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**Before the
FEDERAL COMMUNICATIONS COMMISSION RECEIVED
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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)
)
Amendment of Parts 73 and 74 of)
the Commission's rules to permit)
unattended operation of broadcast)
stations and to update broadcast)
station transmitter control and)
monitoring requirements.)

MM Docket No. 94-130

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**REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters ("NAB")¹ hereby responds to several of the parties who filed comments elicited by the NAB-requested Notice of Proposed Rule Making² ("Notice") in the above-captioned proceeding. In this rule making the Commission sought comment on the FCC's options in taking advantage of statutory law changes -- enacted three years

¹NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and broadcast networks.

²Notice of Proposed Rule Making in MM Docket No. 94-130, 59 Fed Reg. 64378 (Dec. 14, 1994). Several times NAB has urged the Commission to institute rulemaking proceedings that would consider the elimination of the "attended operation" requirement for broadcast stations. See, e.g. Comments of NAB in MM Docket Nos. 91-171 and 91-301, filed November 12, 1993; Letter to the Honorable James H. Quello, from NAB President and CEO Edward Fritts, dated Sept. 22, 1993; Letter to The Honorable Reed Hundt, from NAB President and CEO Edward Fritts, dated June 22, 1994.

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ago³ -- now allowing the Commission to dispense with the regulatory requirement for a licensed operator to be "on duty" and in charge of a broadcast station's technical facilities during all hours of station operation.

A. NAB's Initial Comments

In our initial comments,⁴ NAB recommended complete rescission of these "attended operation" and "licensed operator" requirements. NAB noted that the Commission now has the legal authority to rescind such rules and that, in an age of highly reliable broadcast equipment, the need for constant human monitoring of this gear no longer exists.

NAB also argued that the requirement that any attending operator (if a station opts to maintain attended operation) be "licensed" similarly is unnecessary, in light the overall station licensee obligation to ensure technical compliance. We also pointed out that the operator licensing scheme for broadcasting long ago dispensed with the requirement for the demonstration of the operator's technical proficiency in order to obtain the personal license.

Additionally, NAB underscored the fact that for smaller stations -- particularly radio stations -- operating on a limited budget, the cost savings that could be realized from: (1) the

³Telecommunications Authorization Act of 1992, Pub. L. No. 102-538, 106 Stat. 3533.

⁴See Comments of NAB in MM Docket No. 94-130, filed January 20, 1995.

adoption of unattended operation rules; and (2) the rescission of the rule that requires operators to hold an FCC license, could help stations reallocate resources that simply are wasted on compliance with these rules. Instead, NAB observed that these resources better can be spent on other broadcast operations, including the enhancement of stations' issue-responsive programming.

NAB noted that these proposed "unattended operation" rule changes would in no way diminish a broadcaster's responsibility to adequately monitor its transmitter, and to make any adjustments necessary to comply with FCC technical standards. These rule changes, NAB observed, also would not affect the requirement that stations offer locally-responsive programming, nor the current requirement that stations have a "staff and management" presence during regular business hours.

While our comments acknowledged that the Commission was seeking comment on retention of some reduced "attended operation" requirements for various station types and operating conditions (e.g. for AM directional antenna stations and facilities without Automatic Transmission System ("ATS") gear), NAB took the view that the benefits of unattended operation should extend to all broadcast facilities, under all circumstances. Moreover, we recommended that these "unattended operation" and "no restricted permit required" benefits be extended immediately, and not be

held hostage to the ultimate implementation of the new Emergency Alert System ("EAS").⁵

NAB's initial comments also offered guidance on various details of the FCC's proposed unattended operation regulatory scheme, including the drafting of various aspects of its proposed regulations.

B. NAB's Review of Other Parties' Initial Filings

NAB is pleased that the vast majority of initial comments filed in this proceeding adopted substantive positions congruent with the position taken by NAB in its own comments and in previous submissions we have made to the Commission.⁶

However, a few of the commenting parties have taken somewhat differing positions -- positions that are addressed in the instant NAB reply filing.

Here NAB again urges the Commission to adopt the most liberal approach possible to the removal of these regulations.

⁵See Report and Order and Further Notice of Proposed Rule Making in FO Docket Nos. 91-171 and 91-301, 59 Fed. Reg. 67090 (December 28, 1994).

⁶As one example, there is broad support for the concept of extending the three-minute non-compliance correction response time which was proposed by the Commission. (Notice, supra note 2, ¶ 29.) Almost every commenter (including NAB's Comments at 13) stated that three minutes was not sufficient time to respond to and assess a transmitter malfunction. The Association of Federal Communications Consulting Engineers ("AFCCE") proposes that the three-minute time limit pertain only to circumstances where significant interference would be caused. (See Comments of AFCCE, at 6.) NAB finds such an approach acceptable, so long as the Commission specifies what those interference circumstances would be.

Thus, to the extent that other parties have recommended a more conservative course, we urge FCC rejection of their views.

II. THE COMMISSION SHOULD NOT EXACT AN ENFORCEMENT PENALTY FROM THOSE STATIONS WISHING TO OPERATE UNATTENDED.

A number of commenters has suggested that there should be some type of quid pro quo for relieving stations of their duty operator requirements. They propose that the Commission increase its enforcement activities or create new restrictions or penalties for stations that, in the future, might fail to comply with the Commission's broadcast rules. These proposed new penalty/enforcement provisions ostensibly are intended to guard against irresponsible behavior on the part of licensees.

For example, the Moody Bible Institute of Chicago recommends that "the current fine and forfeitures levels should be twice the normally applicable level in the case of unattended stations."⁷ The Society of Broadcast Engineers, Inc. ("SBE") suggests that the Commission "send the right message" to licensees by maintaining proper funding of the Compliance and Information Bureau "so as to provide a realistic presence of random and complaint driven off-air monitoring"⁸ Similarly, Hallikainen & Friends believes that the Commission should increase station inspections, including the use of the

⁷See Comments of The Moody Bible Institute of Chicago at 3.

⁸See SBE Comments at 3.

earlier-proposed FCC Self Inspection Report in order to guard against station operation by unqualified operators.⁹

NAB believes that there is absolutely no reason to increase FCC enforcement activities simply because a station may choose to take advantage of the benefits of unattended operation. All of these commenters' views are based on the wholly unfounded presumption that broadcasters, in general, will become irresponsible and seek to violate the Commission's rules.

But, contrary to these allegations, it is NAB's strong belief that broadcasters will do all that they can to remain compliant with the Commission's technical regulations, regardless of whether they obtain the benefits offered by unattended operation. While there may be some stations that might stretch the concept of unattended operation to its regulatory limits, there is no reason for the Commission to penalize all broadcast licensees because of the potential future acts of a few "bad apples."

III. CONCLUSION

For the reasons stated herein, in NAB's initial comments and in our other comments and letters we previously have submitted to the Commission, NAB urges the FCC to eliminate the requirement for attended station operation -- as well as the related requirement that any person responsible for a station's technical operation file an application to the FCC in order to

⁹See Comments of Hallikainen & Friends, at 2.

obtain a Restricted Radiotelephone Operators Permit. Again, by taking these actions, the Commission will relieve broadcasters, and itself, from unnecessary and counterproductive burdens.

Respectfully submitted,

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CERTIFICATE OF SERVICE

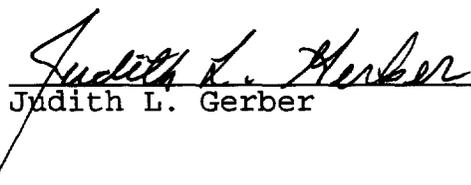
I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Reply Comments of the National Association of Broadcasters" in MM Docket No. 94-130 was sent, via first class mail, on this date, February 6, 1995, to the following:

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