

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
Amendment of Section 3.261 of Part 3 }
(Radio Broadcast Services).

REPORT AND ORDER

BY THE COMMISSION: COMMISSIONERS LEE AND MACK NOT PARTICIPATING.

1. On March 22, 1955, the Commission released a report and order (FCC 55-340 [11 R.R. 1589]) in docket No. 10832, amending its rules to permit FM broadcast stations to engage in functional music operations on a simplex and/or multiplex basis. In this report and order the Commission amended section 3.261 of the rules relating to time of operation of FM broadcast stations to read, in part, as follows:

A minimum of 36 hours per week during the hours of 6:00 a.m. to midnight, consisting of not less than 5 hours in any one day, must be devoted to the FM broadcast operation; time devoted to operations conducted pursuant to a Subsidiary Communications Authorization (see sections 3.293-3.296) shall not be included in meeting this 36-hour broadcast requirement.

2. On October 7, 1955, Progress Broadcasting Corp., licensee of station WHOM-FM, New York, N.Y. filed a petition requesting the Commission to amend section 3.261 to permit FM stations to be silent on Sundays. In support of its petition, Progress Broadcasting Corp. urges that the language of section 3.261 appears to require FM stations to operate on Sunday. Petitioner states that the authorization of functional music operations was a recognition by the Commission that FM stations were, for the most part, in very poor financial circumstances and required additional sources of revenue if they were to continue to exist, and notes that in authorizing functional music operations, the Commission characterized such operations as essentially of nonbroadcast nature. In order to keep the functional music operation subservient to the broadcast function, the Commission required in section 3.261 a minimum of 36 broadcast hours per week; and in order to preclude concentration of the minimum hours in any one period of time, required a minimum of 5 broadcast hours per day. Petitioner urges, however, that the Commission cannot have intended to require FM stations to operate on Sundays, noting that section 3.71 of the Commission's AM rules specifically excludes Sundays from the minimum operating schedule of standard broadcast stations. Because Sunday operation involves overtime payments to

station staffs and provides little opportunity for deriving compensatory revenues, it is substantially more expensive than comparable weekday operations. Petitioner urges, therefore, that its proposed revision of section 3.261 would be consistent with the Commission's policy of improving the financial circumstances of FM stations, and further, would equalize treatment of standard broadcast and FM stations in this particular. Such a revision would not affect the obligation of FM licensees to meet the minimum weekly requirement, and would not permit fulfilling this requirement in any given short period of time.

3. The Commission believes that the public interest does not require Sunday broadcast operation by FM stations. Standard broadcast stations are expressly exempt from such a requirement. The Commission believes that the public interest would be served by removing the financial burden of obligatory Sunday broadcast operation from FM stations. Accordingly, the Commission is amending section 3.261 of its rules to permit FM stations to remain silent on Sundays.

4. Prior notice of proposed rulemaking is unnecessary under the provisions of section 3 of the Administrative Procedure Act, and the amendment may become effective January 3, 1956, since the amendment will relieve restrictions upon licensees of FM stations.

5. The amendment adopted herein is issued pursuant to authority contained in sections 4(i), 303(c) and (r) of the Communications Act of 1934, as amended.

6. In view of the foregoing, *It is ordered*, That, effective January 3, 1956 section 3.261 of the Commission's rules is amended to read as follows: * * *

Adopted December 21, 1955.
Released December 28, 1955.

*Rule deleted since it appears in FCC rules and regulations.