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September 8, 1997

**BY HAND-DELIVERY**

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Acting Secretary  
Federal Communications Commission  
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Washington, D.C. 20554

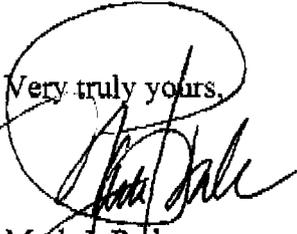
Re: **MM Docket No. 97-138**

Dear Mr. Caton:

Transmitted herewith on behalf of the North Carolina Association of Broadcasters and the Virginia Association of Broadcasters is an original and nine (9) copies of their Reply Comments in MM Docket No. 97-138, Review of The Commission's Main Studio And Local Public Inspection Files of Broadcast Television and Radio Stations.

If any questions should arise in connection with this matter, it is respectfully requested that you communicate with this office.

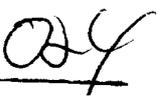
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Mark J. Prak  
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North Carolina Association of Broadcasters and  
The Virginia Association of Broadcasters

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

In the Matter of )  
 )  
Amendment of Sections 73.11 25(a), )  
73.3526 and 73.3527 of the )  
Commission's Rules )

MM Docket No. 97-138

To: The Commission

Reply Comments of  
The North Carolina  
Association of Broadcasters  
and the Virginia  
Association of Broadcasters

September 6, 1997

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Commission's Rules )

To: The Commission

**I. Summary**

The North Carolina Association of Broadcasters ("NCAB") and the Virginia Association of Broadcasters ("VAB") support the Commission's efforts to eliminate the inefficiencies resulting from the Main Studio and Public Inspection File Rules. The NCAB and VAB urge the Commission to take this opportunity to repeal the main studio rule altogether. This rule unduly burdens both broadcasters and the Commission and no longer serves any valid regulatory objective.

If the Commission declines to repeal the main studio rule, it should, at a minimum, revise the rule and do away with the principal community contour standard. The NCAB and VAB support a straight mileage standard of 50 miles. A straight mileage standard is the most equitable proposal and would be the simplest to understand and administer.

The NCAB and VAB fully support the proposal to amend the public inspection file rule to allow broadcasters to keep the public file at the main studio. This amendment would allow broadcasters to save valuable economic resources and would make public files more accessible to community residents. However, not all broadcasters are able to ensure public access to their main

studio buildings. Accordingly, the Commission should allow broadcasters the discretion to choose an alternate location for the public file if that location is equally accessible to the community.

With respect to the proposals to streamline public file contents, the NCAB and VAB agree that many of these requirements are outdated and support many of those proposals. However, the NCAB and VAB feel that David Tillotson's proposal to eliminate the requirement that network affiliate agreements be filed with the Commission is ill-advised. Similarly ill-advised, are the proposals to require that e-mail be kept in the public file, and the proposal to mandate electronic public files.

### Comments

The North Carolina Association of Broadcasters ("NCAB") and the Virginia Association of Broadcasters ("VAB"), by their attorneys and pursuant to Section 1.415 of the Commission's Rules, herewith submit their reply comments in the above-captioned proceeding.

#### **I. Introduction**

In its *Notice of Proposed Rule Making* dated May 28, 1997, FCC 97-182 (the "*NPRM*"), the Commission invites comment on a proposal to amend its main studio rule by replacing the rule's principal community contour standard with a new standard that would allow broadcasters increased flexibility in locating their main studios, while at the same time ensuring that the studio is "reasonably accessible" to residents of a station's community of license. The *NPRM* also proposes

to amend the local public inspection file rule to permit licensees to maintain their public files at the main studio, wherever located, and to streamline the materials required to be kept in the public file.

Numerous parties filed comments in response to these proposals. In response to the proposals raised in the *NPRM* and the comments filed in this proceeding, the NCAB and VAB submit these reply comments.

## II. The Main Studio Rule Should Be Repealed

The NCAB and VAB urge the Commission to repeal the main studio rule.<sup>1</sup> This rule, adopted in 1939 and last revised ten years ago, is rooted in inaccurate and outdated notions of the means by which broadcasters serve the public. Rather than serving any valid regulatory objective, the rule merely wastes valuable economic resources by placing undue economic burdens on licensees and the Commission.

Initially, the main studio rule was adopted by the Commission to ensure that stations would fulfill their local service obligations.<sup>2</sup> Three rationales were given for the rule.<sup>3</sup> First, by locating its main studio in the community of license, a station could draw on local talent and ideas to satisfy its non-network program origination requirements.<sup>4</sup> Second, a location inside the community would

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<sup>1</sup> Three other commenters also proposed repealing the main studio rule. See Comments of Hardy & Carey, L.L.P.; Comments of Capstar Broadcasting Partners; and Comments of Thomas G. Osenkowsky.

<sup>2</sup> *Report and Order, Amendment of the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, 62 RR 2d 1582, 1582 (1987).

<sup>3</sup> *Id.* at 1590.

<sup>4</sup> *Id.*

allow a station to "participate in and be a part of community activities."<sup>5</sup> Finally, the Commission felt that locating the main studio in the community of license would "enable members of the public to participate in live programs and present complaints or suggestions to the station."<sup>6</sup>

Eventually, the main studio rule became outdated. Technological and social changes mooted many of the justifications for the rule. For example, technological changes made it possible for broadcasters to locate their studios anywhere and a competitive marketplace compelled broadcasters to seek alternative sources of programming.<sup>7</sup> Thus, the main studio was no longer necessarily the best location for the origination of responsive programming.<sup>8</sup> In addition, the growth of modern transportation made travel to locations outside the community much easier and much more common.<sup>9</sup> It also became apparent that few residents actually visited the main studio, preferring to communicate with a station by telephone or letter.

Accordingly, in 1987, the Commission considered abolishing the rule, noting that "we do not see a causal relationship between the main studio rules and the provision of service to the community of license which is sufficient to warrant their retention."<sup>10</sup> However, reasoning that it was best to

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<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1585.

<sup>8</sup> *Id.* at 1587.

<sup>9</sup> *Id.* at 1588.

<sup>10</sup> See Comments of Capstar Broadcasting Partners, Inc. at p. 3.

“proceed prudently,” the Commission balked at repealing the rule altogether, and instead opted to relax the rule’s location requirements.<sup>11</sup>

The reasons given for relaxing the main studio rule in 1987, apply with even greater force today. The rule, outdated ten years ago, is totally out of touch with modern broadcasting. The original justifications for the rule have long since become moot. The *NPRM* states that the rule “seek(s) to ensure that members of the local community have reasonable access to station management and information about the station” in order to “enable[] the residents of the community to monitor a station’s public interest performance, and encourage[] a continuing dialogue between the station and its community.”<sup>12</sup> These post-hoc justifications, however, do not survive scrutiny. Given the infrequency with which residents stop by a station’s main studio, the rule cannot be said either to encourage dialogue or to promote public monitoring of a station’s performance.<sup>13</sup> There is no evidence that requiring stations to maintain a main studio furthers any of these goals.

Moreover, the purported goals of the main studio rule are already achieved through other means. For example, residents who wish to communicate with station management can call, write, e-mail or fax the station. The Commission’s toll-free number requirement ensures that all residents have an easy way to contact broadcasters. Access to station information, including information about a station’s public interest performance, is already available to all residents through a station’s

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<sup>11</sup> *Id.* at p. 4.

<sup>12</sup> *NPRM* at ¶1.

<sup>13</sup> Several commenters noted that residents rarely stop by their station’s main studios. See Comments of S&S Communications Group, Inc. at p. 1; Positive Alternative Radio, Inc. at p. 3; Sinclair Telecable, Inc. at p. 2; and Ronita Hawes-Saunders, et al at p.1.

public file. In addition, the demands of the marketplace work to ensure that stations remain responsive to community residents. In today's competitive marketplace, broadcasters must make an effort to communicate with and listen to residents in order to remain competitive. Thus, the main studio rule no longer serves any valid regulatory purpose and should be repealed.

### **III. If Not Repealed, The Main Studio Rule Should Be Relaxed**

The NCAB and the VAB believe that the public interest would be served best by repealing the main studio rule. However, if the Commission declines to repeal the rule, it should, at a minimum, relax the rule to allow broadcasters increased flexibility in locating their main studios.

In its *NPRM*, the Commission sets forth the following proposals for modification:

1. Permit a station to locate its main studio within the principal city contour of any station licensed to its community.
2. Permit a station to locate its main studio within a set number of miles from the center of the station's community of license.
3. A combination of these two standards. That is, a station could locate its main studio anywhere within the principal city contour of any other station licensed to its community or anywhere within a set distance from the community.
4. Permit a licensee that owns multiple stations in the same market to co-locate the main studio of all of its stations at a single site, provided that the main studio is not more than a set distance from the center of the community of license of any of the co-located stations.<sup>14</sup>

The Commission has indicated that it is disinclined to adopt a rule that allows broadcasters to determine for themselves where a reasonably accessible location would be, or to adopt a standard

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<sup>14</sup> *NPRM* at ¶¶ 14-15.

measured by "normal driving time." Rather, the Commission prefers a standard that can be "clearly and easily understood and applied."<sup>15</sup>

**A. The Commission Should Adopt A 50-Mile Fixed Mileage Standard**

If the Commission does not repeal its main studio rule, the NCAB and VAB urge the Commission to permit broadcasters to maintain their main studios at any location within a 50-mile radius from the center of the city of license.<sup>16</sup> Of all the proposals, a straight mileage standard would be the easiest to understand and administer. In addition, a straight mileage standard is the most equitable proposal because it burdens all broadcasters equally.

Fifty miles is a reasonable distance in which to allow broadcasters to locate their main studios. A distance of 50 miles can generally be reached in under an hour and most residents are accustomed to traveling such distances. Moreover, under the current rule, many stations are able to locate their studios much farther outside the city. Under the principal community contour standard, a maximum facility class C radio station has an average radius of greater than 42 miles in which to locate its studio. However, because a station's transmitter is not necessarily located in the center of the city of license, the location of the main studio from that point could be farther than 50 miles.<sup>17</sup>

A fixed mileage standard of less than 50 miles will not provide broadcasters with enough flexibility and will, in all likelihood, result in numerous meritorious but time consuming waiver

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<sup>15</sup> *NPRM* at 7971.

<sup>16</sup> A 50-mile standard was also proposed in the Comments of Radio One and the Comments of Positive Alternative Radio, Inc.

<sup>17</sup> If the Commission adopts a 50 mile standard, it should grandfather those main studios that are already located beyond this distance.

requests.<sup>18</sup> A 50-mile standard will provide the vast majority of broadcasters with increased flexibility in locating their main studios. In addition, this standard will be more efficient for the Commission because it will minimize waiver requests. The Commission must be careful not to defeat the purpose of the amendment by adopting a standard that is too restrictive.

**B. The Principal Community Contour Standard Is Inequitable and Unworkable**

The Commission should abolish the principal community contour standard because it is inherently inequitable. Expanding the standard, as proposed in the *NPRM*, will not alleviate its unfairness. Allowing a station to locate its main studio within the principal community contour of any station in its market discriminates against those stations who are the sole licensee in their market. Moreover, this standard favors those stations who are located in densely-populated markets over those stations located in smaller markets and rural areas.<sup>19</sup>

In addition, the proposed principal community contour standard would be burdensome to understand and to apply. Determining the principal city contour of a station is a technical matter that requires an engineer.<sup>20</sup> Information about the contours of other stations can be costly to obtain. Moreover, the make-up of stations in a market is constantly changing.<sup>21</sup> If a station has located its

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<sup>18</sup> Some commenters suggested fixed mileage standards of less than 50 miles. *See* Comments of S&S Communications Group, Inc. at p. 1; David Tillotson at p. 3; and David Robinson at p. 10.

<sup>19</sup> This flaw was pointed out by several commenters. *See* Comments of Coltre at p.3; Comments of Fuller-Jeffrey Broadcasting at p. 2; Comments of David Tillotson at p. 4; Comments of First Virginia at p. 3; Comments of Pyramid Broadcasting at p. 4; Comments of Casiani Communications at p. 4; and Comments of Sunair Communications at p. 5.

<sup>20</sup> *See* Comments of Capstar Broadcasting Partners, Inc. at p. 11.

<sup>21</sup> *See* Comments of Hardy & Carey at p. 5 n.1.

main studio based on the principal community contour of a station that subsequently moves, or goes out of business, suddenly that main studio location is no longer valid. It is, of course, possible to grandfather these main studios, but, given the frequency with which this situation is likely to occur, grandfathering could become burdensome.

Finally, a standard based on a principal community contour is anomalous because it has no relation to reasonable accessibility.<sup>22</sup> Whether a studio is located in a station's principal community contour has no bearing on whether that studio is accessible to community residents. A straight mileage standard, on the other hand, is directly related to accessibility.

#### **C. A Combination Standard Is Unacceptable**

Many commenters suggested a combination of the straight mileage and principal community contour standards.<sup>23</sup> The NCAB and VAB oppose such a standard because it would perpetuate all the flaws inherent in the principal community contour rule. A combined standard would still be inequitable, difficult to understand and apply, and would continue to regulate main studio locations based on a measurement that bears no relation to reasonable accessibility.

#### **IV. The Local Public Inspection File Rule Should Be Revised**

The NCAB and VAB fully support the Commission's proposals to revise both the location and content requirement of the local public inspection file rule.

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<sup>22</sup> See also Comments of David Tillotson at p. 4.

<sup>23</sup> See Comments of Capstar Broadcasting Partners, Inc. at p. 23; Sinclair Telecable, Inc. at pp. 7-8; First Virginia Communications, Inc. at p. 2; Pyramid Broadcasting, Inc. at pp. 2-3; Casciani Communications, Inc. at p. 3; Sunair Communications, Inc. at pp. 3-4.

**A. A Station Should Be Permitted To Keep Its Local Public Inspection File At Its Main Studio Or At Another Reasonably Accessible Location**

Virtually all the commenters in this proceeding support the proposal to allow a broadcaster to maintain its public inspection file at its main studio, wherever located, and the NCAB and VAB concur.<sup>24</sup> However, in amending the rule, the Commission should also allow broadcasters to locate their public files at an alternate location that is equally convenient and accessible and is made known to community residents.

The main studio is a logical and practical place for the public file for several reasons. First, a station's main studio location is usually well-publicized. The main studio location is listed in the phone book and, generally, is demarcated by signs. In addition, the main studio location is often announced on the air in conjunction with station promotions and public service announcements. By contrast, the location of the station's public file is typically not known to the public. Thus, it is not surprising that residents who wish to inspect a station's public file will usually drive to its main studio only to find that the file is not kept there. This situation has prompted numerous broadcasters whose stations are licensed to communities other than the one in which their main studios are located, to maintain two public files -- one in the community of license and one at the main studio.<sup>25</sup> These duplicative efforts are burdensome and waste valuable resources. Second, public files left in the hands of disinterested third parties are sometimes not well maintained. If the public file was kept at the main studio, station personnel could ensure that it was updated and kept in good condition.

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<sup>24</sup> The comments filed by *Morality in Media* take no position regarding this proposal. All other commenters support the proposal.

<sup>25</sup> See Comments of Capstar Broadcasting Partners at p. 17.

In addition, keeping the file at the main studio would improve public access to the file because station personnel would be available to answer any questions.<sup>26</sup> Third, under the present rule, owners of multiple stations must expend substantial resources maintaining and monitoring several public files. Keeping the public file at the main studio will allow these owners to save valuable resources which can be better used serving the public.

The Commission should not, however, mandate that public files be kept at the station's main studio. There are, on occasion, situations where a location other than the main studio would be a preferable place for station's public file. Broadcasters should be allowed the discretion to make this judgment. Many television, and some radio stations have security procedures at their main studio which do not permit ready public access or have other valid reasons for not wanting to keep a public file in the main studio building. For such stations, it would be preferable to keep the public file at a location outside the main studio.

Television Station WCYB-TV is licensed to Bristol, Virginia, a town which straddles the Tennessee/Virginia border. The main street in Bristol runs down the state line, dividing the town into Bristol, Virginia and Bristol, Tennessee. Most of the major public buildings are located on the Tennessee side and the most convenient and accessible location for WCYB-TV's public file would be in one of those buildings, such as the county courthouse. Under the current rule, WCYB-TV must keep its public file in a private building one block away on the Virginia side of town, a location that is less accessible to community residents. However, requiring WCYB-TV to keep its public file at its main studio would not be an adequate solution. As the result of problems over the years, security

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<sup>26</sup> It should be noted that very few members of the public ever request to inspect a station's public file. See, e.g., Comments of S&S Communications Group, Inc. at p. 1.

rules at the station's main studio would not allow for location of the public file in the station's studio building. In the opinion of knowledgeable station management, the best place for the file is in a building one block away which just happens to be across the state-line in Bristol, Tennessee. Accordingly, the Commission should amend the public inspection file rule to allow broadcasters to keep their public files at their main studios or at an alternate location that, is in the licensee's good faith judgment, is equally convenient and accessible. The use of such an approach will eliminate the need for waiver requests and will provide licensees with much needed flexibility.

**B. The Contents Of The Local Public Inspection File  
Should Be Streamlined**

The NCAB and VAB fully support the Commission's proposal to streamline the contents of the public file. The current rule requires broadcasters to keep out-of-date and unnecessary documents. The *NPRM* proposes eliminating the requirement to keep the 1974 manual "The Public and Broadcasting" and reports filed pursuant to the repealed financial interest and syndication rules. The *NPRM* also proposes to correct the cross-reference in the local public inspection file rules to the rule governing a licensee's political file, and to delete the note set forth in Section 73.3526(a)(1) and Section 73.3527(a)(1). Without exception, the commenters supported these amendments and the NCAB and VAB concur.

**1. Section 73.3613(b) Documents Should Not Be Required To Be Kept in the  
Public File**

Capstar Broadcasting Partners proposes that the Commission revise its requirement that Section 73.3613(b) documents be placed in the public file.<sup>27</sup> The proposed revision would allow

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<sup>27</sup> See Comments of Capstar Broadcasting Partners, Inc. at p. 22.

licensees to provide these documents within seven days, upon a request made in person by a member of the public.<sup>28</sup> The NCAB and VAB support this reasonable proposal. Because Section 73.3613(b) documents are voluminous, they are burdensome to copy and cumbersome in the file. In addition, members of the public rarely request to see these documents.<sup>29</sup> Moreover, as Capstar points out, this proposed revision is similar to the provisions of Section 73.3526(f) which gives a licensee time to make copies for a member of the public upon request.<sup>30</sup>

## **2. E-Mail Messages Should Not Be Required To Be Kept In The Public File**

The *NPRM* proposes to clarify the requirement that "all written comments and suggestions received from the public by licensees. . . regarding operation of their station shall be maintained in the local public inspection file" by including electronic mail messages ("e-mail") transmitted to stations over the Internet.

The NCAB and VAB oppose any proposal to require licensees to print out e-mail and store them in the public file.<sup>31</sup> The task of sorting through e-mails, determining which ones must be filed and printing them out would be tremendously time-consuming and costly. In addition, e-mail is easily sent and easily duplicated. Thus, as Barnstable Broadcasting points out, a limited number

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> Numerous other commenters also opposed this proposal. See Comments of Capstar Broadcasting Partners, Inc. at p. 23; Barnstable Broadcasting, Inc. at p. 5; First Virginia Communications, Inc. at p. 6; Pyramid Broadcasting, Inc. at p.5; Casciani Communications, Inc. at p. 7; Sunair Communications, Inc. at pp. 7-8.

of correspondents could easily "flood" a station with e-mail messages.<sup>32</sup> Given that the focus of the *NPRM* is to simplify its public file rule, imposing a new, unnecessary and burdensome task on broadcasters would be self-defeating.

**3. Letters From The Public Should Not Be Required To Be Kept In The Public File**

The NCAB and VAB support the proposal set forth by Hardy & Carey to delete the requirement that letters from the public be kept in the public file.<sup>33</sup> Keeping these letters is burdensome and serves no useful regulatory purpose. The letters are purportedly kept to assist the Commission's license renewal decision, yet they have not historically been used for this purpose.<sup>34</sup> Accordingly, licensees should be relieved of the burden of collecting and maintaining, letters from the public. Given the changes in the license renewal procedures brought about by the Telecommunications Act of 1996, there is no purpose to be served by this requirement.

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<sup>32</sup> Comments of Barnstable Broadcasting at p. 5.

<sup>33</sup> Comments of Hardy & Carey at p. 10.

<sup>34</sup> *Id.*

**C. A New Licensee Should Not Be Responsible For Former Licensee's File**

The NCAB and VAB support the proposal to eliminate the burden imposed on a new licensee to maintain all the documents required to be maintained by the previous licensee.<sup>35</sup> After the Commission has reviewed a license assignment and once the transfer has occurred, information specific to the former licensee is no longer of relevant.<sup>36</sup> In addition, it is unfair to the new licensee to hold it responsible for any shortcomings of a predecessor.

**D. Electronic Public Files Should Not Be Mandated**

The NCAB and VAB oppose the proposal to require stations to maintain an electronic public file. Those stations who desire to maintain such files should certainly be permitted to do so, but this technology is financially beyond the reach of many smaller stations. Such a requirement would be an enormous financial burden on many small stations who don't have sophisticated computers, access to the Internet or the manpower to "input" their public file documents. Given the infrequency with which members of the public seek out a station's public file, these burdens would be wholly unjustified.

**E. TV Network Affiliate Agreements Should Be Filed With The Commission**

The NCAB and VAB oppose the proposal made by commenter David Tillotson to eliminate the requirement that TV network affiliation agreements be filed with the Commission.<sup>37</sup>

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<sup>35</sup> This proposal is similarly supported in the Comments of Barnstable Broadcasting at p. 5; Comments of Hardy & Carey at p. 12; Comments of Wind River Broadcast Center at p. 6; Comments of David Robinson; and Comments of Fuller-Jeffrey Broadcasting at p. 3.

<sup>36</sup> Comments of Barnstable Broadcasting at p. 5.

<sup>37</sup> See Comments of David Tillotson at p. 6.

Contrary to Tillotson's assertion, these agreements are of substantial value to the public because they promote a pro-competitive environment between TV networks and their affiliates. The existence and availability of this information is necessary for the market for TV programming to function at its highest level. The Commission recognized the procompetitive benefits of this rule when it declined a similar proposal to delete this requirement in 1985.<sup>38</sup> Moreover, this proceeding is not the appropriate forum in which to address this issue. The Commission is currently considering this rule in a separate proceeding.<sup>39</sup>

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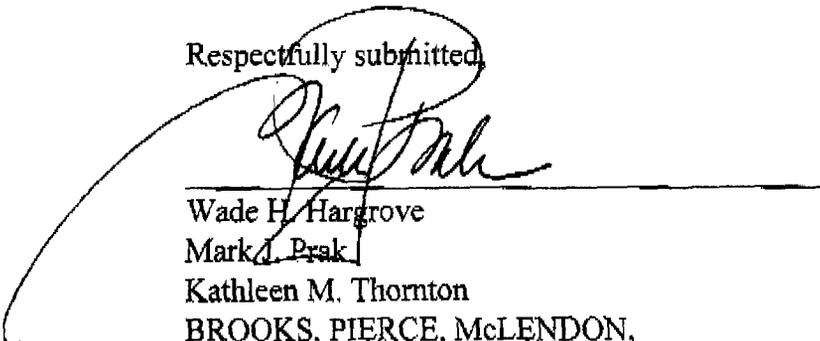
<sup>38</sup> *Report and Order, Amendment of Part 73 of the Commission's Rules Concerning the Filing of Network Affiliation and Transcription Contracts*, 58 RR 2d 815 (1985).

<sup>39</sup> MM Docket No. 94-140.

**V. Conclusion**

In view of the foregoing, the NCAB and VAB urge the Commission to adopt the proposed amendments to the main studio and public file rules to the extent set forth above.

Respectfully submitted,



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