

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
Review of the Commission's Rules)
regarding the main studio and)
local public inspection files of)
broadcast television and radio stations)
)
47 C.F.R. §§ 73.1125,)
73.3526 and 73.3527)
)
To: The Commission)

MM docket No. 97-138

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COMMENTS

InterMart Broadcasting Corporation¹ ("InterMart"), by its counsel, respectfully files these Comments on the Commission's *Notice of Proposed Rule Making* ("NPRM"), FCC 97-182, released May 28, 1997. Comments are due by August 8, 1997.

Main Studio Rule. In the *NPRM*, the Commission proposes to revise Title 47 C.F.R. §§1125 (main studio rule), 73.3526 and 73.3527 (local public inspection file rules). The Commission at *NPRM*, ¶¶14-16, proposes to relax the main studio rule to require its location within the principal community contour of any station licensed to the community of license in question. The Commission also seeks comment on using a straight mileage standard rather than relying on a measurement based on signal contours, or to combine the two approaches. At ¶16, the Commission invited comment on "these various approaches and any other proposals that commenters believe will serve the public interest by minimizing unnecessary regulatory burdens and ensuring that residents of a community have reasonable access to the broadcast stations

¹ InterMart's affiliates are licensees of commercial radio stations in Florida.

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licensed to serve them.” The Commission reminded licensees that it is a “bedrock obligation” of every broadcast licensee to serve the needs and interests of its community, and that it proposes to relax the main studio rule in a manner consistent with this obligation.

As an alternative to its proposals in the *NPRM*, InterMart suggests the Commission consider the **total elimination of the main studio rule** and retention of the local public inspection file rules with certain modifications. InterMart’s suggestion is made after due consideration of the realities of operating radio stations in the 1990’s, and does not lose sight of the “bedrock obligation” recited by the Commission in the *NPRM*.

In 1987 the Commission eliminated its former “program origination rule,” Section 73.1130. See *Main Studio and Program Origination Rules*, 62 RR 2d 1582 (1987). That rule required a majority of a station’s programs to originate from the main studio. The program origination rule was adopted in the days when broadcasters were very limited in the number of stations they could own, and by the potential jeopardy they faced at license renewal time. There was no nationwide satellite delivered digital audio radio service. The rule was adopted because the Commission reasoned that a local main studio would encourage the production and presentation of local programming. During the heyday of the program origination rule, licensees were required to maintain written logs describing their programming, and to make extracts of a “composite week” made up of those logs during the triennial license renewal process to determine whether the station had broadcast certain percentages of non-entertainment programming that the Commission deemed good for the public. In those days the requirement of a main studio and the origination of programs from it was reasonable.

The program origination rule was eliminated in 1987. Many of the now-commonplace

techniques used in broadcasting were then in their infancy. Programming is today delivered by satellite from far-distant origination points, it is managed by sophisticated computers, and whole radio stations can now be located in an area the size of a closet. By 1981 the maintenance of program logs and the non-entertainment programming requirements had been eliminated along with numerous other wasteful and unnecessary regulations (*Deregulation of Radio*, 84 FCC 2d 968 (1981), *on reconsideration*, 87 FCC 2d 797 (1981), *remanded on other grounds, sub nom., Office of Communication of the United Church of Christ v. FCC*, 707 F 2d 1413 (D. C. Cir. 1983)). In 1987, the elimination of the program origination rule was just another logical step in bringing radio regulation into the modern era. Now, ten years after the program origination rule was eliminated, it is time to eliminate the main studio rule.

Mark the words of the 1987 Commission when it eliminated the program origination rule on the grounds that the FCC could no longer justify a requirement that stations originate a stated minimal percentage of their programming from their main studios or other points in their communities:

We do not believe the original rationale of the Rules, to facilitate locally-oriented programming by indirectly promoting the use of local talent and ideas, is still valid. In addition, we now believe the Rule imposes unnecessary costs and may actually preclude the presentation of responsive programming.

As discussed above, the main studio no longer plays the central role in the production of a station's programming and programming originated from within the political boundaries of the community is not necessarily responsive to the needs and interests of the community. Today, remote production and transmission equipment permits responsive programming to originate from outside the main studio or community of license and marketplace forces dictate the provision of such programming from whatever its source. *Main Studio and Program Origination Rules*, 62 RR 2d 1582 (1987)

With those underpinnings, the Commission eliminated the program origination requirements, but continued to require the maintenance of a main studio to satisfy a legal fiction that the existence of a studio within a station's community might result in programming in the public interest, convenience and necessity even though there was no longer a requirement to originate any programs from it. It is time to move another step into the modern age and eliminate even that rule.

Principals of InterMart have many years (some since 1983) of experience in constructing and operating radio stations in the public interest. During that time, they cannot remember ever having a member of the public visit their stations with a demand for "access". When they produce programs to meet the needs and interests of their service areas, they either invite local community leaders to their business office (which often is combined with a studio) or go to visit them with a tape recorder. Many stations interview community leaders via telephone, and record the interviews for later broadcast. In short, the Commission should not mandate the maintenance of a main studio that, in many cases, is never used.

The absurdity of the continued retention and enforcement of the main studio rule can be illustrated by any number of "real-world" examples. Take the case of Stations A, B, C, and D which are all commonly owned. The transmitter sites and main studios of Stations A, B and C are co-located, and Station D is some 40 miles distant from the other three. Virtually all the programs heard on all four stations are produced at the main studios of Stations A, B and C. Although almost no programs are produced or originated at Station D, the licensee must maintain a main studio within Station D's city-grade contour and staff the studio with a "meaningful

management and staff presence,” as required by *Jones Eastern of the Outer Banks, Inc.*, 77 RR 2d 1270 (1995). This results in a waste of resources. Unless the Commission develops in this rule making proceeding some evidence that continued maintenance of the main studio serves the public’s interest, the rule should be eliminated.

InterMart urges that the rule be eliminated. Broadcasters that need a main studio will, of course, continue to maintain and use it. Those that feel they can operate from a business office, wherever located, would be able to do so. Those who believe they can best operate with a main studio and office at some location other than within a certain distance from the community of license would be free to do so.

InterMart does not suggest that the licensee’ obligations to serve the public interest of its community should be relaxed one tiny bit. It is just the maintenance of an unwanted or unneeded main studio by government fiat to which InterMart objects. In light of InterMart’s experience that members of the public typically do not visit main studios for “access,” InterMart believes that the public interest will be unaffected by elimination of the rule.

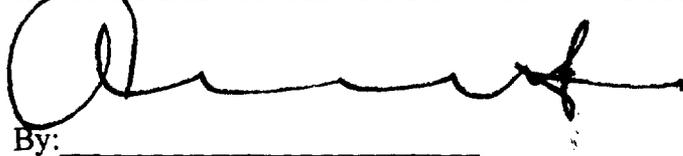
Public Inspection File Rule. InterMart supports the Commission’s proposal (at *NPRM* ¶¶17-22) that the public inspection file rule be revised to eliminate the requirement that the public inspection file be maintained in the community of license. While the Commission proposes that the public file be maintained at the station’s main studio, in light of InterMart’s proposed elimination of the rule, InterMart proposes that the Commission permit licenses to maintain the file at any accessible location within the city-grade contour of the station to which the public file relates. Here is an example of the benefit such a change would afford to InterMart. Currently, Station X is licensed to Anytown, Florida, and the licensee holds a construction

permit to relocate Station X to Newtown, Florida, a distance of approximately 2 miles. Under the current rules, when Station X becomes a Newtown station, it will have to remove its public file from the Station X studios in Anytown and create a new public file location two miles away in Newtown. The studios and transmitter site will not be moving, but in light of the community of license change, the public file must be uprooted from its logical place of repose and relocated to an attorney's office or public building in Newtown. It would be more convenient and logical for members of the public desiring access to the public inspection file to review it in Anytown at StationX, rather than traveling two miles to Newtown and searching for the location of the public file. Such inconvenience would be eliminated with the adoption of the changes to the public inspection file rules.

In light of the foregoing, InterMart respectfully requests the Commission to consider elimination of Section 73.1125 and to revise Sections 73.3526 and 73.3527 consistent with InterMart's comments.

Respectfully submitted,

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