Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Amendment of Section 73.3527(a) of the Commission's Rules Regarding Local Public Inspection File to Permit These Files to Be Kept at a Noncommercial Station's Main Studio	)	RM 8856
	)	RM 8857
	)	RM 8858
	)	

To: The Commission

JOINT COMMENTS OF NONCOMMERCIAL EDUCATIONAL LICENSEES

Ana G. Mendez Educational Foundation, Arkansas Educational Television Commission, Central Michigan University, Council for Public Television, Channel 6, Inc., Iowa Public Broadcasting Board, Kent State University, Maine Public Broadcasting Corporation, Nebraska Educational Telecommunications Commission, Nevada Public Radio Corporation, Ohio University, Public Broadcasting Council of Central New York, Inc., South Carolina Educational Television Commission, State of Wisconsin - Educational Communications Board, The Ohio State University, University of Oklahoma, Virginia Tech Foundation, Inc., WAMC, Inc., West Central Illinois Educational Telecommunications Corporation, and WSKG Public Telecommunications Council (collectively, the "NCE Licensees"), submit these Joint Comments in support of the Petitions for Rulemaking in RM Nos. 8856, 8857, 8858 (Public Notice released August 13, 1996), relating to the amendment of the FCC's Rules on local public inspection files to permit these files to be kept at a noncommercial station's main studio regardless of whether the main studio is located in the station's community of license.

Introduction

The NCE Licensees are noncommercial educational radio and television licensees that are authorized to operate stations which rebroadcast the public radio or TV programming of another commonly-owned station. Some of the NCE Licensees are also applicants for new noncommercial educational radio or television stations that propose this mode of operation. These "satellite" stations operate without a main studio in the city of license (pursuant to FCC waivers), but with a consolidated main studio at the network or "lead" station headquarters. The satellite stations are part of regional or state-wide public broadcasting networks operated by a state university, agency or commission, or of similar networks, sometimes on a smaller scale, by nonprofit community-based organizations. In all of these cases, the NCE licensees use a consolidated main studio for programming and office functions. The satellite mode of operation has proven to be the most cost-effective, efficient way for the NCE Licensees and other public broadcasters to provide the highest quality noncommercial educational programming to the widest possible audiences, consistent with the realities of funding public broadcasting stations nationwide.

Amendment of the Rule Is Appropriate

The NCE Licensees generally support the Petition for Rulemaking filed by Salem Communications Corporation and urge its extension to cover the corresponding public inspection file rule for noncommercial stations set forth in Section 73.3527(a) of the Commission's Rules. The NCE Licensees believe that the Commission should amend it local public inspection file rule to allow maintenance of the satellite station files at the noncommercial licensee's consolidated main studio irrespective of whether the main studio is in the satellite station's community of license. As Salem pointed out, in 1988, the Commission revised the

public inspection file rule to require a locally maintained file in each community of license. The rationale for this requirement was "to assure meaningful public participation in our licensing process." The NCE Licensees submit that the proven track record now demonstrates that maintenance of public files in the community of license does not advance meaningful public participation in the licensing process, although it does impose burdensome costs on licensees. The NCE Licensees thus agree with Salem's experiences, as set forth in its Petition.

For example, taken together the NCE Licensees operate 135 stations, including 117 satellite stations (or pending satellite station applications), across the United States. Personnel at the NCE Licensees with responsibility or supervisory authority for public file maintenance have institutional memories tracing back from at least five years to over twenty-five years at their respective stations. In the eight (8) years since the Commission first required local public inspection files for satellite stations, the NCE Licensees (cumulatively) recall less than a handful of isolated instances where a member of the general public inspected the public inspection file of a satellite station. The majority of the NCE Licensees recall no such instances whatsoever. In all, the NCE Licensees (cumulatively) recall less than a dozen instances where a member of the general public inspected any station public inspection files in the last decade.[1/] Thus, the experience of the NCE Licensees suggests that a local public inspection file for a satellite station is of only minute benefit to the public, at best.

The NCE Licensees also experienced a number of disconcerting problems regarding maintenance of the distant public files for satellite stations. For example, local public libraries have asked if they must continue to maintain public inspection files that have been unused for

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1/ The majority of these inspections were by students taking communications-related classes who reviewed the files as part of a classroom assignment.

several years. These public libraries are themselves facing budget cuts and trying to reduce or consolidate unused materials in their library collections. In one instance, an NCE Licensee seeking to establish a new station started a station inspection file at a public library in a small town and briefed the librarian on the required procedures for maintenance and inspection. When later attempting to update the file, the licensee discovered the library had thrown away the entire file contents because no one had ever requested to inspect the file. In another instance, one licensee had great difficulty finding a local business willing to maintain a local public inspection file, even if compensated to do so, for fear of the liability of improper maintenance. No local attorney or bank would take on the station's public file. That file is now maintained at a City Clerk's office and the licensee fears that this office is not adequately maintaining the files. Another licensee reports that the following problems regarding the status of several distant public files: in one instance, the local person responsible for the file had departed and the file had been lost; in another instance, the files were found in complete disarray with a two-year pile of public file materials shoved into a corner.

As the Commission is well aware, public broadcasting operates in the context of scarcity of funding. Constant financial pressure forces public broadcasters to be maximally efficient if they are to accomplish the Congressional goal of bringing public broadcasting service to as many citizens of the United States as possible. The administrative costs on the NCE Licensees for the staff-time to maintain these distant public inspection files is tremendous, especially when compared to the benefit of such maintenance. For many of the state-wide public broadcasting networks, such as Maine and Nebraska, up to two days or more of travel across the state are required to check on the status of files maintained in communities far distant from the main studio. In some cases, the distance from the main studio to the satellite station is over 400 miles.

In addition, NCE Licensees must often pay a local business to take on responsibility for public file maintenance. At least one of the NCE Licensees maintains files at the local Chamber of Commerce, which requires payment of an annual membership fee to maintain a file that has never been visited by the public.

For these reasons, the NCE Licensees believe that amendment of the public inspection file rule is warranted.

The Revised Rule

While the NCE Licensees generally support the Petition For Rulemaking filed by Salem and the other Petitions seeking amendment of the public inspection file rule, the NCE Licensees disagree with two of the accommodations that Salem suggests should be adopted for residents of the communities of license who wish to view the public inspection file of a station. Salem proposed providing free transportation from the interested party's home to the main studio upon request. Alternatively, Salem proposed delivering the contents of the public inspection file to a designated location for a specified time. Neither of these alternatives is reasonable for the NCE Licensees, whose satellite station's community of license may be located literally on the other side of the state from the main studio. As mentioned above, up to two days travel may be required to journey to and from one of the satellite station's community of license to the main studio. Such "accommodations" would pose unreasonable burdens and costs on an NCE Licensee.

The NCE Licensees submit that the third accommodation proposed by Salem -- providing by mail copy of specially identified documents upon telephone (or mail) request -- would best serve the public interest. This type of procedure is akin to those used by other members of public to obtain information, such as those set forth in the Freedom of Information Act (FOIA),

and would be appropriate to allow for meaningful public access to individual station files maintained at a noncommercial station's main studio. An interested party residing in the community of license could mail in a written request to the licensee, or telephone a request to the main studio on the toll-free line required to be maintained by the licensee. This request could be for specified documents or for a list of the items maintained in the satellite station's public inspection files so that the desired documents could be identified. The licensee would be required to provide copies of the documents within a specified period of time with the transmission costs (postage, fax, overnight courier, etc.) to be borne by the licensee. The licensee would be permitted to charge the reasonable costs of reproduction to the requesting party. In order to avoid abuse of this revised rule, the NCE Licensees encourage the Commission to adopt a reasonableness standard for public inspection file requests, so that a disgruntled community member could not make repeated or excessive demands for access to documents in the station's public inspection file.

Conclusion

For the foregoing reasons, the NCE Licensees support the amendment of the local public inspection file rule to permit the file's maintenance at the main studio of a noncommercial station and urge the Commission to so amend it rules. The NCE Licensees further support an amendment of the public inspection file rule to allow a licensee to provide by mail a copy of specifically identified documents upon telephone or written request for residents of the community of license of any satellite station.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I, Donna Wenit, a secretary with the law firm of Dow, Lohnes & Albertson, hereby certify that on this 12th day of September, 1996, I served a copy of the foregoing Joint Comments of Noncommercial Educational Licensees by U.S. mail, postage prepaid, on the following:

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