 357 (1986), *aff'd in part and remanded in part sub nom. Action for Children's Television v. FCC*, 821 F.2d 741 (D.C. Cir. 1987).

²⁰ In the radio and television deregulation proceedings, the Commission implemented a new issues-programs list requirement. This record keeping requirement, which was refined during the proceedings, provides that a licensee, on a quarterly basis, must compile a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period and place that list in its local public inspection file. See *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983), *Deregulation of Radio*, 96 FCC 2d 930 (1984) (revising issues-programs list requirement), *remanded sub nom. Office of Communication of the United Church of Christ v. FCC*, 779 F.2d 702 (D.C. Cir. 1985); *Deregulation of Radio*, 104 FCC 2d 505 (1986) (revising issues-programs list requirement). The Commission has proposed conforming the issues-programs list requirement for noncommercial licensees to the requirement adopted for commercial stations. See *Revision of Section 73.3527(a)(7) relating to the Issues-programs List for Public Broadcasting Licensees*, 2 FCC Rcd 507 (1986).

²¹ See 47 C.F.R. § 73.1125(a)(1)-(a)(3) (1986).

²² *FM-TV Main Studio Moves*, 27 FCC 2d 851, 853 (1971).

²³ See, e.g., *Central Virginia Educational Television Corp.*, 49 RR 2d 435 (1981); *Jersey Cape Broadcasting Corp.*, 85 FCC 2d 654 (1981).

²⁴ See *Report and Order*, 2 FCC Rcd at 3218.

²⁵ *Id.* at 3218-19.

²⁶ Arkansas Commission, *et al.* Petition for Reconsideration at 10.

²⁷ The main studio rule was based in part on the premise that a studio's location in the community would foster responsive community-based programming. The program origination rule was adopted to complement the main studio requirement. It was premised on the notion that if a significant amount of program-

ming originated in studios located within a community, this would result in locally-oriented programming. *Report and Order*, 2 FCC Rcd at 3217- 19.

²⁸ *Id.* at 3214.

²⁹ See, e.g., *Pappas Telecasting of the Carolinas*, 60 RR 2d 1394, 1400 (1986). However, licensees who are operating main studios in a manner inconsistent with this definition pursuant to a waiver granted under *Arizona Communications Corp.*, 27 FCC 2d 283 (1971), commonly referred to as an *Arizona* prior to the *Report and Order*, are permitted to continue to operate their main studio in the manner authorized in the waiver. This exemption from the main studio rule applies as long as a licensee operates a main studio in the same location and pursuant to the conditions set forth in the waiver. Should a licensee change the location of a main studio covered by a waiver, the exemption no longer applies.

³⁰ *Report and Order*, 2 FCC Rcd at 3218.

³¹ *Id.*

³² *Id.* at 3224 n.10.

³³ Arkansas Commission's Petition for Reconsideration at 6.

³⁴ *Id.* at 6-7.

³⁵ See *Regulations and Rules Oversight of the AM, FM and TV Broadcast Rules*, 44 FR 69,933 (1979). *Accord Central Virginia Educational Television Corp.*, 49 RR 2d 435 (1981) (waiver of main studio location rule granted to noncommercial educational television station).

³⁶ See *Noncommercial Educational FM Broadcast Stations*, 12 FR 1369 (1947). Petitioners incorrectly contend that these rules did not contain a main studio requirement. Section 3.557 of these rules provided that a station must receive Commission authority, through formal application, for a "[c]hange in location of main studio, if it is specified to move the main studio to a different city from that specified in the license." 12 FR at 1332.

³⁷ See, e.g., *Nebraska Educational Television Commission*, 4 RR 2d 771 (1965).

³⁸ See, e.g., *Georgia State Board of Education*, 70 FCC 2d 948 (1979).

³⁹ See 52 FR 21685 (1987) (codified at 47 C.F.R. § 73.1125(a)(4) (1987)).

⁴⁰ CVC is the licensee of two radio stations, an AM station and a Class A FM station, licensed to communities approximately 16 miles apart. CVC maintains that the present rule does not permit it to co-locate its studios at the AM station's main studio site because the principal community contour of the FM station does not extend over that site.

⁴¹ CVC Petition for Reconsideration and/or Clarification at 4.

⁴² See *Report and Order* 2 FCC Rcd at 3224 n.10. DTC is the licensee of a noncommercial Class A educational station licensed to Robstown, Texas. It utilizes the studio of the Telecommunications Center of the Diocese of Corpus Christi located in Corpus Christi as an auxiliary studio. The Robstown station is an affiliate of the Catholic Telecommunications Network of America, (CTNA). CTNA programming is received at and distributed from the Corpus Christi facility. DTC asserts that it would achieve significant operating efficiencies if it could consolidate its operations at the Corpus Christi facility. DTC notes that such consolidation is not possible under the present rule because the Corpus Christi facility is 1.8 miles outside the Robstown station's 70 dbu contour, but would be possible if a 60 dbu contour standard were adopted.

⁴³ DTC notes that the 70 dbu and 60 dbu contours for the various class FM stations extend approximately to the following distances:

Class	70 dbu (miles)	60 dbu (miles)
A	8.43	15
B1	14.35	22.35
B and C2	20.21	32.21
C1	30.96	44.94
C	41.88	57.08

DTC Petition for Reconsideration at 5.

⁴⁴ DTC Petition for Reconsideration at 6. As an alternative, DTC suggests liberalizing the waiver process for educational FM stations. DTC states that a "waiver should be permitted if a station can show that by locating outside of its principal community contour, it will continue to offer reasonable access and provide programming to meet local needs." *Id.* at 9.

⁴⁵ See *Report and Order*, 2 FCC Rcd at 3218.

⁴⁶ See 52 FR 21685 (1987) (codified at 47 C.F.R. § 73.1125(a)(4) (1987)).

⁴⁷ See *Report and Order*, 2 FCC Rcd at 3224 n.10.

⁴⁸ See 47 C.F.R. Sections 73.24(j), 73.315(a) and 73.685(a) (1987).

⁴⁹ See 47 C.F.R. Sections 73.183 and 73.153 (1987).

⁵⁰ Although the rules permit FM stations to use field strength data to determine whether FM broadcast service encompasses specific communities, see 47 CFR Sections 73.314 and 73.315(d) (1987), an entire contour cannot be located under the rules by actual measurements.

⁵¹ As stated in the *Report and Order*, the principal community contour for noncommercial educational stations is that applicable to FM commercial stations. 2 FCC Rcd at 3224 n.10. DTC questions whether the reference in note 10 of the *Report and Order* to Section 73.315(a) to describe the contour to be used by noncommercial educational FM stations imposed a principal city coverage requirement. It did not. That reference was made solely to indicate the applicable main studio location standard for the stations.

⁵² Federal Paperwork Reduction Act, 44 U.S.C. Sections 3501-3520 (1984 Supp.).