

A. The Commission Must Not Accept The Proposals To Require The Public File To Be Located Only At The Main Studio, Unless It Has Also Required That The Main Studio Location Be Within The Principal Community Contour Of Any Station Licensed To The Community Or A 25 Mile Radius, Whichever Is Less.

In supporting the Commission's proposal to change the public file rules, several parties argued that the station's main studio would be first place the public would look to find the public file. *E.g.*, NAB Comments at 11; Comments of Pyramid Broadcasting at 5. Furthermore, they claim that locating the file within station offices would also enhance the station's ability to maintain, preserve, and add material to the files. *Id.* These commenters claim that these benefits would inure to the public regardless of the actual difficulty members of the public would have in travelling to the main studio location. *Id.*

These arguments misconstrue the Commission's regulatory scheme, which, as noted above, relies on listeners and viewers to monitor licensee compliance with programming regulations. Therefore, *citizen ability to access the public files must come first.* They must not be made to travel 50 or 100 miles to reach the public file; this would be the result, however, of the reforms broadcasters urge. If the public would not look in any location besides the main studio, than broadcasters should have the obligation to inform them about alternative locations. Similarly, broadcasters must find a reliable way to maintain the files, even at a remote location.

To help further ensure accessibility, UCC, *et al.* endorse the proposal of Salem Communications ("Salem") in its comments in support of its petition for rulemaking. Salem proposed that if a station locates its public file outside the community of license, it must also accommodate the public by: (1) offering free transportation to the main studio, (2) delivering the public file to a requestor, or (3) providing specific documents by mail. *NOPR* at ¶19. *See also*, ABC

Comments at 12 ("a station could provide transportation to particular individuals"). This will help to reduce the effects of a remote main studio - especially to the immobile, elderly, or in cases where the station's location is not convenient to mass transit, to those without cars. Salem's proposal certainly should be adopted if the Commission sets a straight mileage standard radius at greater than 25 miles. This approach strikes a compromise between the rights of listeners to inspect the public file and the desires of licensees to enjoy the benefits of studio consolidation.

B. The Commission Should Not Accept Proposals Which Would Remove Requirements To Keep Essential Documents In The Public File Or Which Would Shorten The Retention Periods Of Those Documents.

The broadcasters have generally approved of the Commission's proposals to reduce the number of documents licensees are required to place in their public files and the duration they must retain those documents. *NOPR* at ¶¶23-30. *See also, e.g.,* Capstar Comments at 19-27; Armak Comments at 8-9; NAB Comments at 13-16. The majority of these proposals should be rejected, however, because they would compromise the public's and the Commission's ability to monitor licensee performance.

The cost savings to licensees from not including a few documents in their public files is likely to be minimal - little more than photocopying costs and a few hours per month in administrative time. This is far outweighed by the benefits of, and the reliance of the FCC's current regulatory scheme upon, public participation, and it is not unreasonable in light of the extremely valuable asset, spectrum, which broadcasters receive for free.

Several broadcast commenters complain about the burden of recordkeeping and the space needed to maintain these files. Their complaints take an extreme view of the duties and costs of a licensee in maintaining its public files. As even the NAB admitted, the public file, at its

largest, might occupy no more space than a single filing cabinet. NAB Comments at 17. This can hardly be called burdensome. Therefore, the Commission should not allow space considerations to affect its determination of what records to require and how long to retain such records in the public files.

Finally, UCC, *et al.* endorse the Commission's "electronic public file" proposal, which would allow public files to be scanned into databases rather than being kept in paper files. *NOPR* at ¶32. Preferably, stations would then keep these files on their world wide web sites, so that citizens could examine the files at a distance as well. At a minimum, they could keep these files at the main studios. In either case, the station should be required to provide a detailed contents index and full text search capability. In addition to providing greater ease of access, this option would remove the objections of many broadcasters to the burdens of maintaining paper public files.

1. Responsibilities Upon Transfer

Upon sale of the station, the transferee must still be held responsible for maintaining the transferor's files, so that documents remain in the public file for the full period designated by the Commission's rules.

UCC, *et al.* agree with the comments of Pyramid Broadcasting that absolving the transferee from maintaining the files it inherits from the transferor would "encourage present licensees to fail to maintain the files in the knowledge or belief that the stations's license would be assigned in the not too distant future." Pyramid Comments at 6. This problem would become all the more severe in light of the fervent station trading of the last few years.

Indeed, it is more important now than ever before to keep records from previous station

owners. The current market structure of broadcasting is dominated by ever-larger group owners, and stations can change hands very quickly. A group owner coming under suspicion of violations of the Commission's rules in one of its stations could sell one or more of its other stations to avoid detection of further violations, because the new owner could lawfully destroy any evidence of violations of the Commission's multiple ownership, programming, political and EEO rules that might be present in the public files. An important, and perhaps the only, way to determine the practices of a group owner across its entire operation is to follow the history of its holdings.

Even for a single station, the previous owner's public file is important in that it provides a historical standard against which the public can compare the performance of current licensees. The cost to the new station owner from keeping the old owner's files is minimal, little more than the cost of the file cabinet space occupied by the previous owners' files.

Finally, some broadcasters expressed concern over liability for the omissions of the previous owners. Odyssey Comments at 8; Capstar Comments at 27 n. 32. UCC, *et al.* certainly would not object to a Commission policy of immunizing the transferee from liability for incomplete recordkeeping on the part of the transferrer. But it must make plain that it will still hold all licensees, even after a transfer, to full and strict recordkeeping requirements for the period of time in which they hold the station. It is hardly burdensome to require a transferrer not to destroy files and transferees not to dispose of them. Moreover, the Commission would look to a licensee's intent in determining whether there was a violation and in determining its severity. If defective records were attributable to a prior licensee, the current owner would not be accountable so long as it did not discard the files it received at the time of sale.

2. Affiliation Contracts And Ownership Documents.

A number of broadcast commenters argued that the public file should not include affiliation agreements or ownership and financial documents. For example, Armak Broadcasters, *et al.* advocated elimination of the requirement to file affiliation contracts and several other contracts related to corporate structure and finance. Armak Comments at 8-9. Capstar seeks to eliminate the requirement to keep contracts, instruments, or documents relating to the present or future ownership or control of the licensee, such as articles of incorporation, bylaws, stock transfer agreements, loans, and changes in officers, directors, or shareholders. Capstar Comments at 20-22. It claims these are unnecessary because they involve "voluminous amounts of paper" and are specific and highly complex documents that it claims are rarely requested by the public. *Id.* at 21.

The Commission should reject these arguments because they wildly exaggerate the cost of maintaining such documents in the file and fail to state any benefits. Although broadcasters claim that retention forces them to keep copies of many long documents, the costs of this are negligible as the result of technological innovations such as high speed copiers, digital storage and page feed scanners.

On the other hand, ownership and financial documents provide information that is crucial to public scrutiny of issues involving, for example, licensee character and fitness, attribution of ownership interests, and any unauthorized transfers of control of the station. In light of the Commission's tentative authorization of some LMAs and time brokerage agreements and its attribution of ownership to certain LMA programmers, these materials are essential to enforce Commission policies. These documents may be the only way to determine whether the holder

of an LMA is programming more than 15 percent of the broadcast time of a station, and has an attributable interest under §73.3555(a)(2)(i) of the Commission's rules. *See also, Further Notice of Proposed Rulemaking, Review of Attribution Rules*, 11 FCC Rcd 19895, 19908 (1996).

These documents may also be the only way to discover the real party in control of a station. For example, in a recent case, a station's viewers raised questions about the real party in control that could only have been discovered from an examination of financial documents located in the station's public files. *See, e.g., Petition for Reconsideration of WACCI-VCR, Jeffra Becknell and Anthony Pharr* (filed July 16, 1992) in the Assignment of Urban Telecommunications Corp. (licensee of WTMW-TV, Arlington, VA); *Petition to Deny of WACCI-VCR, Jeffra Becknell and Anthony Pharr* (filed April 24, 1994) in the same matter; *In re Applications of Roy M. Speer and Silver Management Company*, 11 FCC Rcd 14147 (1996).¹⁰

3. "The Public and Broadcasting"

Many broadcasters supported the Commission's proposal to delete the requirement that a copy of the 1974 report, "the Public and Broadcasting," be kept in the public file. *NOPR* at ¶24. *See also, e.g., Capstar Comments* at 19-20.

In light of the reliance the Commission has placed on citizen policing of licensee performance, it is nothing short of outrageous to deprive the public of such a document. For many citizens, this is the only plain language outline of their rights, and would be the only descriptive information a viewer or listener would have in reviewing the public file.

There is a problem in need of remediation here, but it will not be fixed by removing the

¹⁰Finally, it is irrelevant that these documents are rarely requested by citizens. *See discussion above* at 11-12.

requirement that broadcasters make available a plain language summary explaining citizens' rights. The solution is to retain the public file requirement but for the Commission also to remedy its scandalous failure to have updated this manual in over 20 years. The Commission should update this report instead of discontinuing its use. It would cost the Commission little to update the booklet and it would then be a simple matter for broadcasters to replace the 1974 edition with a new one.

4. Retention Requirements

Some broadcasters have asked the Commission to reduce the number of years that a station must retain certain materials in the public file, such as ownership reports, employment reports, political time requests, and issues/program lists. PAR, for example, argues that only "current" copies of these documents, *i.e.* less than 1 or 2 years old, would be relevant. PAR Comments at 3. Malrite advocates retaining public letters for 2 years instead of 3, and retaining both issues/program lists and Children's Television Act documentation for only 2 years instead of the entire license term. Malrite Comments at 8-9. Both commenters assert that this would reduce the burden on licensees by saving space. PAR Comments at 3; Malrite Comments at 8-9.

Upon closer examination, however, this analysis makes little sense. As UCC, *et al.* have already noted, the space burdens of maintaining the public file, even under current requirements, are minimal. Moreover, evidence of repeated conduct over an entire license term can provide necessary evidentiary support for allegations of fact in citizens' petitions to deny. The Commission's enforcement frequently focuses on patterns of violation instead of isolated incidents. Finally, and even more importantly, the Commission evaluates applications for license renewal on a broadcaster's performance record and programming *throughout its entire license term.* *Monroe*

Communications Corp. v. FCC, 900 F.2d 351 (D.C. Cir. 1990) ("Some briefer period of time may not give...a representative picture of the incumbent's past performance."). It is unfair to limit the public to being able to review only the last 1 or 2 years of the licensee's record, when the licensee itself will have records going back for the full term of its license. In sum, shortening the retention period would sap the Commission's remaining rules of their meaning; it would allow licensees all but to avoid the threat of detection.

5. Electronic Communication

Finally, some broadcasters opposed the Commission's proposal to require broadcasters to retain e-mailed letters as they would written paper messages. Pyramid Comments at 6-7; Capstar Comments at 23. They claim that because e-mail is easily reproduced, it would allow viewers to flood the station with submissions. Pyramid Comments at 7; Capstar Comments at 23.

This distinction, however, is meaningless. In fact, many broadcasters have also said that e-mail is a sort of communication-at-a-distance that should be a substitute for in-person visits. See discussion above at 10-11. Broadcasters cannot have it both ways. The viewer concerns expressed in e-mailed messages are just as valid as printed messages. Moreover, there is no greater risk of "flooding" the station with messages; with the advent of word processors, laser printers, and photocopiers, paper messages are just as easily reproduced and sent. Perhaps the only real difference between e-mail and paper messages is that the former has not yet been printed out from its original data format.

CONCLUSION

For the reasons set forth above, the Commission should (a) grant the broadcasters' proposals for relaxing the main studio rule only if the new standard requires the main studio to be located in the principal community contour of any station licensed to the same community or within 25 miles of the community center, *whichever is less*, (b) deny the broadcasters proposals to relax the public file rule such that a copy of the public file would only be kept at the main studio, unless the main studio location is required to be within the community of license or within 25 miles of the community center, and (c) continue to require public file contents and retention times as described above, so that licensees retain all documents in public files that are necessary for public review of licensee compliance with ownership and programming rules.

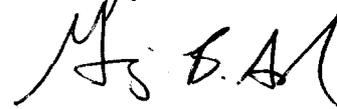
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