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

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In the Matter of	)	
	)	
Amendment of Section 73.3526(d)	)	RM-8855
Location of Local Public Inspection File	)	RM-8856
	)	RM-8857

COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

Pursuant to Section 1.405(a) of the Commission's Rules,[1] the National Association of Broadcasters ("NAB")[2] files these Comments in general support of the above-captioned petitions for rule making ("Petitions").[3] These Petitions ask the Commission to allow a broadcast station to maintain its public inspection file only at its main studio, even if the main studio is located outside the station's community of license. NAB believes that by adopting such a rule, the Commission would provide the public with more certainty as to the location and completeness of the public file. NAB, therefore, urges the Commission to adopt the proposed rule advanced in the Petitions.

NAB has long encouraged the Commission to allow broadcasters to maintain the public file at the main studio location, regardless of whether the main studio is located within the

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[1] 47 C.F.R. § 1.405(a).

[2] NAB is a nonprofit, incorporated trade association which serves and represents America's radio and television stations and networks.

[3] On August 13, 1996, the Commission placed on Public Notice petitions for rule making filed by Salem Communications, Inc. ("Salem") on March 15, 1995; by the law firm of Hardy & Carey ("H&C") on May 13, 1994; and by the Law Office of Lauren A. Colby ("Colby") on August 20, 1993. Report No. 2147, released August 13, 1996.

physical boundaries of the community of license.[4] We agree with the petitioners that locating the public file at the main studio, rather than at some location within the community of license that may have no obvious affiliation with the station, is more beneficial to the public and to licensees. Common sense dictates that a member of the public would expect to find the public file where the station conducts its business, i.e., at its main studio, and not at a public library, an attorney's office or some other location that has no other connection with the station. Thus, as noted by the petitioners,[5] the public may be unnecessarily inconvenienced due to confusion about where the station's public file may be located. Therefore, it would be in the public interest to allow licensees to maintain their public file at the location most identified with the station — the main studio.

This premise also holds true for stations that are operating as part of a local marketing agreement ("LMA"). Although there might be no programming regularly originating from the station's main studio, the Commission's rules still require that the licensee maintain a "meaningful managerial presence" at the main studio, which — absent waiver — still must be located within the station's city grade contour. The express purpose of the staffing provision is allow the licensee to have sufficient contact with its community of licensee to determine the needs and issues of importance to the community. Furthermore, the Commission requires that the main studio remain staffed during normal business hours.[6] Therefore, the main studio of stations involved in LMAs are just as accessible as those not involved in LMAs. Yet, these stations too are required to maintain a separate public file within their community of license if the main studio is located outside the community. In this regard, NAB believes that LMA stations should be

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[4] *See* NAB's Petition for Partial Reconsideration and Clarification, filed in MM Docket No. 86-406 on July 7, 1987 ("1987 NAB Petition").

[5] *See* H&C Petition at 6-7; Salem Petition at 5; Colby Petition at 2. *See also* 1987 NAB Petition at 4.

[6] *Jones Eastern of the Outer Banks, Inc.*, 7 FCC Rcd. 6800, 6802 (1992).

treated no differently than other stations and be allowed to maintain their public file only at the main studio.

Moreover, the public interest demands that the public file be as complete as humanly possible. In order for the public to ascertain the station's operation, all required documentation must be placed in the public file in a timely manner. That includes information regarding purchases of time by political candidates, which must be placed in the file immediately. If the file is located in a place not directly under the control of the licensee, there is an increased likelihood that the file will be incomplete — due to documents being misfiled or improperly removed — at a given time. An incomplete public file disserves the public by giving an incorrect picture of the licensee's operation, and may deprive political candidates of notice of their equal opportunities rights. NAB agrees with petitioners that allowing the public file to be located at the station's main studio would decrease the likelihood of the file being inaccurate, and therefore better serve the public interest.[7]

We also concur with H&C's assertion that the current rule is inconsistently applied.[8] Stations that had received "Arizona" waivers prior to the relaxation of the main studio rule are not required to maintain a public file within the physical boundaries of their community of license, even though the main studio may be located outside the community. The Commission's reasoning for maintaining this dual regulatory approach is that one criterion for approving an "Arizona" waiver was that the main studio be accessible to the public.[9] NAB believes that such a justification is no longer valid. There is no reason to believe that a main studio which has been moved under the relaxed rules would be any less accessible to the public than a main studio which

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[7] Salem Petition at 7-8; H&C Petition at 8-12.

[8] H&C Petition at 4-7.

[9] *Main Studio and Program Origination Rules*, 3 FCC Rcd. 5024, 5025-26 (1988).

has been moved pursuant to an "Arizona" waiver. We therefore urge the Commission to abandon this distinction without a difference.

We disagree, however, with proposals in the record that would require licensees to accommodate persons who are unable or unwilling to visit the main studio to inspect the public file.[10] The three alternatives presented — that licensees be required to provide round-trip transportation to the main studio; that licensees be required to deliver the public file to the individual; or that licensees be required to respond to telephone or mail requests for public file documents — would unnecessarily burden licensees and would likely increase the number of frivolous requests for public file documents. First, the vast majority (if not all) of broadcast main studios are easily accessible by major highways, city streets or mass transit, and thus present no major obstacles to anyone who may desire to inspect the public file. In addition, most areas — including rural areas — provide some sort of government funded transportation for the disabled and/or the elderly. Therefore, there are very few instances where a member of the public would be unable to visit a station's main studio.[11]

Second, requiring a station to transport its public file to an individual would be unworkable. The public file at most stations fills an entire filing cabinet. There appears to be little justification for the expenditure of staff time and resources involved in transporting a heavy, bulky filing cabinet so that an individual could look at only that portion of the file in which he/she might be interested. Moreover, requiring licensees to transport their public file off station premises could inconvenience those members of the public who might visit the main studio to inspect the public at the same time the file is being viewed off-premises.

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[10] Salem Petition at 10-12.

[11] Certainly, licensees should not be required to accommodate anyone who is able to visit the station's main studio, but merely unwilling to do so.

Third, requiring licensees to respond to telephone or mail requests for documents would greatly increase expenditure of staff time and resources, often pointlessly. Most members of the public have no idea what documents are included in the station's public file, and stations often receive requests for documents (such as invoices and program logs) which are not public records. If licensees were required to respond to telephone or mail requests, these types of frivolous requests would likely increase tremendously. In addition, licensees would be inundated with requests for documents during political campaign seasons, when candidates and their agencies are anxious to know their opponent's advertising schedules. Moreover, licensees may charge the reasonable cost of copying documents. Unless an individual knows how many pages the document contains and the cost per page charged by the station, the station would have to bill the individual before completing the transaction, thus increasing its own costs.[12]

It is plain that the costs of requiring stations to provide alternative means for inspection of the public file would far outweigh the benefits. NAB urges the Commission to refrain from imposing such requirements.

Conclusion

Many changes have taken place in the industry and in society since the Commission last examined the rules concerning the public file location nearly a decade ago. The time has come for the Commission to re-examine Section 73.3526(d) in light of these changes.

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[12] As Salem points out, it spends approximately $40,000 per year to maintain the public files of its 12 stations that have main studios outside the community of license. Salem Petition at 8.

The petitioners have made valid arguments for allowing broadcast stations to maintain the public file only at the main studio. NAB urges the Commission to proceed expeditiously to rulemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Comments of the National Association of Broadcasters was sent via First Class mail, postage prepaid, this 12th day of September, 1996, to the following:

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