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ANN BAVENDER*
 JAMES A. CASEY
 ANNE GOODWIN CRUMP*
 VINCENT J. CURTIS, JR.
 PAUL J. FELDMAN*
 ERIC FISHMAN*
 RICHARD HILDRETH
 EDWARD W. HUMMERS, JR.
 FRANK R. JAZZO
 CHARLES H. KENNEDY*
 KATHRYN A. KLEIMAN
 PATRICIA A. MAHONEY
 M. VERONICA PASTOR*
 GEORGE PETRUTSAS
 LEONARD R. RAISH
 JAMES P. RILEY
 MARVIN ROSENBERG
 KATHLEEN VICTORY*
 HOWARD M. WEISS
 *NOT ADMITTED IN VIRGINIA

FLETCHER, HEALD & HILDRETH, P.L.C.

ATTORNEYS AT LAW

11th FLOOR, 1300 NORTH 17th STREET
 ROSSLYN, VIRGINIA 22209

(703) 812-0400

TELECOPIER

(703) 812-0486

INTERNET

HILDRETH@ATTMAIL.COM

ROBERT L. HEALD
 (1958-1983)
 PAUL D.P. SPEARMAN
 (1936-1982)
 FRANK ROBERSON
 (1936-1961)
 RUSSELL ROWELL
 (1948-1977)

RETIRED
 EDWARD F. KENEHAN
 FRANK U. FLETCHER

CONSULTANT FOR INTERNATIONAL AND
 INTERGOVERNMENTAL AFFAIRS
 SHELTON J. KRYS
 U.S. AMBASSADOR (ret.)

OF COUNSEL
 EDWARD A. CAINE*

WRITER'S NUMBER
 (703) 812-

0426

March 15, 1995

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MAR 15 1995

BY HAND DELIVERY

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

Mr. William F. Caton
 Acting Secretary
 Federal Communications Commission
 1919 M Street, N.W., Room 222
 Washington, D.C. 20554

Dear Mr. Caton:

Transmitted herewith on behalf of Salem Communications Corporation are an original and four copies of its Petition for Rulemaking with regard to the Commission's Rule concerning public inspection files for broadcast stations (47 C.F.R. § 73.3526(a)).

Should any questions arise concerning this matter, please communicate with the undersigned.

Very truly yours,
 FLETCHER, HEALD & HILDRETH, P.L.C.



Anne Goodwin Crump
 Counsel for
 Salem Communications Corporation

Enclosures

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SUMMARY

Salem Communications Corporation ("Salem"), hereby respectfully submits its Petition for Rulemaking and requests amendment of the Commission's rule regarding public inspection files for broadcast stations (47 C.F.R. § 73.3526(a)) to allow these files to be kept at a station's main studio, regardless of whether that studio is located within the city limits of the station's community of license. In Salem's experience, the requirement that licensees maintain public inspection files in the community of license imposes significant burdens on licensees without providing counterbalancing benefits to the public.

In order to accommodate the special interests of the residents of the community of license who might wish to view the public file, Salem proposes that licensees be required to provide one of the following alternatives: (1) providing free transportation from the interested resident's home to the main studio upon request; (2) within 24 hours of receiving a request, delivering the public inspection file to a specified public location at an appointed time and permitting a reasonable amount of time for review; or (3) providing by mail a copy of specifically identified documents upon telephone request. These options would better serve the purpose of the public inspection file rule without creating the burdens, risks, and expenses associated with maintaining a public inspection file outside the main studio.

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MAR 15 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.3526(a))	MM DOCKET NO. 95- _____
Local Public Inspection File)	RM- _____

Directed to: The Commission

PETITION FOR RULEMAKING

Salem Communications Corporation ("Salem"), by its attorneys, hereby respectfully submits its Petition for Rulemaking and requests amendment of the Commission's rule regarding public inspection files for broadcast stations (47 C.F.R. § 73.3526(a)) to allow these files to be kept at a station's main studio, regardless of whether that studio is located within the city limits of the station's community of license. With respect thereto, the following is submitted:

INTRODUCTION

1. Subsidiaries and affiliates of Salem are the licensees of 27 radio stations in 23 communities throughout the United States. Twelve of these stations maintain public inspection files away from their main studio locations. In its experience, Salem has discovered that the Commission's rule requiring each licensee to maintain a public inspection file within the station's community of license, regardless of where the station's main studio may be located, does not serve the stated purpose of the rule and, in many

instances, can be counterproductive. The location of a station's public file outside its main studio is not generally known to community residents. Moreover, when the file is maintained off the licensee's premises, it is subject to either deliberate tampering or inadvertent loss of documents. In addition, a public file location within a community of license is not required to be particularly convenient or attractive, and, in the interest of controlling expenses, less convenient and less attractive locations within a community may often be selected. Thus, while maintenance of a separate public file is expensive for the licensee, that expense is not justified by increased benefit to the public.

2. Accordingly, Salem hereby proposes that broadcast stations also be allowed to maintain their local public inspection files at their main studios, within each station's city grade contour. Salem further proposes that special rule provisions be adopted for the benefit of residents of the community of license who might wish to view the public inspection file but who would be unwilling or unable to come to the main studio on their own. These accommodations could include: (1) providing free transportation from the interested resident's home to the main studio upon request; (2) within 24 hours of receiving a request, delivering the public inspection file to a specified public location at an appointed time and permitting a reasonable amount of time for review; or (3) providing by mail a copy of specifically identified documents upon telephone request. These options would better serve the purpose of the public inspection file rule without creating the

burdens, risks, and expenses associated with maintaining a public inspection file outside the main studio.

ARGUMENT

3. The Commission first required broadcast stations to keep local public inspection files in 1965. Records of Broadcast Licensees, 4 R.R.2d 1664 (1965), recon. granted in part, denied in part Inspection of Records, Pregrant Proceedings, and Local Notice, 1 F.C.C.2d 921 (1965). At that time, the Commission stated that the purpose of the local public inspection file was to allow greater public participation in the Commission's processes. Id. at 1665, 1667. Up until that time, the information to be placed in the local public file was a matter of public record only at the Commission's offices in Washington, D.C. Obviously, this arrangement did not allow ready access to residents of communities located hundreds or thousands of miles away. The Commission stated that in instituting the requirement for a local public file, its "primary purpose ... is to make information to which the public already has a right more readily available, so that the public will be encouraged to play a more active part in a dialogue with broadcast licensees." Id. at 1667.

4. It should be noted, however, that at the time the rule first was proposed, it was phrased to require broadcast licensees to maintain local public files "in the community in which the main studio is located, or proposed to be located...." Id. at 1665 (emphasis added). At that time, most stations were required to have their main studios located within their communities of

license. Nevertheless, the rule was phrased so that the main studio location and the required location of the public inspection file would be the same. Furthermore, it is clear that the Commission intended for licensees to keep their public inspection files at their main studios. On reconsideration, the Commission explicitly stated that the provision allowing licensees to keep the file at another accessible place in the community "was designed to cover situations in which an applicant does not have a studio, as, for example, in the case of an applicant for a construction permit for a new station." Inspection of Records, Pregrant Proceedings, and Local Notice, 1 F.C.C.2d at 924.

5. Furthermore, whenever the Commission granted a waiver of the former main studio location rule to allow a station to locate its main studio outside its community of license, the licensee still was permitted to maintain its public file at the main studio. Main Studio and Program Origination Rules, 3 FCC Rcd 5024 (1988). Likewise, prior to July 16, 1987, AM stations, who already were allowed to locate their main studios at their transmitter sites, also were allowed to keep their public files at their main studio locations. Thus, it is clear that the Commission's preference was for licensees to maintain their public files at their main studio locations.

6. It was not until the Commission relaxed its main studio location rule that stations were required to keep their local public inspection files in the community of license regardless of

the main studio location.¹ At that time, the Commission stated that it would require that every station locate its public inspection file in the community of license "[t]o assure meaningful public participation in our licensing process." Main Studio and Program Origination Rules, 2 FCC Rcd 3215 (1987), modified in part, 3 FCC Rcd 5024 (1988). On reconsideration, the Commission affirmed the requirement that licensees maintain their local public files in the community of license because it was important to assure that the information in the file would remain accessible to community residents. 3 FCC Rcd at 5025.

7. In practice, however, requiring a station with a main studio location outside the city limits of its community of license to maintain a separate public file within the community imposes significant burdens on the licensee without any counterbalancing gain in accessibility for residents of the community. Indeed, in many instances, locating the public file away from the main studio may make viewing the information contained more inconvenient for community residents. The Commission should not assume that it is necessarily the case that a location within the city of license is more convenient to a city resident than one located a short distance outside the city limits. For example, it might be the

¹Even then, on reconsideration, the Commission allowed stations which had located their main studios outside the community of license under exceptions to or waivers from the former to continue to locate their public inspection files at the main studio. Main Studio and Program Origination Rules, 3 FCC Rcd at 5026. The Commission recognized that this approach still would allow community residents access to the public inspection files. Id.

case that the more heavily populated area of a city would be located on one side of town while the public inspection file could be all the way across town. In such a case, a public inspection file location in a nearby suburb might actually be more convenient for city residents.

8. As an initial matter, the public generally associates a station with its main studio location. It is only logical to assume that all records associated with the station's business would be located at the main studio, the station's central business location. All a member of the public must do in order to ascertain the main studio location is look it up in the local telephone directory. Thus, it would be natural for someone to proceed directly to the main studio in order to view the public file.

9. On the other hand, if the public inspection file is located at an accessible place in the community of license away from the main studio, a member of the public has no way to consult a directory to determine the location of the file. Unless the interested party wishes to see the public file at a time when the station happens to be running a public notice including the file location, and unless that party happens to hear or see the notice, the only way to find the location would be to visit or call the station. Therefore, members of the public who wish to inspect the local public file can be led to make a wasted trip to the main studio, only to find out that they must go somewhere else to view the file. Furthermore, a community resident who called the station first could be offered the alternatives listed in Paragraph 2,

above, rather than simply being given the file address. This approach would allow members of the public to obtain the information which they desire in the manner most convenient for them.

10. Even more importantly, having a public file located away from the licensee's main studio premises removes the file from the licensee's direct control. Even the most diligent licensee cannot be assured that its public inspection file will be complete at all times. Innumerable possibilities exist for documents to go astray. If the licensee mails a document to the public file location, it can be lost in the mail. If the document arrives safely by either mail or hand delivery, it may then be mis-filed by the person responsible for maintaining the file. If the document is filed properly the first time, if someone removes it to make a copy, it may not be replaced properly. If someone attempts to view the public file, he may encounter a particular employee who is not familiar with the public file or the requirements pertaining to it. Since the employees at the public file location do not work for the licensee, the licensee cannot control who may be assigned to answer public inquiries on a daily basis. Thus, even assuming that all parties act in good faith, the possibilities for something to go wrong are legion. Furthermore, when the file is away from the licensee's supervision, it is far more likely that someone would be able to pilfer documents or otherwise tamper with the file.

11. Nevertheless, the licensee is held responsible for maintaining a complete public file. When documents are missing,

community residents are frustrated in their efforts to obtain information. Further, the Commission may impose a forfeiture on the licensee for failure to maintain a complete public file. As a practical matter, however, unless a licensee makes daily visits to the file, it cannot be certain that the public file remains complete from day to day. For example, if the licensee visits once per month, it is possible that a document could be removed the day after that visit, and the file would remain incomplete for an entire month until the next inspection by the licensee.

12. All of the monitoring of a public inspection file off its premises imposes a considerable expense on the licensee. The licensee must divert an employee from other duties to go to the public file location and make sure that the file is in order. If something is found to be missing, the licensee must make another copy of that document, and an employee must make a separate trip to the file to replace the missing items. These expenses are in addition to the extra expenses for copying documents and any payments which must be made in order to keep a public file at a particular location. The direct and indirect costs of maintaining a public file apart from the main studio vary widely depending upon the station's location. The costs for Salem's stations range from a token amount to \$15,600 per year. Overall, Salem estimates that the total costs of public file maintenance for its 12 stations with main studios outside the community of license is approximately \$40,000 per year.

13. It is therefore clear that the Commission's requirement

that licensees with main studios located outside the city limits of their communities of license maintain a public inspection file within the community's city limits imposes significant burdens on licensees and in many instances inconveniences members of the public who wish to view the file. Moreover, in Salem's experience, members of the public do not actually take advantage of the opportunity to view the public inspection file in the community of license. During the last three years, for the 12 Salem stations with main studios outside the community of license, members of the public have viewed the public inspection files located in the communities of license a combined total of two times.² By way of contrast, during the same time period, for the same 12 stations with public file locations separate from the main studio location, a total of 12 persons visited the main studios of the stations for the purpose of viewing the public file. Five stations of the 12 stations with separated public files received requests to view the public file only at the main studio. Two of the 12 stations received requests both at the main studio and at the public file location within the community of license. The remaining five of the 12 stations received no requests at all to view the public inspection file. Thus, it is clear that the public file within the community is almost entirely unused by the public and, therefore, provides at best an immeasurably small benefit to community of license residents.

²At an average annual cost to the licensee of approximately \$40,000 per year, over a three year period, this works out to a cost of approximately \$60,000 per viewing of the file.

14. As set forth above, it is clear that the Commission's primary concern is to maintain accessibility to the public inspection file for members of the public, particularly residents of the community of license, in order to preserve their ability to participate in the Commission's processes. Nevertheless, the Commission's current rules impose considerable burdens on licensees which far outweigh the minimal benefits enjoyed by the public. Accordingly, the Commission should permit licensees to maintain public inspection files at main studios outside the community of license if the licensees offer an effective and convenient means of preserving accessibility to the public file for community residents. The Commission could prescribe the following alternatives as acceptable means of providing public inspection file access for residents of the community of license.

15. As the first alternative, the Commission could require that stations which maintain their public inspection files at main studios located outside the community of license provide to any community resident upon written request free round-trip transportation to the main studio from that person's residence or other specified location within the community. This requirement would preserve the ability for all residents to view the public file without expense to themselves. They therefore would not be discouraged from obtaining all necessary information to participate in the Commission's processes and to engage in a dialogue with the licensee with regard to whatever issues may be of concern.

16. As another alternative, licensees could be required to

deliver the public inspection file to a specified public location within the community of license within 24 hours of receiving a request from a community resident or at another time convenient for the resident. The licensee would be required to set an appointment with the requesting resident, an appointment providing a reasonable amount of time to allow the community resident to review the file. This option would have the effect of making the file available in the community to any party interested in examining it. The burden on the resident would be no greater than it is at the present time. As set forth above, a member of the public now generally must call the station in order to determine the location of the public inspection file in the community, as that information is not readily available otherwise. Furthermore, if the licensee meets the community resident at a specified public location, such as a public library, the resident will be able to review the file and immediately make any desired copies of documents. The file never will leave the custody of the licensee, however. Therefore, the licensee will be able to maintain control over the contents of the file and assure that it remains complete.

17. As a final alternative, licensees could be required to provide on request a copy of any specifically identified document to any community of license resident, with the licensee charging only for actual costs of copying and postal costs. The resident thus would have the information of interest provided to him in his own home. Obviously, this option would provide the ultimate convenience to the resident as he would not be required to expend

time to go anywhere. Rather, the entire matter could be handled through use of the telephone. As licensees are required to have toll-free telephone numbers for community residents, the resident would be able to obtain the items of interest at minimum cost to himself, perhaps less than the cost of transportation to a public file location within the community of license.

CONCLUSION

18. In sum, the Commission's current requirement that all licensees maintain a local public inspection file in the community of license imposes significant burdens on licensees and in many cases inconveniences members of the public without providing counterbalancing benefits in terms of accessibility. Therefore, the Commission should delete that requirement and amend its public file rule to allow all licensees to maintain public inspection files at main studios within stations' city grade contours if the licensees: (1) provide free transportation to the main studio for residents of the community of license, (2) deliver the file to a specified public location within the community of license at an appointed time, or (3) provide copies of specifically identified documents by mail.

Respectfully submitted,

SALEM COMMUNICATIONS CORPORATION

By:


James P. Riley
Anne Goodwin Crump

Its Attorneys

FLETCHER, HEALD & HILDRETH, P.L.C.
1300 North 17th Street
Eleventh Floor
Rosslyn, Virginia 22209
(703) 812-0400

March 15, 1995

CERTIFICATE OF SERVICE

I, Roberta Wadsworth, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C. do hereby certify that true copies of the foregoing "Petition for Rulemaking" were sent this 14th day of March, 1995, by hand delivery, to the following:

Reed E. Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, DC 20554

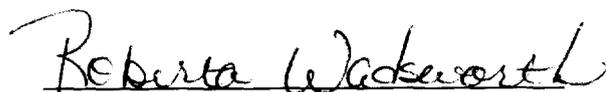
James H. Quello
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 802
Washington, DC 20554

Andrew C. Barrett
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 826
Washington, DC 20554

Rachelle B. Chong
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, DC 20554

Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W.
Room 832
Washington, DC 20554

Roy J. Stewart
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, DC 20554


Roberta Wadsworth