Call Letters, Assignment
Rules, Amendment of

Report and Order adopted revising Section 73.3550 of rules with respect to assignment of call letters to b/c stations. Action taken to eliminate unnecessary regulations and policies and to provide efficient and expeditious service to the public.
–Amendment of Part 73
MM Docket No. 83-373

FCC 83–573

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In re Matter of Revision of Section 73.3550 of the Commission's Rules with respect to the Assignment of New and Modified Call Letters to AM, FM and TV Broadcast Stations	MM Docket No. 83–373

REPORT AND ORDER
(PROCEEDING TERMINATED)

(Adopted: December 1, 1983 Released: December 14, 1983)

BY THE COMMISSION: CHAIRMAN FOWLER CONCURRING IN THE RESULT; COMMISSIONER QUELLO DISSENTING IN PART AND ISSUING A STATEMENT.

1. The Commission has before it the *Notice of Proposed Rulemaking* in this proceeding (48 Fed. Reg. 20252, published May 5, 1983). In the *Notice*, we proposed significant revisions of processing procedures as well as our underlying policies with respect to the assignment of call letters to broadcast stations.

2. The present call letter rules are the result of our 1973 action codifying existing Commission policies which were scattered throughout various decisions and public notices and, at the same time, addressing processing problems not previously considered. *Assignment of Call Signs*, 41 FCC 2d 481 (1973). In essence, that proceeding provided that a station may, in most situations, request call letters of its choice (except the initial letter) if the desired call letters are available, are in good taste, and are sufficiently dissimilar phonetically and rhythmically from existing call letters of stations in the same service area so that there will be no significant likelihood of public confusion. That proceeding also dealt with such

matters as the actual procedure for requesting call letters and the filing of an objection to a proposed set of call letters, requests by a proposed assignee, reassignment of relinquished call letters and conforming basic call letters. In the *Notice*, we indicated that after nearly ten years of experience, the present rules warrant revision or, at the very least, detailed review to determine whether these rules should be retained, modified or eliminated. Included in the *Notice* were proposals to clarify the criteria to be used in resolving a call letter dispute, eliminate the requirement for actual notifications to all broadcast stations within 35 miles, shorten or eliminate the 30-day holding period, and eliminate proscriptions concerning conforming call letters and reassignment of call letters in the same community. This *Notice* also contained a controversial proposal to have call letter objections considered in local forums.

CALL LETTER DISPUTES IN LOCAL FORUMS

3. All of the comments we received in this proceeding opposed our proposal to have call letter disputes resolved in local forums. The gravamen of these oppositions is that litigation in a local forum premised on unfair competition would be complicated, costly and time-consuming. The local judicial process involves pleadings, hearings, temporary restraining orders, and damages. These comments also referred to the possibility of inconsistent results and the fact that several courts could have jurisdiction in a particular case. In addition, these comments observed that under this proposal, confusing call letters could actually be in use in a particular community before the local forum acts. This would be harmful to the public and unfair to the broadcaster. Furthermore, the broadcaster would no longer be able to receive a final approval before it makes substantial efforts to promote its new call letters. Finally, several comments have asserted that this proposal would contravene Section 303(o) of the Communications Act which requires the Commission to retain "full and unhampered" authority over call letter matters.

4. After careful consideration of these comments, we continue to believe that our adjudication of these disputes represents an unnecessary and inefficient use of our administrative resources. Therefore, we will no longer be the forum to resolve a call letter dispute. First of all, it should be emphasized that none of the comments disputed our contention that an adequate remedy does, in fact, exist in local forums. Rather, these comments have asserted that resolution in local forums would impose additional costs and delays upon broadcasters. While these comments have not documented these expenses and burdens, they have referred to a potential cycle of hearings, pleadings, temporary orders as well as damages and the appeal process. In considering these comments, it is quite possible that in some jurisdictions, the costs, burdens and delays would be greater than those attendant to our processes.

However, it should be emphasized that our present procedures are not without burdens and delays for the broadcaster. Our procedures involve notifications, objections, staff decisions, reconsideration of staff decisions, requests for stay, applications for review of the staff decision to the Commission, reconsideration of the Commission decision and judicial appeal. As a consequence, we are not persuaded that comparing the relative burdens and delays of the local forum *vis-a-vis* our procedures should be determinative of this matter. In this connection, it should also be noted that our present procedures resulted from an early concern with protecting stations from other stations using confusingly similar call letters. Today, broadcasting is a mature and healthily competitive industry with significantly less need for any protectionist policies. See *Classical Broadcasting Society of San Antonio, Inc.*, 53 RR 2d 87 (1983). The broadcasting industry is well able to pursue its remedies and assert its rights in the various local forums in the same manner as other industries.[1] This can be done without imposing the present burden on our administrative resources.

5. In *Classical Broadcasting Society of San Antonio, Inc., supra*, we stated that many of our decisions exalted form over substance in determining whether there would be a significant likelihood of public confusion. We feel that an analogy can be made to our present procedures. In this regard, Section 73.1201 of the Rules only requires that a station announce its call letters once an hour. At all other times, a station may identify or promote its station as it sees fit. The promotional identifications (e.g., Q107, DC101) may have little, if any, relationship to the actual call letters. Furthermore, the promotional announcement may, as far as the public is concerned, be the means of identifying a station. Our present procedures do not take this into account or the fact a requested set of call letters could be easily confused with an existing promotional identification (e.g., KIKR with "Kicker Radio"). Our existing policy is to defer such a controversy to a local forum. See *Shamrock Development Corp.*, 32 FCC 2d 82 (1971). This policy has not visited any apparent burden or hardship upon broadcasters, or resulted in public confusion. As a consequence, it makes little sense for us to continue to be a forum to resolve a dispute limited solely to call letters when these call letters, compared to the actual means of identifying a particular station, may have little relevance to the issue of public confusion. The local forum would take all relevant factors into consideration and, thus, would be the most accurate forum to resolve the issue of public confusion.

6. In a similar vein, we do not feel that the other arguments

[1] In order to facilitate a resolution in the local forum, it is our view that a licensee possesses a sufficient interest in its call letters during the term of its license to pursue, without our objection, a service mark under Sections 2 and 3 of the Trademark Act (15 U.S.C. §§1052 and 1053).

advanced against this proposal would warrant the opposite result. It is probable that in most disputes, several courts could have jurisdiction over a particular dispute. However, such questions of jurisdiction, venue and conflict of laws are common to many other types of disputes and would not appear to present any unusual problems for broadcasters. We also do not feel that there is any significant problem with respect to the possibility of inconsistent decisions throughout the various jurisdictions. Each dispute involves unique sets of call letters, involving one or more of three broadcast services in various communities throughout the United States. Moreover, we believe that a local forum would also be more attuned to what constitutes a potential for public confusion in its local community. The comments have also observed that the procedure outlined in the *Notice* could result in confusing call letters actually being in use while the issue is litigated in local court. In practice, we do not think this would be a pervasive problem. First of all, in the absence of prior Commission approval, a broadcaster would be extremely reluctant to select and use confusingly similar call letters since it may have to respond ultimately in damages to the aggrieved broadcaster and incur the additional expense of selecting new call letters. In any event, as stated in the *Notice*, less than 10% of the objections to requested call letters are sustained. Inasmuch as approximately 10% of all call letter request receive an objection, the potential for this type of confusion appears to be *de minimis*. Finally, Section 303 of the Communications Act does not require the Commission to continue to resolve call letter disputes between broadcasters. This Section merely grants the Commission authority to "designate call letters to all stations." It does not restrict our authority to implement this section or determine the most appropriate forum to resolve call letter disputes.

NOTIFICATION AND 30-DAY HOLDING PERIOD

7. As indicated in the preceeding paragraphs, the Commission will no longer be the forum to resolve call letter disputes. Consequently, the notification requirement and a 30-day holding period are no longer necessary and Section 73.3550(e)(1) and 73.3550(g) of the Rules will, therefore, be eliminated.

CONFORMING BASIC CALL LETTERS

8. In the *Notice* we proposed modification of Section 73.3550(1) of the Rules which presently permits conforming the basic call letters of commonly owned stations assigned to the "same or adjoining" communities. While most of the comments were favorable, Arbitron Ratings Company filed comments opposing this proposal. Arbitron's concern appears to focus on public confusion in identifying a particular station if we were to permit commonly owned stations in the same service to use the same basic call sign. This concern is not

well founded. As proposed, this rule will not permit two commonly owned stations in the same service (e.g., FM) to have the same basic call sign. Instead, this modification merely permits a licensee of an AM, FM and/or television station to use the same basic call sign (with required "-FM" and "-TV" suffixes) regardless of the location of the stations. Accordingly, for the reasons outlined in paragraph 11 of the *Notice,* we are eliminating the requirement that the stations be assigned to the same or adjoining communities.

REASSIGNMENT OF RELINQUISHED CALL LETTERS

9. The comments we received concerning our proposal to have relinquished call letters assigned on a "first-come-first-served" basis were favorable. Presently, Section 73.3550(k) of the Rules provides for the Commission to announce the availability of relinquished call letters. All requests received within a subsequent 15-day period are considered on an equal footing, with the call letters being awarded to the applicant having the longest continuous record of broadcast service. The purpose of this provision was to avoid the purported problem of trafficking in call letters. Specifically, trafficking involves a licensee relinquishing call letters and another licensee wishing to acquire them, by prearrangement, controlling the "availability" date by the appropriate timing of their respective requests. We previously viewed this practice as being unfair to other parties having a legitimate interest in the relinquished call letters and bordering on an abuse of process. Upon reflection, we do not believe that such private agreements between licensees harms the public interest to the extent of justifying the ongoing administrative burden this rule places upon our processing staff. Therefore, we are eliminating the 15-day procedure and will process all call letter requests on a "first-come-first-served" basis. In the event we receive requests for the same call letters on the same day, we would only then select the applicant with the longest continuous period of broadcast service.

10. On the other hand, we did receive comments in opposition to our proposal to eliminate Section 73.3550(q) of the Rules, which proscribes reassignment of call letters in the same community within 180 days except to the same licensee or its successor-in-interest. The purpose of the rule is to avoid the erroneous impression among listeners and viewers that the same principals are involved in the new operation. We remain skeptical whether this rule furthers a tangible public interest objective. The opposition comments have focused upon possible distortions in audience ratings. These comments assert that the public often associates a station's call letters with the station well after a station changes its call letters. In the event another station commences using the relinquished call letters, the public would be confused as to what station they are actually listening, and distortions in audience ratings would result. This

argument is speculative and our experience in somewhat similar circumstances have not resulted in instances of public confusion. In this connection, the rule, as presently written, permits a station in an adjoining or nearby community to immediately acquire the relinquished call letters. This rule also permits a licensee who is disposing of one facility and acquiring another facility in the same community to transfer its call letters to the new facility. We are unaware of instances of resulting public confusion. By the same token, there does not appear to be public confusion or audience ratings distortion when an AM/FM combination, with the same basic call letters, changes the call letters of one station. In these situations, the absence of public confusion may result from the efforts of the station to promote its new call letters and the fact the public may very well be more discerning in its ability to identify a station than is often perceived.[2] In any event, as indicated earlier, we are unconvinced that the purported problem justifies retaining the rule and Section 73.3550(q) of the Rules will be eliminated.

"SUITABLE CLEARANCE" AND "GOOD TASTE"

11. We did not receive any opposition to our proposal to eliminate Section 73.3550(s) of the Rules, which proscribes the assignment of call letters using the initials of the President, a living former President, the United States of America or any of its agencies or departments, unless "suitable clearance" is obtained. We continue to believe that the public interest is not served by a rule which requires the applicant to undertake a burdensome effort to obtain "suitable clearance" and requires the Commission to determine whether these efforts are, in fact, sufficient. If a station attempts to use such call letters in a manner intended to suggest a relationship with a President or a federal agency, there are adequate remedies outside the context of call letter processing. Therefore, Section 73.3550(s) will also be eliminated.

12. We are eliminating the "good taste" language presently set forth in Section 73.3550(j) of the Rules. We agree with both the National Radio Broadcasters Association and the National Association of Broadcasters that the Commission should not be an arbiter in this area. Good taste is a concept for which standards have traditionally been set and enforced by the local communities. We will therefore rely upon the broadcasters' responsiveness to, among

[2] We must concede that the absence of public confusion in these situations may stem, in part, from the fact that we do not require a station to commence use of new call letters during a rating period or even during the time shortly before a rating period. Therefore, there would be a hiatus between the time a station commences use of the new call letters and the time a station is identified during the next rating period.

other things, their communities' wishes and federal law dealing with the broadcast of obscene indecent and profane material[3] to control the selection and use of call letters.

13. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. *Need for and Purpose of the Rules*

1. We have concluded that requiring applicants to notify all broadcast stations within 35 miles and comply with other rules and procedures of questionable public interest value unnecessarily burdens the applicant and delays the processing of these requests.

II. *Summary of issues raised by public comments in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result*

A. *Issues Raised*

1. There were comments asserting that extra costs attendant to litigating a call letter dispute in a local forum would be an undue burden on broadcasters.

2. There were also comments that the Commission did not consider the alternative of retaining jurisdiction over such disputes.

B. *Assessment*

1. We have carefully considered these comments in order to determine if there will be a significant financial and administrative impact on a substantial number of small businesses. The comments did not detail or document the relative costs of pursuing a remedy in a local forum *vis-a-vis* the Commission. In this regard, it should be noted that as outlined in paragraph 4, *supra*, the Commission procedures can entail significant costs and delays for the broadcaster. Nevertheless, in some jurisdictions, the costs and delays of pursuing a remedy in the local forum could very well be greater. However, with respect to these situations, it should be reiterated that broadcasting is a mature and financially viable industry able to pursue its remedies in local forums.

III. *Significant Alternatives Considered and Rejected*

1. The alternative rejected was to remain the forum to resolve call letter disputes. In addition to the fact that we consider this to be an unnecessary and inefficient use of our administrative resources, we feel that the local forum will provide the most complete forum for relief. As discussed in paragraph 5, *supra*, call letters may or may not be the primary means by which a station is identified or preceived in a particular community. Inasmuch as we do not consider promotional acronyms in resolving call letter disputes, our resolution is limited and may not, in actuality, reflect the correct result with respect to the issue of public confusion in a particular community. Local forums could take

[3] 18 U.S.C. §1464 (1976); *See F.C.C.* v. *Pacifica Foundation*, 438 U.S. 726 (1978).

these other uses into consideration and, thus, be the most effective forums in making such determinations.

12. Authority for adoption of the rules contained herein is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

13. Accordingly, IT IS ORDERED, That Section 73.3550 of the Commission's Rules IS AMENDED as set forth in Appendix A, effective January 20, 1984.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO, *Secretary*

APPENDIX A

Section 73.3550 of the Commission's Rules is amended to read as follows:

§73.3550 Requests for new or modified call sign assignments.

(a) Requests for new or modified call sign assignments for broadcast stations shall be made by letter to the Secretary, FCC, Washington, D.C. 20554. An original and one copy of the letter shall be submitted and shall be accompanied by the filing fee, if required, specified in §1.1111. Incomplete or otherwise defective filings will be returned by the FCC, and any filing fee submitted in connection therewith will be forfeited 45 days from the date the application is returned should the applicant fail to submit an acceptable call sign application for the same station within that period. As many as five call sign choices, listed in descending order of preference, may be included in a single request. A call sign may not be reserved.

(b) No request for a new call sign assignment will be accepted from an applicant for a new station until the FCC has granted a construction permit. Failure by the permittee of a new station to request the assignment of a specific call sign within 30 days of grant of the construction permit will result in the FCC, on its own motion, assigning an appropriate call sign.

(c) An applicant for transfer or assignment of an outstanding construction permit or license may, in accordance with this Section, request a new call sign assignment at the time the application for transfer or assignment is filed, or at any time thereafter. In the absence of written consent of the proposed transferor or assignor, no change in call sign assignment will be made effective until such application is granted by the FCC and the transaction consummated.

(d) Where an application is granted by the FCC for transfer or assignment of the construction permit or license of a station whose existing call sign conforms to that of a commonly owned station not part of the transaction, the assignee shall, within 30 days after consummation, request a different call sign in accordance with the provisions of this Section. Should a suitable application not be received within that period of time, the FCC will, on its own motion, select an appropriate call sign and effect the change in call sign assignment.

(e) Call signs beginning with the letter "K" will not be assigned to stations located east of the Mississippi River, nor will call signs beginning with the letter "W" be assigned to stations located west of the Mississippi River.

(f) Only four-letter call signs (plus FM or TV suffixes, if used) will be assigned. However, subject to the other provisions of this Section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call sign assignment (plus FM or TV suffixes, if used).

(g) Subject to the foregoing limitations, applicants may request call signs of their choice if the combination is available. Objections to the assignment of requested call signs will not be entertained at the FCC. However, this does not hamper any party from asserting such rights as it may have under private law in some other forum. Should it be determined by an appropriate forum that a station should not utilize a particular call sign, the initial assignment of a call sign will not serve as a bar to the making of a different assignment.

(h) Call signs are assigned on a "first-come-first-served" basis. Receipt by the FCC of a request for an available call sign blocks the acceptance of competing requests until the first received request is processed to completion. In the case of requests for the same call sign being received on the same date at the FCC, the assignment (if otherwise grantable) will be made to the station having the longest continuous record of broadcasting operation under substantially unchanged ownership and control. However, involuntary and *pro forma* assignments and transfers will not be taken into account in determining priority.

(i) Stations in different broadcast services which are under common control may request that their call signs be conformed by the assignment of the same basic call sign. For the purposes of this paragraph, 50% or greater common ownership shall constitute a *prima facie* showing of common control.

(j) The provisions of this Section shall not apply to International broadcast stations, to stations authorized under Part 74 of the Rules, nor to FM or TV stations seeking to modify an existing call sign only to the extent of adding or deleting an "-FM" or "-TV" suffix. The latter additions and deletions may be effective upon notification to the Commission.

(k) Unless subject to a pending transfer or assignment application, a change in call sign assignment will be made effective on the date specified in the telegram authorizing the change. In this regard, the applicant may include with its application a request for a specific effective date to take place within 45 days of the submission of its application for a call sign. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(l) Four-letter combinations commencing with "W" or "K" which are assigned as call signs to ships or to other radio services are not available for assignment to broadcast stations, with or without the "-FM" or "-TV" suffix.

(m) Users of nonlicensed, low-power devices operating under Part 15 of the FCC rules may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the FCC issues a license.

December 1, 1983

STATEMENT OF FCC COMMISSIONER JAMES H. QUELLO DISSENTING IN PART

In re: Report and Order revising Section 73.3550 of the Commission's Rules with respect to the assignment of call letters to broadcast stations.

The Commission should continue its policy of routinely reviewing call letter requests in order to ensure that the government does not issue a call sign that is either offensive to listeners or viewers or abusive toward any segment of the audience. The Commission has

the responsibility under the Communications Act to designate call signs "as public convenience, interest, or necessity requires,"[1] and the Commission requires regular and frequent broadcast of this identifying symbol.[2] In my view, the Commission's clear and unavoidably affirmative role in the selection and broadcast of call signs mandates a determination by the Commission that every assignment of call letters will serve the public interest.

The majority opinion notes that the criminal law prohibition on broadcast of obscene, indecent, or profane language[3] would apply to the selection of call signs, but this strict criminal standard is not appropriate for determining whether a symbol is suitable for government issue. For example, there is no indication under existing law that ethnic slurs would be covered by the statutory prohibition, but I think it is evident that the use of such a word in the official identification of a broadcast licensee would be improper.

The majority's decision does not address how a request for an objectionable call sign would be processed nor what the Commission's role would be should a call sign be challenged as violating the criminal law. I am not sure whether in such a case we Commissioners should be the judges or the licensee's co-defendants. We certainly shall not be disinterested spectators to the proceeding because only the Commission can order the effective relief of changing the offending call sign.

I believe my colleagues have improperly ignored this Commission's controlling role regarding call sign selection and broadcast, and thus they have misplaced their well-intentioned concerns about free speech for licensees. This is an unnecessary agency action, and I only hope that it will not damage the Commission's ability to eliminate the real restrictions which still limit licensees' editorial freedom.

---

[1] 47 U.S.C. §303 (1976).
[2] 47 U.S.C. §303(p) (1976); 47 C.F.R. §73.1201 (1983).
[3] 18 U.S.C. §1464 (1976).