

BENTLEY LAW OFFICE

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June 19, 2006

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: RM-11332 (Amendment of Sections 73.3526 and 73.3527 of the Rules

Dear:

This letter is written on behalf of Maranatha Broadcasting Company, Inc. (“MBC”), licensee of AM broadcast station WEST, 1400 kHz, Easton, Pennsylvania, and MBC Grand Broadcasting, Inc. (“MBC Grand”), licensee of AM broadcast stations KNZZ and KTMM and FM broadcast stations KJYE, KMOZ-FM, and KMGJ, all Grand Junction, Colorado, and FM broadcast station KSTR-FM, Montrose, Colorado.¹ MBC and MBC Grand support the above-referenced Petition for Rule Making, which aims at the elimination or substantial modification of the FCC’s public inspection file rules for both commercial and noncommercial stations. As currently constituted and administered by the FCC, the public inspection file rules place a substantial burden on broadcast licensees that is not outweighed by any valid regulatory purpose.

The experience of the MBC companies in complying with the requirements of the public file rules illustrates the inconsequential benefits of the file rules as currently constituted and enforced. A few reporters and representatives of political candidates have reviewed the stations’ political broadcasting files. Otherwise, in more than 30 years, fewer than five members of the general public

¹ MBC has been the licensee of radio and television stations since 1965; MBC Grand acquired KNZZ and KJYE in 1989 and has acquired its other stations at various times over the intervening years.

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have asked to review the public files of any of the MBC companies' stations, only one in connection with any of the stations' renewal applications.

In contrast to the nearly nonexistent public benefit of the public inspection files, the rules impose a number of significant burdens on radio station licensees:

1. *Staff time devoted to public file maintenance.* Significant staff time is devoted to the preparation of quarterly programs/issues lists and inserting public file items (and withdrawing them as document retention periods expire). This burden is multiplied for licensees of co-located stations, as a literal reading of the FCC's rules requires a separate file (and redundant multiple copies of numerous documents) for each station. The rules apply to large and small stations alike, and the required amount of material in the public file is largely unrelated to the size of the station, making file upkeep even more burdensome for stations with only a handful of employees.
2. *Legal fees incurred to ensure compliance.* The public file rules are ambiguous, complicated and inconsistent.² Notwithstanding efforts of trade groups such as the NAB and state broadcasters' associations to assist stations in complying with the public file rules, nuances of the rules, and the gloss of decades of FCC decisions known principally to communications lawyers, result in licensees regularly incurring legal fees for advice on which items are required to be kept in the public file, how long items are required to be retained, and procedures for handling hypothetical (although, in actuality, rare) requests for access. Confusion about what is specifically required to be available and what is not commonly leads licensees to err in favor of "over-inclusion" (magnifying the administrative burdens of the rules). "Over-inclusion" serves only to confuse the public; on those rare occasions when a member of the public reviewing the file finds an item *not* required to be included, the natural tendency is to speculate why other similar (but not required) items are missing.

² For example, the rules permit a station to provide copies of public file material as long as seven days after the request. If a member of the public contacts the station by telephone, the FCC allows the licensee to respond to the request by mail. But if a member of the public arrives at the station without an appointment, or an FCC inspector knocks, the failure to provide immediate access to the public file constitutes a violation of the rules.

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3. *Exposure to large monetary forfeitures.* The FCC has “enforced” its public file rules by large monetary forfeitures, or the *in terrorem* effect of possible forfeitures (contributing to the burdens of seeking legal advice, and over-inclusion, described above). The “base” forfeiture for a public inspection file violation is \$10,000 (see Section 1.80 of the Rules), the highest “base” forfeiture specified in the rules – higher than violation of the terms of the station authorization, higher than failure to provide federal candidates with reasonable access. (For no apparent reason, the failure to place documentation in the political file carries a higher base forfeiture than failing to comply with the political broadcasting rules.) Throughout their histories as broadcast licensees, the MBC companies have worked diligently to assure that the stations’ public file obligations have been fulfilled regularly and on a timely basis. And the FCC has never found that any of the stations has violated any part of the public file requirements. But many other licensees have found themselves, at renewal time, confronting a Hobson’s choice: either (a) commit, arguably, perjury, by certifying in their applications complete and *timely* compliance with *all* of the public inspection file requirements or (b) incriminate themselves by detailing, at length, even minor violations which ensure, at a minimum, lengthy delays in action on their renewal applications or, likely, assessment of large forfeitures. Review of the FCC’s enforcement actions shows an apparent inability to distinguish between major and minor violations of the public file rule, with minor omissions leading to forfeitures comparable to those for wholesale disregard for the rules. Indeed, in view of the negligible use of public inspection files by actual members of the general public, the principal beneficiary of the rules appears to be the U.S. Treasury.

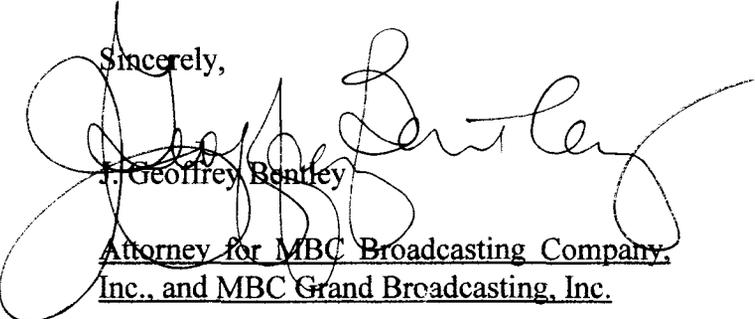
The benefits of the public file rules are even more illusory when the actual documents required to be available are considered. As detailed in the Petition for Rule Making, many public inspection file items (applications, reports) are available via the Internet, on the FCC’s web site, or could easily be made available there. Given the number of computers in schools and public libraries, Internet access in the United States is virtually universal. (Moreover, access to such documents via the Internet is instantaneous; no trip to the station to inspect applications, etc., is necessary.) Other public file retention requirements are anachronistic (citizen’s agreements), unrelated to any potential public purpose (contour maps), redundant (annual EEO activity summaries of larger stations are required to be posted on a station web site) or serve no useful regulatory purpose (letters or e-mails to the station from the general public).

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For the foregoing reasons, the FCC should grant the Petition for Rule Making and issue a *Notice of Proposed Rule Making* looking to the repeal or, at a minimum, a substantial reduction of the scope of the public inspection file requirements.

Sincerely,



J. Geoffrey Bentley

Attorney for MBC Broadcasting Company,
Inc., and MBC Grand Broadcasting, Inc.