

FCC MAIL SECTION

Federal Communications Commission

FCC 98-175

Aug 14 8 35 AM '98

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

In the Matter of	)	
	)	MM Docket No. 97-138
Review of the Commission's Rules	)	RM-8855
regarding the main studio and	)	RM-8856
local public inspection files of	)	RM-8857
broadcast television and radio stations	)	RM-8858
	)	RM-8872
47 C.F.R. §§ 73.1125,	)	
73.3526 and 73.3527	)	

**Report and Order**

**Adopted: July 27, 1998**

**Released: August 11, 1998**

By the Commission: Commissioners Ness and Tristani issuing a joint statement.

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**I. INTRODUCTION**

1. With this *Report and Order*, we amend our rules regarding the main studio and local public inspection file for broadcast stations.<sup>1</sup> In the *Notice of Proposed Rule Making*<sup>2</sup> initiating this

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<sup>1</sup> 47 C.F.R. § 73.1125(a) (main studio rule); 47 C.F.R. §§ 73.3526, 73.3527 (public inspection file rules).

proceeding, we proposed that modification of these rules could serve the public interest. We here conclude that it is possible to grant broadcast licensees additional flexibility in locating their main studios, together with their public files, and adhere to the original purpose underlying these rules: to maintain reasonable accessibility of station facilities, personnel and information to members of the station's community of license, which enables the residents of the community to monitor a station's performance, and encourages a continuing dialogue between the station and its community. In this way, a station is better integrated into the activities of the community and can be more responsive to local community needs in its programming. In order to facilitate this interaction, this *Report and Order* also amends Sections 73.3526 and 73.3527 of our rules to clarify and update the required contents of the public inspection files. The actions we take today are consistent with our ongoing effort to ensure that our rules continue to serve the public interest without imposing unnecessary regulatory burdens. These modifications in no way alter the obligation of each broadcast licensee to serve the needs and interests of its community. As the Commission has long recognized, this is a "bedrock obligation" of every broadcast licensee.<sup>3</sup>

## II. MAIN STUDIO RULE

2. **Background.** The main studio and public file rules are rooted in Section 307(b) of the Communications Act of 1934.<sup>4</sup> Section 307(b) requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same."<sup>5</sup> In carrying out this mandate, the Commission has established a scheme for distributing broadcast service in which every radio and television station is assigned to a community of license with a primary obligation to serve that community.<sup>6</sup> A central component of this scheme requires that a broadcast station's main studio be accessible to its community of license. This permits "community residents to readily contact the station to voice suggestions or complaints."<sup>7</sup> We have also observed that "[e]xposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today's competitive marketplace and to meet our community service requirements. In addition, the studio will continue to be accessible to community residents participating in those local programs that, at the broadcaster's option, are produced at the studio."<sup>8</sup>

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<sup>2</sup> See *Notice of Proposed Rule Making*, 12 FCC Rcd 6993 (1997) ("NPRM").

<sup>3</sup> *Deregulation of Radio*, 84 FCC 2d 968, 977, 982 (1981), *on recon.*, 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). See also *En Banc Programming Inquiry*, 44 FCC 2303, 2312 (1960) ("The principal ingredient of [the public interest] obligation consists of a diligent, positive and continuing effort by the licensee to discover and fulfill the tastes, needs and desires of his service area.").

<sup>4</sup> 47 U.S.C. § 307(b).

<sup>5</sup> 47 U.S.C. § 307(b).

<sup>6</sup> See *Main Studio and Program Origination Report and Order*, 2 FCC Rcd 3215 (1987).

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

<sup>8</sup> *Id.* at 3218. In 1987, the Commission eliminated a requirement that stations originate a set minimal percentage of their programming from their main studios or other points within their communities. *Id.* at 3218-19.

3. At one time, all broadcasters were required to maintain their main studios in their communities of license. In 1987,<sup>9</sup> we relaxed the rule to permit a station to locate its main studio outside its community of license provided it is within the station's strongest signal area - the principal community contour.<sup>10</sup> In doing so, we noted that the role of the main studio in the production of programming had diminished over the years, that community residents often communicate with stations by telephone or mail rather than visiting the studio, and that the growth of modern highways and mass transit systems had reduced travel times. We further observed that the revised rule would allow broadcasters to obtain certain efficiencies, such as co-locating a station's studio at its transmitter site or moving the studio to lower cost areas. These factors persuaded us that relaxing the rule would provide broadcasters greater flexibility while at the same time ensuring that their main studios continued to be reasonably accessible to the communities they serve.<sup>11</sup>

4. In this proceeding, we have reexamined these rules in light of the changes to a number of our broadcast rules resulting from the Telecommunications Act of 1996 ("1996 Act"). In the *NPRM* initiating this proceeding, we stated that we were considering revising these rules not only because we received a petition for rule making which formally requested us to do so,<sup>12</sup> but also because the 1996 Act significantly relaxed the radio multiple ownership rules and adopted other reforms. Consistent with these reforms, we sought comment on ways to lessen the burdens on licensees, particularly those owning multiple stations, by giving them greater flexibility in locating their main studios. In addition, we were concerned that because principal community contours vary so greatly by class of station, restricting the area of location to principal community contours may be disproportionately restrictive and burdensome for owners of smaller stations. We emphasized that in proposing modifications to our main studio rule we in no way sought to alter the "bedrock obligation" of each broadcast licensee to serve the needs and interests of its community.

5. In the *NPRM* in this proceeding, we set forth two goals. Our first goal is to strike an appropriate balance between ensuring that the public has reasonable access to each station's main studio and public file and minimizing regulatory burdens on licensees.<sup>13</sup> Our second goal is to adopt clear rules that are easy to administer and understand.<sup>14</sup> In the *NPRM*, we proposed four options to achieve these goals.<sup>15</sup> The first option would require that the main studio be located within the principal community

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<sup>9</sup> *Id.* Under the current rule, each station's main studio must maintain program origination and production facilities and a full-time management and staff presence during business hours, and provide local or toll-free telephone service to facilitate contact by members of the community.

<sup>10</sup> The principal community contour (5 mV/m for AM radio, 3.14 mV/m for FM radio and city-grade for TV) must encompass the entire community of license, but often extends beyond those limits in some directions. See 47 CFR §§ 73.24(i), 73.315(a), 73.685.

<sup>11</sup> *Main Studio and Program Origination Report and Order*, 2 FCC Rcd at 3217-18.

<sup>12</sup> See Petition for Rule Making filed by Apex Associates, Armak Broadcasters, Inc., Starview Media, Inc., Silverado Broadcasting Co., and Mountain View Broadcasting Company ("Apex, et al.") (filed July 8, 1996).

<sup>13</sup> See *NPRM*, 12 FCC Rcd at 6999.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 7000.

contour of any station licensed to the community of license in question. Option two would require a station to locate its main studio within a radius of a set number of miles from a common reference point in the station's community of license, such as the community's city-center coordinates. Option three would combine the above two approaches: a station could choose to locate its main studio anywhere in the principal community contour of any station licensed to the same community, or within a set distance from the community center, whichever it chooses. Option four, a market approach, was limited to entities owning multiple stations in a market, and would allow such entities to co-locate the main studio for their stations at any one of the commonly owned stations, provided each of the stations is located in the same local market<sup>16</sup> and that the main studio was within some set distance from the community center.

6. Comments. Over sixty commenters specifically expressed support for modifying the rule governing the location of the main studio, and eleven suggested deleting the rule entirely. Fifteen of these commenters supported a straight mileage standard, with widely varying radius sizes, ranging from 24 to 62 miles from the community center, while twenty supported some type of combination of mileage and contour, with very little agreement on specifics. With respect to the contour suggestion posed by the *NPRM*, one commenter agreed and five others supported variations. Eleven commenters supported using a market definition, while eight would leave the decision as to location to licensee discretion. Finally, four commenters supported the *status quo*, including Morality in Media, which specifically opposes any change in the rule.

7. Discussion. We are adopting a rule which combines a signal contour and a mileage standard. Specifically, we will allow a station to locate its main studio at any location that is within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license,<sup>17</sup> whichever it chooses. This approach fulfills our stated goals. By establishing a clear, bright line test for determining location of the main studio, it is clear and easy to administer. It expands the area in which most licensees may locate their main studios while maintaining a close connection to the community. The contour aspect increases the area in which licensees in communities with multiple stations will be able to choose location, putting all licensees in a community on equal footing, and the mileage aspect increases the area for smaller radio stations, particularly those providing the sole local service in a community. Although this expansion is not limited to co-owned stations, the increased flexibility it provides should allow many more multi-station licensees to combine the resources of their jointly-owned stations, which can allow them to better serve the public. Revising the rule to permit greater co-location of main studios should also reduce the number of waiver requests we have received from licensees in the past, which will reduce the burden on

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<sup>16</sup> The local radio market is defined as the area encompassed by the principal community contours (*i.e.*, predicted or measured 5 mV/m for AM stations and predicted 3.16 mV/m for FM stations) of the mutually overlapping co-owned stations. See *Implementation of Section 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd 12368, 12370 (1996); *Memorandum Opinion and Order in MM Docket No. 91-140*, 7 FCC Rcd 6387, 6395 (1992).

<sup>17</sup> For Commission allotment and licensing purposes, a community's reference coordinates are generally the coordinates listed in the United States Department of Interior publication entitled *Index to the National Atlas of the United States*. An alternative reference point, if none is listed in the Atlas, are the coordinates of the main post office. See 47 C.F.R. § 73.208(a)(1).

both licensees and the Commission.<sup>18</sup>

8. At the same time, the standard we are adopting places the main studio in a reasonably accessible location to the community of license. The amended rule maintains broadcasters' obligations under Section 307(b) to provide service to their communities of license by continuing the main studio's connection to the community of license. Our relaxation of the main studio location requirement takes into account the evidence in the record that more people use remote rather than face-to-face means of communication for routine contact with their local stations, and that permitting stations greater flexibility in locating their main studios should not unduly burden the public.<sup>19</sup>

9. **Increased Flexibility/Reduced Regulatory Burden.** We believe that our new approach will substantially reduce regulatory burdens consistent with the public interest, and with longstanding Congressional and Commission policy.<sup>20</sup> Amendment of the main studio rule is particularly warranted in light of the 1996 Act and its changes to the local radio ownership rules which allow a single entity to own up to eight commercial radio stations in the largest markets.<sup>21</sup> The changes we adopt today will open up opportunities for more licensees owning two or more stations to operate those stations from a centrally located studio/business office rather than requiring each to maintain a separate main studio for one or more of its commonly-owned stations. We believe that these changes will reduce substantially the burdens the

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<sup>18</sup> The action we take today will not affect any stations operating pursuant to a waiver of these rules. Of particular note are licensees of noncommercial educational stations operating their stations as satellites of a main station. Commenters Xavier University and Moody Bible Institute ("Moody") request that our rule changes avoid any detrimental effect on the Commission's established waiver process for these types of stations. With respect to main studio waiver requests, noncommercial stations have been given distinct treatment from commercial stations. See, e.g., Comments of Moody at p. 4. We will continue to follow these waiver criteria, although we decline to incorporate them into our rule, as Moody requests. See Comments of Moody at 4-5; see also Comments filed in response to public notice dated August 13, 1996, Report No. 2147 by Xavier University at p. 3. Absent a waiver, however, the rules apply equally to commercial and noncommercial stations. See *Memorandum Opinion and Order* in MM Docket 86-406 (Main Studio/Program Origination Reconsideration), 3 FCC Rcd 5024, 5026-7 (1988).

<sup>19</sup> See, e.g., Comments of NAB at p. 5; Paxson Communications Television at p. 4; Sinclair Telecable, Inc. at pp. 3, 6; KALI-FM/Polyethnic Broadcasting, Inc. ("KALI") at p. 6.

<sup>20</sup> See S. Conf. Rep. 104-230, 104th Cong. 2d Sess. 1 (1996) (purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework"); S. Conf. Rep. 96-878, 96th Cong. 2d Sess. 1 (1980) (purpose of Regulatory Flexibility Act is "to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations"); *Implementation of Section 203 of the Telecommunications Act of 1996 (Broadcast License Terms)*, 12 FCC Rcd 1720 (1997) (extending broadcast license terms to 8 years consistent with policy of reducing regulatory burdens).

<sup>21</sup> The rules are as follows: (1) In a radio market with 45 or more commercial radio stations, a party may own up to 8 commercial radio stations, not more than 5 of which may be in the same service (AM or FM); (2) in a market with between 30 and 44 stations, a party may own up to 7 stations, not more than 4 of which may be in the same service; (3) in a market with between 15 and 29 stations, a party may own up to 6 stations, not more than 4 of which are in the same service; and (4) in markets with 14 or fewer stations, a party may own up to 5 stations, not more than 3 of which may be in the same service, except that a party may not own more than 50 percent of the stations in such market. See 47 C.F.R. § 73.3555(a)(1); *Implementation of Section 202(a) and 202(b)(1) of the Telecommunications Act of 1996*, 11 FCC Rcd at 12369 (1996); See also, *Telecommunications Act of 1996*, Pub. L. No. 104-104, 110 Stat. 56 (1996).

previous rule imposed on the licensee, and can generate savings that can be put to more productive use for the benefit of the community served by the station. Numerous commenters who generally favor the combined approach,<sup>22</sup> including the National Association of Broadcasters ("NAB"), agree that this approach will reduce burdens on stations.<sup>23</sup>

10. We also believe that this amendment of the main studio rule will lessen the disproportionate effect that the previous rule had on owners of smaller stations. As pointed out below, the principal community contour of a broadcast station -- the determinant of the main studio's location -- varies greatly depending on a station's channel or class. High power stations, which have principal community contours as great as 44 miles in radius, have greater flexibility in locating their main studios under the rule than low power stations, which can have principal community contours as small as 10 miles in radius.<sup>24</sup> While the current rule serves to "ensure[] that the main studio is located in the primary reception area of the station,"<sup>25</sup> we believe that the rule we adopt today addresses the differential treatment between small and larger stations, assures that the main studio remains in the primary reception area of a station licensed to the same community, and grants small station licensees a much wider degree of latitude in choosing main studio locations.

11. **Reasonable accessibility.** We believe that the combination approach we adopt today will place each main studio in a reasonably accessible location to the members of the community of license. The principal community contour of each station, while varying in size depending on service, channel and class,<sup>26</sup> is required to cover the community of license,<sup>27</sup> and encompasses the area within which the

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<sup>22</sup> See, e.g., Capstar Broadcasting Partners, Inc., at p. 11; Malrite Communications Group Inc. at p. 3; Max Media Properties, LLC, at pp. 2-3; NAB at pp. 1-2.

<sup>23</sup> See Comments of NAB at pp. 3-4 (consolidation of resources may help improve diversity of programming through cost savings).

<sup>24</sup> See note 26, *infra*.

<sup>25</sup> *Main Studio and Program Origination Report and Order*, 2 FCC Rcd at 3218.

<sup>26</sup> By way of illustration, the size of the principal community ("city-grade") contour (70dBu) for all FM stations varies by class of station. At maximum facilities for each class of station, the radius of the contours are as follows:

Class A	16.2 km (10.1 miles)
Class B1	23.2 km (14.5 miles)
Class B	32.6 km (20.4 miles)
Class C3	23.2 km (14.5 miles)
Class C2	32.6 km (20.4 miles)
Class C1	50.0 km (31.3 miles)
Class C	67.7 km (42.3 miles).

The 5 mV/m contour is the city grade contour for AM stations. This actual contour is calculated using a formula taking into account the frequency, power, radiation and ground conductivity of the facilities and thus varies from station to station.

The city grade contour for broadcast television stations is specified according to channel. The contour for Channels 2-6 is the 74 dBu contour, for Channels 7-13, it is 77dBu, and for Channel 14-69, it is 80 dBu. The size

strongest listenable signal is broadcast. It is thus the contour most closely linked to the community of license, and will ensure that the community of license has reasonable access to the studio. We also agree with commenters' remarks that this change is reasonable because the public is increasingly likely to contact the station by phone or mail rather than in person, and this expanded area of location is still limited enough to assure accessibility to the remaining public through mass transit or modern highways.<sup>28</sup>

12. Our adoption of a 25-mile permissible range as an alternative option for the licensee is based on a number of factors. First, the 25-mile standard reflects an approximation of the weighted average of the principal community contour radii of FM radio and TV stations (actual weighted average: 23.08 miles).<sup>29</sup> AM radio station contours, based on frequency, power, radiation and ground conductivity, and conceivably quite large, were not taken into account because they vary very significantly from station to station. Second, a 25-mile radius from city center gives stations a 50-mile diameter (1962.5 square miles) within which to locate the main studio. With this standard, citizens at the opposite end of the community would not be expected to have to travel more than 50 miles to reach the studio, which we believe is a reasonably accessible distance to expect members of the public to travel, given today's modern transportation and good roads. Several commenters generally agree with this approach.<sup>30</sup> We do not agree with some commenters, such as NAB,<sup>31</sup> or Capstar,<sup>32</sup> who argue that the distance of the straight mileage standard should approximate the largest possible principal community contour (44 mile radius, or an 88 mile diameter). As stated above, the weighted average of the contours more closely approximates 25 miles rather than the largest possible contour, and the majority of stations considered in that calculation are FM radio stations in Classes A through C2 with maximum facilities with a radius of less than 25

of the contour varies by channel and geographic zone. The size of the radius of the city-grade contour at maximum facilities for each group of channels by zone are as follows:

Channels 2-6	Zone I	43.4 km (27 miles)
Channels 2-6	Zones II, III	60.3 km (37.5 miles)
Channels 7-13	Zone I	53.1 km (33 miles)
Channels 7-13	Zones II,III	70.8 km (44 miles)
Channels 14-69	Zones I, II, III	80.0 km (43 miles).

<sup>27</sup> See 47 C.F.R. §§ 73.24(i), 73.315(a), 73.685.

<sup>28</sup> See, e.g., Comments of NAB at p. 5; Paxson Communications Television at p. 4; Sinclair Telecable, Inc. at pp. 3, 6; KALI-FM/Polyethnic Broadcasting, Inc. ("KALI") at p. 6.

<sup>29</sup> This average was arrived at by calculating the maximum facilities for all FM and TV stations. A significant number of radio stations (5,653 of 7,204) are Classes A through C2, which have maximum facilities with radiuses of less than 25 miles.

<sup>30</sup> See Comments of Galen O. Gilbert at p. 4; KALI at p. 6; Salem at p. 8; and Positive Alternative Radio, Inc., *et al.* ("PAR") at p. 2; and Reply Comments of North Carolina Association of Broadcasters and Virginia Association of Broadcasters ("NCAB/VAB") at p. 7. These commenters suggest that we adopt a 50-mile radius standard. As a general matter, we do not believe that this distance would place the main studio in a location reasonably accessible to the listeners and viewers it is licensed to serve.

<sup>31</sup> See Comments of NAB at p. 5.

<sup>32</sup> See Comments of Capstar at p. 11.

miles.

13. **Clarity and ease of administration.** As stated above, our second goal in this proceeding is to adopt clear rules that are easy to understand and administer. We believe that using the combined approach fulfills this goal. The combination of contour and mileage is clear, easy to apply, and reduces the discrepancies between low and high power stations. It also provides a single standard for all television, FM and AM stations, commercial and noncommercial. The mileage element is self explanatory. As NAB claims, this change lessens the burden on broadcasters and the Commission in comparison to proposals put forth by other parties, and does so in a way that gives licensees clear guidance.<sup>33</sup> Although some parties criticized the contour approach as being difficult to administer because, for example, the parameters of other stations' contours might be difficult to obtain,<sup>34</sup> we disagree.<sup>35</sup> Each station's contours are a matter of public record. Licensees, therefore, will have this information available to them to facilitate their decisions as to main studio location.<sup>36</sup>

14. **Alternative proposals.** As noted, some commenters proposed variations to the rule we adopt today, some of which would further relax the rules, while others would be more restrictive.<sup>37</sup> As an initial matter, some commenters suggest that we delete the main studio requirement altogether. We continue to believe that the main studio requirement is necessary to ensure that broadcast stations are reasonably accessible to the communities they serve, which, as described in paragraph 2 above, provides important public interest benefits.<sup>38</sup>

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<sup>33</sup> See Comments of NAB at p. 4, 6.

<sup>34</sup> See, e.g., Comments of Capstar at 11.

<sup>35</sup> Capstar also points out that since contours are affected by other stations, this method could pose some practical problems for stations. See Comments of Capstar at p. 12. We do not anticipate this to occur. However, in the rare instance in which a station's main studio is placed outside all community contours because of another station's subsequent modification of facilities, we will grandfather the affected station's main studio location.

<sup>36</sup> Morality in Media argues that the proposed changes would make it more difficult for the FCC to monitor station performance because the remote main studio locations would be too difficult for inspectors to visit. Comments of Morality in Media at p. 10. FCC inspectors are able to locate radio station facilities in remote locations now. We expect them to continue to be able to carry out this aspect of their functions. Also, in response to Morality in Media's concerns about public monitoring of station performance, we expect the changes we make herein to facilitate public participation, not discourage it. The *NPRM* never suggested that the public visit the FCC in Washington to get such information as coverage maps, classes of stations, ERP and HAAT, or that a personal visit to Washington was the only way to gain access to this information. This information will be available both in the local public inspection file and at the FCC office in Washington.

<sup>37</sup> For example, some commenters argue that other rules suffice to assure access or suggest that provision of access should be left to licensee discretion. See Comments of ABC at p. 8; Capstar at p. 9. We believe, however, that we need to maintain clear rules regarding the location of a licensee's main studio and public inspection file to ensure that a station has a presence in, and is accessible to, its local community.

<sup>38</sup> Some commenters also argue that we should repeal the requirement that stations maintain program origination capability in their main studios. See Comments of Allbritton at p. 2; KHWY at p.3; see also *Memorandum Opinion and Order* in MM Docket 86-406 (Clarification of the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations), 3 FCC Rcd 5024, 5026 (1988)(deleting program origination

15. We also are not persuaded by the alternatives advanced by other commenters because those proposals provide relief to fewer stations and could, in some cases, make the studios less accessible than the rule we adopt today. We are satisfied that use of principal community contours or the mileage standard will give stations ample area within which to locate their main studios. ABC, Barnstable, Inc. ("Barnstable") and others<sup>39</sup> suggest that we require location of the main studio within the principal community contours of any mutually overlapping co-owned stations.<sup>40</sup> We believe that this approach would benefit only the licensees of multiple stations, and could place the main studio location well beyond a reasonably accessible location to the station's community of license. Other suggestions include defining the permissible area to locate the main studio by TV Grade B contour, designated market area, Arbitron radio market,<sup>41</sup> metropolitan statistical area, or "protected service contour," i.e., the .5 mV/m contour for AM and 1 mV/m contour for FM.<sup>42</sup> We believe that these suggestions would potentially place the main studio at too distant a location from the community to be considered reasonably accessible.

16. We also decline to adopt the proposal of the Office of Communication of the United Church of Christ, the Media Access Project, Center for Media Education, and Minority Media and Telecommunications Council (collectively referred to as "MAP") which would more restrictively permit location within any contour of any station licensed to the community, or 25 miles from the community center, whichever is less.<sup>43</sup> MAP favors the contour aspect of the rule we adopt today, stating that a modest relaxation of the rules may promote minority ownership and employment because it may encourage exurban stations to locate closer to urban areas.<sup>44</sup> However, MAP claims that in-person visits would be deterred if the main studio were allowed to be located further away than 25 miles.<sup>45</sup> It points to recent changes to the Commission's rules that place increased reliance on citizen involvement in the licensing process with respect to children's television and to political candidate enforcement of lowest unit rate provisions.<sup>46</sup> While we are aware of the need for reasonable accessibility in order to facilitate citizen

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requirement but specifically retaining requirement to maintain program origination capability at main studio). This too is an issue that was not raised in the *NPRM* and is therefore beyond the scope of this proceeding.

<sup>39</sup> See Comments of Cox Radio, Inc. ("Cox"), Fuller-Jeffrey Broadcasting Companies, Inc. ("Fuller-Jeffrey"), Paxson Communications Corporation ("Paxson"), Casciani Communications, Inc. ("Casciani"), The Dalton Group ("Dalton"), Dick Broadcasting Company, Inc. of Tennessee ("Dick"), First Virginia Communications, Inc. (First Virginia), Pyramid Broadcasting, Inc. ("Pyramid"), Sunair Communications, Inc. ("Sunair").

<sup>40</sup> See Comments of ABC at p. 9; Barnstable at p. 2.; Cox at p. 3. Fuller-Jeffrey at p. 2; Paxson at p. 3.

<sup>41</sup> See Comments of Allbritton at p 7; ARSC at p. 7.

<sup>42</sup> See Comments of Jacor at p. 6.

<sup>43</sup> See Reply Comments of MAP at 12. On December 4, 1997, the United States Catholic Conference filed informal Comments in support of MAP's Reply Comments.

<sup>44</sup> See Reply Comments of MAP at p. 13.

<sup>45</sup> See Reply Comments of MAP at 9-10.

<sup>46</sup> See Reply Comments of MAP at p. 11.

involvement in the licensing process, MAP's proposal to "cap" the allowed distance for a licensee to locate its main studio at 25 miles would make the new rule more restrictive than the current rule for most TV and many radio stations. MAP argues that licensees should expect to incur additional costs in maintaining accessible studios as reasonable expenses associated with doing business as broadcasters. It states that broadcasters should assume these costs in exchange for the free use of the public airwaves, and "other governmentally granted benefits."<sup>47</sup> We have concluded that MAP's positions impose too strict a standard of accessibility given current means of communication and transportation, and does not adequately consider regulatory burdens. This is inconsistent with our stated goals to balance accessibility with the burdens of our regulations. We believe that the rule we have adopted today strikes the appropriate balance in the public interest.

17. We also reject another variation supported by Morality in Media, which argues that the Commission should continue to require each station to locate its main studio in the community of license because in-person visits will be deterred by a too distant main studio. Although we are conscious of the concerns raised in Morality in Media's comments, we note that its comments were based on a misapprehension of the current rule. As noted above, when the rules were amended in 1987, we relaxed the rule to allow location within the principal community contour after determining it was no longer feasible to require stations to continue to locate their main studios in the community of license. As we have stated, we have formulated the rule we adopt herein based on our balance of the need for reasonable access and the reduction of regulatory burdens on licensees, addressed specifically above.

### III. LOCAL PUBLIC INSPECTION FILE RULES

#### A. Location of the Local Public Inspection File

18. Background. The Commission's rules generally require a broadcast station to maintain its local public inspection file at its main studio, when the main studio is located within the station's community of license, or at any accessible place in the community of license (e.g., an attorney's office or local public library) if the station's main studio is located outside the community.<sup>48</sup> As with the main studio rule, reasonable access to the public inspection file serves the important purpose of facilitating citizen monitoring of a station's operations and public interest performance and fostering community involvement with local stations. This in turn helps ensure that stations are responsive to the needs and interests of their local communities.

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<sup>47</sup> See Reply Comments of MAP at p. 14.

<sup>48</sup> 47 C.F.R. §§ 73.3526(d) (governing commercial stations) and 73.3527(d) (governing noncommercial stations) state in pertinent part:

(d) *Location of Records.* The file shall be maintained at the main studio of the station, where such studio is located in the community to which the station is licensed or where such studio is located outside the community of license pursuant to authorization granted under §73.1125(a) of the rules prior to July 16, 1987, or at any accessible place (such as the public registry for documents or an attorney's office) in the community in which the station is or is proposed to be licensed . . . .

47 C.F.R. §§ 73.3526(d), 73.3527(d).

19. In the *NPRM*, we sought comment on the proposals and Comments of Apex, *et al.*, Lauren Colby, Hardy and Carey, and Salem Communications Corp. requesting amendment of our rules to permit both commercial and noncommercial stations to locate their local public inspection files at their main studios, wherever located.<sup>49</sup> This would place the public file at the same "reasonably accessible" location as the main studio, even when the main studio is outside the community of license. We also proposed that an applicant for a new station or change of community maintain its file in the proposed community of license or at its proposed main studio. In so proposing, we recognized that allowing co-location outside the community of license would alter our 1987 determination that the public file should be kept in the community of license in order to "assure meaningful public participation in the licensing process."<sup>50</sup> In conjunction with the above proposals, we sought comment on accommodations to the public when the public file is located outside the city of license, such as those proposed by Salem Communications Corp., which would require any licensee with a main studio outside the community of license to: (1) provide free transportation to the main studio; (2) deliver the public file to a location specified by the requestor; or (3) provide specified documents by mail.

20. Comments. 52 of 70 commenters specifically state that they believe the public file should be kept at the main studio, wherever located, with a few others, including Morality in Media, arguing for retention of the current requirement to keep the public file within the community. Most disagree with the suggested accommodations.<sup>51</sup> One commenter suggests deleting the rule.<sup>52</sup>

21. Discussion. Based on the proposals and comments before us, we believe that it is in the public interest to amend the public file rules, Sections 73.3526(d) and 73.3527(d) of our rules, to provide that the licensee of a station locate its public file at its main studio, wherever located.<sup>53</sup> In addition, the rules we adopt today provide that an applicant for a new station or change of community locate its public inspection file in the proposed community of license or at its proposed main studio. We also are giving licensees the option of maintaining all or part of their public file in a computer database rather than in paper files, and are encouraging licensees who chose this option to post their "electronic" public files on any World Wide Web sites they maintain on the internet.<sup>54</sup> Public files available over the internet can be viewed from homes, schools, and libraries with internet connections, thereby greatly increasing the number of sites where such files can be accessed.

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<sup>49</sup> See Petitions for Rule Making filed by Apex *et al.*, Lauren Colby (filed August 20, 1993), Hardy and Carey (filed May 13, 1994), Salem Communications Corp. (filed March 15, 1995) (requesting amendment of local public inspection file rules regarding location); and David Tillotson (filed on July 8, 1996) (requesting amendment of local public inspection file rules regarding contents).

<sup>50</sup> *Main Studio and Program Origination Report and Order*, 2 FCC Rcd at 3218.

<sup>51</sup> See, e.g., Comments of NAB at p. 12; Barnstable at p. 5; Malrite at p. 7; Paxson at p. 7; Casciani at p. 6; Dalton at p. 5; Dick at p. 6; First Virginia at p. 5; Pyramid at p. 5; and Sunair at p. 6.

<sup>52</sup> See Comments of Thomas Osenkowsky at p. 2

<sup>53</sup> This includes stations operating pursuant to a main studio waiver, subject to the "accommodation" described below. See Comments of University of North Carolina Center for Public Education ("UNCTV") at p. 3.

<sup>54</sup> See *infra* para. 53.

22. We believe that having a licensee maintain its public file at its main studio will fulfill our stated goals. This rule is clear and easy to administer.<sup>55</sup> It also takes into account the fact that many members of the public contact stations by telephone, and the accommodation we set forth below will facilitate access to the public file by permitting individuals to call a station and request that it mail portions of the file to the caller's home or office. As several commenters point out, the main studio is the most logical and likely place for the public to expect to find a station's public inspection file.<sup>56</sup> It is listed in the telephone book, and is usually well marked by commercial signage. These factors are likely to increase the convenience to the public in some cases, and could also facilitate public involvement at the station.<sup>57</sup> The public would also be better served if the file is maintained and stored under the direct control of the station.<sup>58</sup> Not only would there be greater assurance that the file is kept up-to-date and in proper order, but also the licensee would be able to provide assistance to those researching the public file, if necessary. As some commenters point out, collocating the public file and main studio will reduce the burdens on licensees who previously were required to maintain an off-premises public file in the community of license because their main studios are outside the city limits of the community of license.<sup>59</sup> Moreover, we note that co-location of the main studio and public file will aid same-market, multiple-station owners by allowing them to channel their resources in ways that would better serve the public.

23. Commenter Thomas Osenkowsky suggests that we delete the public file requirement, and require stations to maintain routine station records electronically. We continue to believe the local public file serves a vital public interest benefit. Although we encourage stations to maintain files electronically, *see supra*, we will not require them to do so given the burdens this could impose on members of the public without computer access or ability, and on stations, given current technology and stations' current computer capabilities.

24. **Accommodation.** We will require stations to make available, by mail upon telephone request,<sup>60</sup> photocopies of documents in the public file, including our revised version of "The Public and Broadcasting" (as drafted by the FCC staff; *see infra*)<sup>61</sup> which shall also be placed on the FCC's internet site. The station may require the person requesting the copies to pay the reasonable cost of photocopying

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<sup>55</sup> Some commenters claim that the current rule is confusing and difficult to comply with. *See* Comments of Capstar at p. 17; Hardy and Carey at p. 8.

<sup>56</sup> *See, e.g.*, Comments of Cox at p. 7; Capstar at p. 16; NAB at p. 10; Hardy and Carey at pp. 7-10; Paxson Communications Corp. ("Paxson") at p. 6-7.

<sup>57</sup> *See e.g.*, Comments of ABC at p. 11; ARSC at p. 8; Barnstable at p. 4; Armak et al. at p. 5; NAB at p. 11; Capstar at p. 17; Hardy and Carey at p. 8.

<sup>58</sup> *See, e.g.*, Comments of NAB at p. 10; ARSC at pp. 8-9; Capstar at pp. 17-18; ABC at p. 11; Cox at p. 7.

<sup>59</sup> *See, e.g.*, Comments of Capstar p. 17; NAB p. 10; Hardy and Carey at pp. 7-8; Paxson at p. 6.

<sup>60</sup> Note that the Commission's rules require stations to provide local or toll-free telephone service to their communities of license. *See* 47 C.F.R. §73.1125(c).

<sup>61</sup> This manual will generally describe broadcasters' public file obligations, and how the public can help monitor licensee performance.

and the station will pay postage.<sup>62</sup> To facilitate requests for public file documents over the telephone, we will require stations to provide callers, if they wish to receive one, a copy of the new edition of "The Public and Broadcasting" free of charge. This description will assist callers in identifying documents they may ask to be sent to them by mail. We will require licensees to assist callers in this process and answer questions they may have about the actual contents of the station's public file. For example, stations, if asked, should describe to a caller the number of pages and time periods covered by a particular ownership report or children's television programming report, or the types of applications actually maintained in the station's public file and the dates they were filed with the FCC. We also encourage stations to place the descriptions of their public files on any Internet home page that they maintain. We believe that this accommodation for the public should ensure that public file materials continue to be reasonably accessible to all members of the public. The revised "The Public and Broadcasting" should facilitate this access by educating the public about the contents of the file. Various commenters agree that accommodations of this general nature would be appropriate under some circumstances.<sup>63</sup>

25. We reject the other accommodations mentioned in the *NPRM* and proposed by commenters. In addition to the accommodations raised in the *NPRM*, accommodations supported by commenters include courier, fax or e-mail delivery,<sup>64</sup> toll-free telephone service,<sup>65</sup> or requiring stations to make their studio available at non-business hours by appointment.<sup>66</sup> Some commenters suggest that the actual method of provision of public file access be voluntary<sup>67</sup> or left to licensee discretion, but within a set period of time from the time of the request.<sup>68</sup> We have considered all of the alternate suggestions and have determined that the accommodation we require in this rule fulfills our stated goals of balancing public access with regulatory burden and ease and clarity of administration. As noted, toll-free telephone service is already required. We believe that requiring stations to provide transportation to requesters, to transport the public file to them or open the main studio during non-business hours would be unnecessarily burdensome to station owners. Finally, Noncommercial Educational Licensees request that we place a limit on the number of requests to avoid harassing requests.<sup>69</sup> We will not adopt such a limit; there is no evidence in the record that public requests for information are made in bad faith to any significant extent, or that stations are being overwhelmed by such requests. A licensee, may, of course, seek a waiver or special relief from the Commission in the event such circumstances arise.

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<sup>62</sup> We do not believe it is unreasonable for licensees to require payment before sending out these copies from the public file.

<sup>63</sup> See, e.g., Comments of Crawford at p. 4; ABC at p. 12; Moody at p. 7; Odyssey at p. 7; Reply Comments of MAP at p. 20.

<sup>64</sup> See Reply Comments of MAP at p. 20; Comments of Hardy and Carey at p.12; Wind River at p. 5; KALI at p. 8; ABC at p. 12; Moody at p. 7; Odyssey at p. 7.

<sup>65</sup> See Comments of Crawford at p. 4; KALI at p. 8.

<sup>66</sup> See Comments of Crawford at p. 4.

<sup>67</sup> See Comments of ABC at p. 12.

<sup>68</sup> See Comments of Wind River at p. 5 (suggests 24-48 hours); Hardy and Carey at p. 12 (suggests 48 hours).

<sup>69</sup> See Comments of ABC at p. 12; Moody at p. 7; Odyssey at p. 7.

26. Several commenters specifically disagree with making any accommodation, including the one we have adopted. Most cite the undue burden on broadcasters, discouragement from locating outside the community, and the ease with which the accommodations could be abused.<sup>70</sup> One specifically notes that allowing requests by phone rather than in-person could encourage frivolous requests.<sup>71</sup> We believe that the rules we adopt today address these concerns. First, a requestor is entitled to "The Public and Broadcasting," which should provide adequate guidance to make an intelligent request for information. In addition, the rules regarding the public file's contents in their revised form will be much easier to understand and administer for both licensees and the public seeking information. Finally, we expect that requiring a person seeking documents from a station's public file to pay the reasonable expenses of photocopying should reduce the possibility for abusive and frivolous requests.

#### B. Contents of the Local Public Inspection File

27. Background. In the *NPRM*, we sought comment on updating our requirements regarding the materials that a station must place in its public inspection file. Currently, both commercial and noncommercial broadcast licensees must maintain a local public inspection file containing copies of certain applications and related materials filed by the station with the FCC, ownership reports, employment reports, and a list of programs aired by the station during the previous three months that provided its most significant treatment of community issues (the "issues/programs list").<sup>72</sup> Commercial broadcast licensees must also retain written comments and suggestions received from the public regarding operation of their stations.<sup>73</sup> In addition, broadcast licensees must maintain a separate public file concerning requests by political candidates for broadcast time on the station,<sup>74</sup> and commercial television licensees must maintain a file containing information regarding the educational and informational programming they air for children.<sup>75</sup>

28. We invited comment in the *NPRM* on a number of specific proposals designed to eliminate out-of-date provisions in the public inspection file rules or to clarify particular aspects of the rules. We also asked whether, in the case of an assignment of license, assignees should be relieved of their current obligation to ensure that the public file contains all of the documents previously required to be maintained

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<sup>70</sup> See Comments of NAB at p. 12; Malrite at p. 7; Paxson at p. 7; ARSC at pp. 9-10; Barnstable at p. 5; Casciani at p. 6; Dalton at p. 5; Dick at p. 6; First Virginia at p. 5; Pyramid at p. 5; and Sunair at p. 6.

<sup>71</sup> See Comments of ARSC at p. 9. ARSC also argues that allowing requests without in-person review by the requestor will burden licensees because the requestor will not be able to make an informed request without looking through the file, and that stations will have to interpret these vague requests and become researchers to determine exactly what the requestor needs. *Id.*

<sup>72</sup> 47 C.F.R. §§ 73.3525(a)(1) - (a)(3), (a)(5), (a)(8)(i), & (a)(9) (requirements for commercial stations); 47 C.F.R. §§ 73.3527(a)(1) - (a)(3), (a)(5), & (a)(7) (requirements for noncommercial educational stations).

<sup>73</sup> 47 C.F.R. §§ 73.3526(a)(7), 73.1202.

<sup>74</sup> 47 C.F.R. §§ 73.3526(a)(4), 73.3527(a)(4), 73.1943.

<sup>75</sup> 47 C.F.R. § 73.3526(a)(8)(ii) & (a)(8)(iii).

in the file by the assignor.<sup>76</sup> In addition, we proposed to clarify the obligation of commercial licensees to retain in the public file copies of "written communications and suggestions" received from the public. We indicated our wish to clarify that such "written comments and suggestions" include electronic mail messages transmitted to the station via the internet, and invited comment on this proposed clarification.

29. We proposed a number of revisions to the retention periods for the materials in the public inspection file to update and clarify those provisions. We stated our desire to provide clear guidance to licensees and the public regarding retention period requirements, facilitate meaningful public participation in monitoring licensee compliance with our rules and policies, and minimize unnecessary paperwork burdens. We sought comment on whether any of the public file retention periods can be shortened to reduce regulatory burdens without depriving the public of useful, relevant information, and on other ways in which the retention period requirements can be clarified and streamlined. We also sought comment on giving stations the option of maintaining all or part of the public inspection file in a computer database rather than in paper files, noting that this and other uses of computer technology could reduce stations' paperwork burdens while at the same time improving public access to information about the station.

30. **Updates to the Rules.** In the *NPRM*, we proposed the following specific amendments to update and clarify the public inspection file rules:

(a) We proposed to delete the requirement that licensees maintain in their public file a copy of the 1974 manual entitled "The Public and Broadcasting,"<sup>77</sup> noting that this manual is long out-of-date.

(b) We proposed to delete the reference in Section 73.3526(a)(11) of our rules regarding the maintenance of reports required under our financial interest and syndication rules,<sup>78</sup> which have been repealed.<sup>79</sup>

(c) We stated that we will correct the cross-reference in the public inspection file rules to the rule section governing a licensee's political file.<sup>80</sup>

(d) We proposed to delete the note set forth under Sections 73.3526(a)(1) and 73.3527(a)(1) of the public inspection file rules exempting from the rules certain applications filed on or before May 13, 1965. We noted that, even without the exemption, the retention periods for maintaining such applications have long since expired.

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<sup>76</sup> See 47 C.F.R. §§ 73.3526(b)(1), 73.3527(b)(1).

<sup>77</sup> 47 C.F.R. §§ 73.3526(a)(6), 73.3527(a)(6).

<sup>78</sup> 47 C.F.R. § 73.3526(a)(11).

<sup>79</sup> See *Review of Syndication and Financial Interest Rules*, MM Docket No. 95-39, 10 FCC Rcd 12165 (1995).

<sup>80</sup> Section 73.1943 of the rules describes the obligation of licensees to maintain a political file containing information about requests for broadcast time made by or on behalf of candidates for political office. 47 C.F.R. § 73.1943. In referring to these political file requirements, the local public inspection file rules incorrectly cross-reference Section 73.1940 of the rules. See 47 C.F.R. § 73.3526(a)(4) & (e), 73.3527(a)(4) & (e).

31. Comments. The great majority of commenters that addressed these proposals to revise our public inspection file requirements supported them, generally viewing them as long overdue.<sup>81</sup> MAP, however, strongly opposed our proposal to eliminate the requirement that stations retain a copy of "The Public and Broadcasting," arguing that the manual provides a useful, plain language description of citizens' rights and other important information. According to MAP, it would be "nothing short of outrageous" to deprive the public of this document in view of the Commission's increased reliance on public monitoring of licensee performance.<sup>82</sup> Instead of deleting this requirement, MAP argues that the Commission should update the manual to provide current information and require broadcasters to replace the 1974 edition with a new one.<sup>83</sup>

32. Discussion. We will adopt the three specific proposals, described in (b) - (d) above, to amend our public inspection file rules. No commenters objected to these revisions, and they will serve to clarify and make current licensees' obligations under these rules. With respect to our first proposal regarding the 1974 manual "The Public and Broadcasting," we will no longer require licensees to maintain this out-of-date document. But we concur with MAP that this volume should be replaced with an updated version. The new manual will describe our new requirements regarding the contents of the public file, and discuss ways in which the public can help monitor licensee performance. We believe that this updated manual will provide a useful description of the documents that are available for public inspection, and will facilitate interaction between licensees and their communities that may lead to improved service to the public. The Commission staff will prepare the manual, and issue a Public Notice notifying licensees when it is complete.<sup>84</sup> The Commission will place the new manual on its World Wide Web site on the internet,<sup>85</sup> where it can be accessed and downloaded by licensees and the public. We will require all commercial and noncommercial licensees to replace their 1974 manuals with the updated version when it is available.

33. Assignment of License. Our current rules provide that after the Commission approves an application for assignment of license and the transaction has been consummated, the assignee is responsible for ensuring that the public file contains all the documents previously required to be maintained in the file by the assignor.<sup>86</sup> We stated in the *NPRM* that we had received a petition for rule

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<sup>81</sup> See, e.g., Comments of NAB at pp. 13 - 14; Capstar at p. 20; GRK Productions Joint Venture at p. 5; Hardy & Carey at p. 10; KALI at p. 9; Malrite at p. 7; Salem at p. 7; and Wind River at p. 6. See also Reply Comments of NCAB/VAB at p. 12.

<sup>82</sup> Reply Comments of MAP at p. 25.

<sup>83</sup> *Id.* at p. 26.

<sup>84</sup> We expect that the staff will be issuing the new version of this manual in the fourth quarter of this year.

<sup>85</sup> The address for the Commission's internet home page is: <http://www.fcc.gov>.

<sup>86</sup> Section 73.3526(b)(1) provides: "In cases involving applications for consent to assignment of broadcast station construction permits or licenses, with respect to which public notice is required to be given under the provisions of § 73.3580 or § 73.3594, the [local public inspection file] shall be maintained by the assignor. If the assignment is consented to by the FCC and consummated, the assignee shall maintain the file commencing with the date on which notice of the consummation of the assignment is filed with the FCC. The file maintained by the assignee shall cover the period both before and after the time when the notice of consummation of assignment was filed. The assignee is responsible for obtaining copies of the necessary documents from the assignor or from the

making requesting that the Commission amend the public file rule to delete this requirement. The petitioner argued that the proposed change is warranted because the public file need only contain information concerning the current licensee or permittee, as the public has no practical use for information regarding the ownership, programming, and EEO practices of a station's prior licensees. The petitioner also contended that a new licensee should not bear the burden of locating documents missing from a prior licensee's public file. We stated our belief that there is merit to these arguments regarding licensee-specific information, but noted that there may be information in the public file relevant to a station's facilities that is not licensee-specific (e.g., engineering material in a modification application filed by the assignor) and therefore should be maintained by the assignee. We invited commenters to address this issue.

34. Comments. A large number of commenters agreed that an assignee should not be required to retain materials relating to the operations of the previous owner on the ground that information regarding a prior licensee is irrelevant to current station operations. These commenters also argued that assignees should not be held responsible for correcting deficiencies in the assignor's files, as missing documents are often costly or impossible for the assignee to obtain.<sup>87</sup> Generally, these commenters accepted the view that assignees should be held responsible for retaining copies of any documents that do relate to current operations, such as facilities modifications.<sup>88</sup> NAB asked that the FCC identify those documents assignees will be held responsible for obtaining from the assignor.<sup>89</sup>

35. In contrast to these views, MAP and a number of other broadcaster commenters argued that assignees must be held responsible for maintaining the assignor's files so that documents remain in the public file for the full period required by the Commission's rules. According to these parties, relieving licensees of this responsibility would encourage them to fail to maintain files in the belief or knowledge that the station will be sold in the not-too-distant future.<sup>90</sup> MAP contends that holding the assignee responsible in this situation is increasingly important as the number of station transfers and the number and size of group owners increases. MAP also argues that, if an assignee is permitted to destroy files obtained from the assignor, a group owner coming under suspicion of violations of the Commission's rules at one of its stations could sell one or more of its other stations to avoid detection of further violations

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FCC files." 47 C.F.R. § 3526(b)(1). Section 73.3527(b)(1) of the rules contains an identical provision relating to noncommercial educational stations.

<sup>87</sup> See, e.g., Comments of ARSC at pp. 10-11; Allbritton at p. 11; Barnstable at p. 5; Capstar at p. 27; Crawford at p. 7; Fuller-Jeffrey at p. 3; Jacor at p. 11; KHWY at p. 9; Moody at pp. 7 - 8; Susquehanna at p. 4. See also Reply Comments of NCAB/VAB at p. 15.

<sup>88</sup> See, e.g., Comments of David Tillotson at p. 10; NAB at p. 14.

<sup>89</sup> Comments of NAB at p. 14.

<sup>90</sup> See Reply Comments of MAP at pp. 22-23. See also Comments of Casciani at p. 6-7; First Virginia at p. 5-6; Dalton at p. 6; Dick at pp. 6-7; Pyramid at p. 6; Sunair at p. 7. Wind River noted that the assignor should be held responsible for maintaining a complete public file in accordance with FCC regulations, and that the assignee can identify any missing records during its due diligence examination of the assignor's operations and can require the assignor to locate and provide these documents prior to closing. Comments of Wind River at p. 6.

of the Commission's public file, programming, ownership, or other rules.<sup>91</sup> A number of commenters advocated that the successor licensee be held responsible for those contents required to be in the public file for a two year period preceding consummation of the assignment to them or back to the previously granted renewal, whichever is shorter.<sup>92</sup> MAP states that it would not object to immunizing an assignee from liability for incomplete recordkeeping on the part of the assignor, but would require assignees to retain public file documents obtained from the assignor for the duration required by the Commission's rules.<sup>93</sup>

36. Discussion. In the case of an assignment of license, we will continue to require the assignee to retain public file documents obtained from the assignor for the period required by our revised rules. However, we will not hold assignees responsible for correcting any omissions in the file that exist at the time of the assignment. We believe that, on balance, requiring licensees to retain the assignor's public file intact is a minimal burden which is outweighed by the benefit to the public of continued access to these materials for the entire retention period. We are persuaded by those commenters who argued that relatively little effort and expense is required to simply retain public file materials obtained from an assignor, rather than disposing of all or part of those materials.<sup>94</sup> Documents that relate to the operations of a previous licensee can be relevant and useful in the context of a challenge to or investigation of the qualifications of that licensee to hold other FCC authorizations. In view of the large number of station sales in recent years, especially in the radio market, and the longer eight-year license period, it increasingly occurs that a station is assigned to a new owner before the license term is complete. To ensure that the previous owner's record is available for review, we will require that the file inherited from the assignor be retained for the full period specified by our rules.

37. While we will continue to require an assignee to retain records obtained from an assignor, we will not hold licensees strictly liable for omissions created by predecessors. However, we expect parties engaged in the purchase of a station to make a good faith effort to correct deficiencies in the assignor's file that exist at the time of the assignment through the due diligence process typically undertaken by a purchaser of a station. Given the other rule changes we are adopting today, we expect that as a general matter there will be fewer instances where a licensee's public file will be missing required documents, whether at the time of an assignment or any other time. In particular, we are making revisions today both to reduce the number of documents required to be maintained in the public file and to clarify the retention requirements. This should help reduce the number of instances in which the public file is found to be incomplete. Moreover, the revisions we are making today to our rules governing public file location should improve management and maintenance of the file by licensees, further facilitating compliance (*see* para. 21, *supra*). We emphasize that all licensees have a duty to comply with our public file rules, and expect that licensees will find this obligation easier to meet in light of the revisions we are making today.

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<sup>91</sup> See Reply Comments of MAP at 23.

<sup>92</sup> See Comments of Casciani at p. 7; First Virginia at p. 6; Dalton at p. 6; Dick at p. 7; Pyramid at p. 6; Sunair at p. 7.

<sup>93</sup> See Reply Comments of MAP at p. 23.

<sup>94</sup> *Id.*

38. **Electronic mail.** We proposed in the *NPRM* to clarify the requirement that "[a]ll written comments and suggestions received from the public by licensees of commercial AM, FM, and TV broadcast stations regarding operation of their station shall be maintained in the local public inspection file." We stated our wish to clarify that such "written comments and suggestions" include electronic mail messages transmitted via the internet. We noted that internet "e-mail" is an increasingly popular means of communication, and invited comment on this proposed clarification.

39. **Comments.** Comments on this proposal were mixed. Parties that opposed requiring stations to retain e-mail messages generally argued that such communications are too easily made and duplicated, and that the volume of such messages is increasing, presenting the possibility that stations could be flooded with frivolous, irrelevant, or harassing comments or suggestions.<sup>95</sup> Some contended that because e-mail is often delivered directly to the intended recipient, it generally bypasses any central mail sorting system, thus making it difficult to collect, sort, and direct to the public file.<sup>96</sup> Those opposed to the proposal also argued that requiring communications to be in traditional letter form was not onerous and established a minimal, acceptable standard of formal effort for communications required to be maintained in the public inspection file.<sup>97</sup>

40. Commenters who supported the Commission's proposal generally argued that viewer concerns expressed in e-mail messages were just as valid as those expressed as printed communications.<sup>98</sup> Some also pointed out that, with the advent of word processors and high speed copiers, printed letters are almost as easy to create and duplicate as e-mail. Supporters of the proposal also argued that stations should have the option of retaining e-mail in electronic form as long as it is easily made available to the public.<sup>99</sup>

41. **Discussion.** We will adopt our proposal to clarify that our rules require the retention by licensees of e-mail messages as well as traditional printed communications. We concur with those commenters that expressed the view that there is no fundamental distinction between e-mail and printed letters that would justify treating those forms of communication differently for purposes of this rule. Both means of communication can be used to convey important comments or suggestions regarding programming, and should be treated in a similar fashion. We will give licensees the option of retaining e-mail messages either in a computer or a paper file. Rather than printing out hard copies of these e-mail communications, licensees that choose the computer file option may provide the public upon request with a computer diskette containing copies of the e-mails received by the station, or may make available to the

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<sup>95</sup> See, e.g., Comments of ARSC at p. 11-12; Casciani at p. 7; Barnstable at p. 5; First Virginia at p. 6; Dalton at p. 6; Dick at p. 7; Pyramid at p. 6; Sunair at p. 7. See also Reply Comments of Odyssey at p. 2.

<sup>96</sup> See, e.g., Comments of ARSC at p. 11-12; Capstar at p. 23.

<sup>97</sup> See Comments of Casciani at p. 7; Barnstable at p. 5; First Virginia at p. 6; Dalton at p. 6; Dick at p. 7; Pyramid at p.6; Sunair at p. 7.

<sup>98</sup> See, e.g., Comments of NAB at p. 14; Reply Comments of MAP at p. 27.

<sup>99</sup> Comments of NAB at p. 14.

public a computer terminal where these communications may be accessed.<sup>100</sup> In the case of identical e-mails or letters received from different parties, we will also give licensees the option of retaining, either on paper or in a computer file, a single sample copy of the e-mail or letter as well as list of all parties that sent identical e-mails or letters to the station.

42. For reasons of clarity, rather than retaining our rules governing the retention of letters received by commercial broadcast stations in a separate rule section, § 73.1202, we have moved those rules to § 73.3526, our public file rule section for commercial broadcast stations. The obligation to retain letters received from the public is fundamentally a public file obligation, and should therefore be part of the public file rules themselves.

43. **Retention requirements.** We also sought comment in the *NPRM* on whether the retention periods for the materials in the public inspection file and political file should be revised to update and clarify those provisions. At a minimum, we proposed to revise those retention periods tied to the broadcast license term to reflect the new license term of eight years. We also proposed to amend the rules to require that all documents required to be retained for the license term be retained not only for the eight-year term but until the grant of the renewal application is final, *i.e.*, no longer subject to reconsideration, review, or appeal either at the FCC or in the courts. In addition, we sought comment on whether any of the public file retention periods can be shortened to reduce regulatory burdens. In particular, we noted that we currently require that certain applications filed with the FCC be retained until "the expiration of one license term ... or until grant of the first renewal application of the television or radio broadcast license in question." We proposed shortening the required retention period for license assignment and transfer applications and applications for major facilities modifications to the period in which they are pending before the FCC or the courts. We noted that this is the period of time these applications are of particular relevance to the public, and that after this period other public file materials such as ownership reports may provide an alternative source for the information contained in these applications. Finally, we also sought comment on other ways to clarify and streamline our retention period requirements, and on the appropriate retention periods for letters received from the public, annual employment reports, and annual ownership reports.

44. **Comments.** Commenters generally agreed that our public file retention requirements are unnecessarily complex and need clarification. For example, a number of parties noted that the current rules are unclear regarding the length of time licensees must keep annual ownership and employment reports in the file.<sup>101</sup> Commenters, including a number of broadcasters, also generally supported the Commission's proposal to update the rules by revising those retention periods tied to the broadcast license term to reflect the new eight-year term, and to clarify that documents required to be retained for the license term be retained until grant of the renewal application is final.<sup>102</sup> A large number of commenters also expressed the view that the current rules have unnecessarily long retention periods for certain

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<sup>100</sup> Files made available on computer diskette should be in a generally accepted, simple text file format (*i.e.*, ASCII) on a diskette.

<sup>101</sup> See, *e.g.*, Comments of Allbritton at p. 11; Jacor at p. 10. These commenters requested that the Commission publish a complete list of what must be retained in the public file and the retention period for these documents.

<sup>102</sup> See, *e.g.*, Comments of NAB at p. 15; Fuller-Jeffrey at p. 3; KALI at p. 10; S&S Communications Group at p. 2; Wind River at p. 7.

documents, or require retention of documents which have no useful purpose. Finally, several concurred with the Commission's proposal that assignment and transfer applications and applications for major facilities modifications be retained only during the period they are pending before the Commission or the courts.<sup>103</sup>

45. In contrast to comments in support of streamlining public file requirements, a few commenters, including MAP, opposed reducing either the number of documents licensees are required to place in the public file or the period they must be retained. These commenters argued that the cost savings resulting from such rule changes would be minimal, given the relatively small amount of time required to place documents in the file and the relatively small amount of space occupied by the file.<sup>104</sup> They contended that eliminating public file requirements or the duration documents must be kept in the file would compromise the public's and the Commission's ability to monitor licensee performance. According to these commenters, the benefits of public participation in monitoring licensee performance, and the FCC's reliance on such monitoring, far outweigh the cost to licensees of complying with current public file requirements.<sup>105</sup>

46. Discussion. We believe there is significant room for clarification of our public file retention requirements, and agree with those commenters who argue that some of the current rules are unnecessarily complex. We also believe that our public file requirements can be streamlined, either by shortening the retention period where appropriate or eliminating the retention requirement altogether for documents that are not useful to the public.

47. As we proposed in the *NPRM*, for those documents we believe should be retained for the entire license term (including issues/programs lists and Children's Television Programming Reports), we will update our rules to reflect the current eight-year license term for both television and radio licenses. We will also require that those documents required to be retained for the full eight-year term be retained until the grant of the renewal application is final, *i.e.* no longer subject to reconsideration, review, or appeal either at the FCC or in the courts. This revision will ensure that those documents we believe should be available to the public for the entire license term remain available until final action has been taken on the license renewal application, thus facilitating monitoring of licensee performance by interested parties and their participation in the license renewal process. We disagree with those commenters who argued that the retention period for issues/programs lists, which is now 5 or 7 years based on the former license term for radio and TV stations, be reduced.<sup>106</sup> The lists contain information about licensee

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<sup>103</sup> See, e.g., Comments of Hardy & Carey at p. 12; Capstar at p. 26; GRK Productions at p. 6. Crawford advocated that licensees be required to keep a copy of applications filed with the FCC, other than license renewal applications, until 6 months after grant of the application is final. Comments of Crawford at p. 5.

<sup>104</sup> According to NAB, the public file, at its largest, might occupy no more space than a single filing cabinet. Reply Comments of NAB at p. 17.

<sup>105</sup> Reply Comments of MAP at pp. 21-22.

<sup>106</sup> Malrite supports reducing the retention period for these lists to 2 years. Comments of Malrite at p. 8. Crawford advocates these lists be retained for only 1 year. Comments of Crawford at pp. 5 - 6. Hardy & Carey would require stations to make available only information on the most significant programming addressing community issues aired during the previous 3 months. They argue that the 1996 Telecommunications Act makes renewal challenges almost impossible, thereby eliminating the public's need to see the lists. Comments of Hardy &

compliance with public interest obligations which is relevant to the evaluation of licensee performance at renewal, and must continue to be available throughout the license term and until final grant of the next renewal application. Similarly, we decline to reduce the retention period for Children's Television Programming Reports, as one commenter suggested.<sup>107</sup> Compliance with our children's programming requirements is an important issue to be examined at time of renewal. Consequently, these reports also must remain available through the entire license term and until final grant of the next renewal application.

48. In addition, as we proposed in the *NPRM*, we have decided to shorten the public file retention period for most applications filed with the FCC. Our current rules generally require that all applications be retained for the term of the license.<sup>108</sup> The applications subject to this retention period include, for example, license assignment and transfer applications and applications for major facilities modifications. As we noted in the *NPRM*, and as many commenters agreed, these applications are most relevant to the public during the period they are pending before the FCC or the courts. Moreover, much of the information contained in these applications is available in other public file documents; information about the applicant's ownership structure, for example, is also available in the ownership reports. Accordingly, we will require that applications and related materials be retained in the public file only until final action has been taken on the application, except that new construction permit applications and applications for assignment or transfer of license that are granted pursuant to a waiver showing must be retained for as long as the waiver is in effect.<sup>109</sup> With respect to these latter applications, the Commission has granted the waiver based, in part, on representations contained in the application and waiver exhibit. We believe these applications must remain available to the public for the entire period the waiver is in effect to ensure the public can assist the FCC in evaluating licensee performance in light of the representations made in the application and waiver request. Commenters that addressed this issue generally agreed that applications granted pursuant to a waiver request should be retained.<sup>110</sup> Finally, we will also require that renewal applications granted on a short-term basis be retained throughout the short-term license period and until completion of the next renewal review. As the performance of these licensees has led to imposition of a short-term renewal sanction, it is especially important that these renewal applications remain available to the public over the entire, shortened license term.

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Carey at p. 12.

<sup>107</sup> Malrite would require retention of these records for 2 years rather than the license term. Comments of Malrite at p. 9.

<sup>108</sup> See §§ 73.3526(a)(1), (a)(2), and (e)(2), and §§ 73.3527 (a)(1), (a)(2), and (e)(2). Several commenters noted that it is unclear under the language of the current retention requirement how long applications placed in the file midterm must be retained (*e.g.*, whether such applications must be retained 5 or 7 years - the license terms specified in the current rule - or whether they need be retained only until expiration of the current term). See, *e.g.*, Comments of Jacor at pp. 10 - 11. The revisions we make to the rules today should eliminate any ambiguity regarding the required retention period for these and other public file documents.

<sup>109</sup> Unlike our current rule, our new rule does not distinguish between applications for which local public notice is required and those for which it is not required. See §§ 73.3526(a)(1) and (2), 73.3527(a)(1) and (2). Instead, our new rule distinguishes between applications only on the basis of the public's need for continued access to such applications. This change will both clarify the overall retention requirements and shorten the retention period for most applications.

<sup>110</sup> See, *e.g.*, Comments of Capstar at p. 26.

49. Regarding other possible means of streamlining our retention period requirements, we have concluded that we will require licensees to retain only the most recent, complete ownership report (FCC Form 323) in the public file, together with any subsequent statements filed with the FCC certifying that the current report is accurate. The current rule requires retention of all ownership reports for the term of the license. We agree with those commenters who argued that the most recent ownership report contains current information regarding the licensee's ownership structure, and that it is unnecessary to require licensees to retain previous ownership reports filed during the license term that contain out-of-date information.<sup>111</sup> In the unusual case that a member of the public desires access to previous ownership information, these reports can be obtained from the Commission.<sup>112</sup>

50. To further reduce the paperwork burden on licensees, as suggested by some licensees we will revise our current requirement that licensees retain in their public inspection files contracts required to be filed with the Commission under § 73.3613 of the rules (relating to licensee ownership and control, including network affiliation agreements, articles of incorporation, bylaws, stock agreements, and radio time brokerage agreements).<sup>113</sup> Rather than requiring copies of all such contracts to be kept in the public file, we will permit stations, as an alternative option, to maintain an up-to-date list identifying all such contracts and to provide copies to requesting parties within seven days.<sup>114</sup> We believe this revision will reduce the burden on licensees, and especially on group owners who presently may have to retain multiple copies of the same agreement. At the same time, the public will have immediate access to a complete list of such contracts pertaining to the licensee, and can rapidly obtain any specific documents they wish to

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<sup>111</sup> See, e.g., Comments of Crawford at p. 5; Capstar at p. 26; Delta at p. 4. NAB would require licensees to retain the most current ownership report as well as the three previous ones. Comments of NAB at p. 16.

<sup>112</sup> We note that the Commission has proposed, in a proceeding examining ways to streamline Mass Media applications, rules, and processes, to decrease the frequency with which Ownership Reports for commercial and noncommercial broadcast stations must be filed with the Commission. See *Notice of Proposed Rule Making, In the Matter of 1998 Biennial Regulatory Review - Streamlining of Mass Media Applications, Rules, and Processes*, MM Docket No. 98-43, FCC 98-57 (rel. April 3, 1998) ("*Streamlining NPRM*") at ¶¶83-89. The changes to our public file requirements adopted herein will, of course, be subject to the outcome of that proceeding.

<sup>113</sup> Commenters supporting revision or elimination of this requirement include David Tillotson, at pp. 7-9, and Capstar, at pp. 20-22. Some commenters advocated that the Commission eliminate the requirement that licensees retain and file with the FCC television network affiliation agreements. See, e.g., Comments of David Tillotson at 7-9. Both the Network Affiliated Stations Alliance and MAP opposed this proposal. Reply Comments of Network Affiliated Stations Alliance at pp. 1-2; Reply Comments of MAP at pp. 24 - 25. The Commission has a pending proceeding examining the network affiliation contract filing requirement. See *Filing of Television Network Affiliation Contracts*, MM Docket No. 95-40, 60 Fed. Reg. 19564 (1995). We believe the Tillotson proposal should be considered in the context of that proceeding where the issues raised by the parties can be more thoroughly examined. We will not alter or delete in this proceeding our requirement that television network affiliation agreements be filed with the FCC. As discussed *infra*, we will revise our public file requirements relating to such contracts only insofar as giving licensees the option of providing copies of contracts, and other § 73.3613 agreements, upon request within seven days.

<sup>114</sup> This is similar to the approach proposed by Capstar. See Capstar Comments at p. 22.

review.<sup>115</sup>

51. Finally, with regard to communications (including e-mail) received from the public by commercial broadcasters regarding operation of their station and required to be maintained in the public file pursuant to current §73.1202 of the rules, we will retain the current three year retention period for such communications. We will not extend the retention period for such letters to coincide with the eight year license term. We believe that an eight year retention requirement would be overly burdensome, and that older letters are less relevant to current licensee performance. While we will not extend the retention period for such communications beyond the existing three year term, we decline to shorten the retention period, or to eliminate the retention requirement altogether, as advocated by some commenters who argued that these letters are rarely requested by the public or used by the licensee or others in connection with a contested license renewal, especially in light of the expedited renewal procedures mandated by the 1996 Telecommunications Act.<sup>116</sup> We are not persuaded by these arguments, and continue to believe that these letters and e-mails, retained for a three-year period, can play a helpful role in assisting the public in monitoring station performance. A member of the public may, for example, wish to know whether others have expressed similar concerns in letters to the station during the previous several years. We consequently believe a three-year retention period for letters and e-mails is warranted and will help promote a dialogue between stations and their communities.

52. In light of our goal to reduce unnecessary paperwork burdens, we will delete the requirement that letters from the public received by commercial TV licensees be separated into programming and non-programming subject categories.<sup>117</sup> The burden imposed on licensees by this requirement seems to outweigh the relatively minimal benefit to those members of the public interested in reviewing these letters. Our rules will still require that licensees maintain a separate file containing letters requesting broadcast time for political candidates,<sup>118</sup> making these letters more readily available. In addition, we note that licensees are required to prepare a summary at time of renewal of any letters they have received regarding violent programming,<sup>119</sup> thereby assisting members of the public interested in letters received by licensees on this issue.

53. **Electronic Public File Option.** We will adopt our proposal to give stations the voluntary

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<sup>115</sup> In our *Streamlining NPRM* we have proposed to eliminate the requirement that applicants file certain contracts and agreements with the Commission as part of assignment and transfer applications and following execution of such agreements, and instead to require applicants to place such agreements in the station's public inspection file. *Streamlining NPRM, supra* n. 112, at ¶¶ 30 - 33. The changes we make today may therefore be subject to further review in our streamlining proceeding.

<sup>116</sup> See, e.g., Comments of Crawford at p. 7, Hardy & Carey at p. 10, and Reply Comments of NCAB/VAB at p. 14 (advocating elimination of requirement to retain letters from the public). Hardy & Carey would not oppose requiring retention of letters from the public regarding violent programming, however. Comments of Hardy & Carey at p. 10. See also Comments of Delta at p. 4 and Malrite at p. 8 (supporting reducing retention period for letters from 3 to 2 years).

<sup>117</sup> See 47 C.F.R. § 73.1202(a)(2).

<sup>118</sup> See 47 C.F.R. §73.1943.

<sup>119</sup> See *infra* paragraph 56.

option of maintaining all or part of their public inspection file in a computer database rather than in paper files. We encourage, but will not require, stations that elect this option to post their "electronic" public files on any World Wide Web sites they maintain. We noted in the *NPRM* that many stations are equipped with computers and make information available to the public on their own World Wide Web home pages on the internet. Stations that post their "electronic" public files on the World Wide Web increase the number of locations from which these files may be accessed. Such measures can facilitate communication between licensees and their communities that can lead to better service to the public. Commenters generally supported giving stations the option to use computer technology to maintain and improve access to their public file, as long as such use is voluntary and not required.<sup>120</sup> As proposed in the *NPRM*, a station that chooses the option of maintaining an "electronic" public file will be required to make a computer terminal available to members of the public interested in reviewing the station's file,<sup>121</sup> and will be required to provide paper copies of such public file materials upon request.<sup>122</sup>

54. **Contents of Local Public Inspection File.** To summarize the actions we are taking today to update, clarify, and revise our public inspection file rules, following is a list of our revised public file requirements. In addition to the revisions discussed above, this list includes certain other revisions and clarifications addressed in the *NPRM* and in comments as well as other modifications, more editorial in nature, designed to shorten and clarify the rules.

(i) **Authorization.** All licensees will be required to retain a copy of their current authorization, as well as any other documents necessary to reflect any modifications thereto or conditions that the Commission has placed on the authorization. Our current rule does not require that authorizations be maintained in the public file. This revision will ensure that the public has ready access to the technical parameters of the station license and any conditions on station operation imposed by the FCC.

(ii) **Applications and related materials.** We will require retention of applications filed with the FCC only until final action has been taken on the application, except that applications for a construction permit and applications for assignment or transfer of license granted, in either case, pursuant to a waiver must be retained for as long as the waiver remains in effect. In addition, renewal applications granted on a short-term basis must be retained through the short-term renewal review and until final grant of the next renewal application.

(iii) **Citizen Agreements.** As under the current rules, we will continue to require that a copy of every written citizen agreement be retained in the file for the term of the agreement.

(iv) **Contour maps.** As under the current rules, we will continue to require that applicants, permittees, and licensees retain in the file copies of any service contour maps submitted with any application tendered for filing with the FCC, together with any other information in the application

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<sup>120</sup> See, e.g., Comments of NAB at p. 17; Wichita Great Empire Broadcasting at p. 8; Fuller-Jeffrey at p. 3; Moody at p. 7, and Reply Comments of MAP at p. 22.

<sup>121</sup> This requirement does not apply to licensees who choose to maintain only e-mails in a computer file. These licensees may provide copies of such e-mails to the public on a computer diskette. See *supra* paragraph 41.

<sup>122</sup> We will continue to require that parties requesting copies of public file documents pay the reasonable cost of printing or reproduction. See 47 C.F.R. §§ 73.3526(f); 73.3527(f).