

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 86-406

In re

Amendment of Sections 73.1125
and 73.1130 of the Commission's
Rules, the Main Studio and Program
Origination Rules for Radio and
Television Broadcast Stations

RM-5480

NOTICE OF PROPOSED RULE MAKING

Adopted: October 16, 1986 Released: October 30, 1986

By the Commission:

Introduction

1. The Commission has before it for consideration a petition for rule making filed on June 11, 1986, by the Arizona Justice Committee ("AJC"), a self-described "*ad hoc*" group of radio licensees.¹ AJC asserts that the current main studio program origination and location rules for radio stations are outdated, unnecessary, and detrimental to providing the best radio service to the listening public.² AJC proposes to supplant these rules with the requirement that each radio station "shall maintain an office that is reasonably accessible to the residents of its community of license and shall maintain a main studio within the station's service area." Comments in support of the AJC petition were received from Westinghouse Broadcasting and Cable, Inc., Sunbelt Television, Inc., Cox Enterprises, Inc., Broadco of Texas, Inc., and the National Association of Broadcasters.³

2. We agree that the time is ripe to examine the continued desirability of the present main studio rules, and here propose their modification along the lines suggested by AJC. Alternatively, we also propose permitting the main studio to be located anywhere within a station's city grade coverage, or completely eliminating both rules. These requirements were first adopted over 35 years ago. Since that time, we have never directly reviewed their underlying justifications. Thus, an inquiry into whether they continue to serve the public interest is necessary in any event to fulfill our statutory mission. Additionally, the Mass Media Bureau has questioned the need for these rules in its recent report on the AM radio service.⁴ The Bureau there asserts that the present rules exalt form over substance and declares that "primary emphasis should be on whether the station is serving the needs of the community and not where the programming originates."⁵ Further, our view that market forces will continue to assure that licensees serve their audiences, expressed in our radio and television deregulatory initiatives, undercuts the rationale behind these rules. While the main studio and program origination rules were promulgated originally as a means to ensure that stations met their service obligations to their communities of license, we have more recently eschewed rules and policies which attempt to promote licensee compliance with program-related guidelines by

artificial means. Finally, compelling a licensee to maintain a main studio within the community of license and to originate programming from that studio or from a nearby location could, in some cases, impose significant economic burdens that are unjustified and result in the broadcast of less issue-responsive programming, particularly in smaller radio and television markets.

3. The AJC petition addresses the main studio and program origination rules only as they pertain to AM and FM radio broadcast stations. However, in the interest of a consistent and comprehensive reevaluation of these rules, we find it appropriate to expand our inquiry to include television broadcast stations as well. Indeed, the regional service character of television stations, the public interest obligations that flow therefrom, and the sophisticated program delivery systems now in use in that medium may present even stronger arguments for the proposed rule modifications than are present in the radio context.

Revision of Main Studio and Program Origination Rules

4. *Background.* The main studio rules for both radio and television stations were designed originally to give effect to our construction of Section 307(b) of the Act as contemplating "transmission service" as well as reception service. We defined transmission service as "the opportunity which a . . . station provides for the development and expression of local interests, ideas, and talents and for the production of radio programs of special interest to a particular community." *Promulgation of Rules and Regulations Concerning the Origination Point of Programs of Standard and FM Broadcast Stations*, 43 FCC 570, 571 (1950).⁶ Our view was that main studio location in the community of license was necessary because it is the location of the studio rather than the transmitter which is of particular significance in connection with transmission service. A station often provides service to areas at a considerable distance from its transmitter but a station cannot serve as a means for local self-expression unless it provides a reasonably accessible studio for the origination of local programs It is apparent that Section 307(b) and the Commission's efforts to apply it may be largely frustrated if . . . a station . . . removes its main studio to a distant point and originates all or substantially all of its programs in a city or town other than that which it was licensed to serve. *Id.* A similar rationale was employed in the television context. *Television Main Studio Location*, 43 FCC 888 (1952); *see also Rules Governing Standard and High Frequency Broadcast Stations*, 11 Fed. Reg. 33 (1946).

5. In amending these rules in minor respects in 1971, we characterized their purpose thus:

The main studio rules, . . . , are intended to make broadcast stations readily accessible to the people and communities which they are primarily licensed to serve, and they constitute one of the essential ways we have for insuring that stations realistically meet their obligations to serve their communities of license as outlets for local self-expression. *FM - TV Main Studio Rules*, 27 FCC 2d 851 (1971). The main studio and program origination rules have remained unchanged in substance to this day, and the rules have been steadfastly applied. *See Reiteration of Policy Regarding Enforcement of Main Studio Rule*, 55 RR 2d 1178 (1984); *Pappas Telecasting of the Carolinas (WHNS (TV))*, 60 RR 2d 1394 (1986); *WAVY Television, Inc.*, 102 FCC 2d 1538 (1985); *RKO General, Inc. (WRKO)*, 57 RR 2d 374 (1984). Deviations from these rules have been permitted rarely.⁷ Moreover, we have noted the existence of and purpose behind these rules in eliminat-

ing unnecessary regulatory schemes like the suburban community policy, the *Berwick* doctrine, and the *de facto* reallocation policy. See *Report and Order* in BC Docket No. 82-320, 93 FCC 2d 436, 456 (1983) ("*Berwick Doctrine*' Reconsidered"), *recon. denied*, 56 RR 2d 835, 839 (1984), *aff'd sub nom. Beaufort County Broadcasting Company v. FCC*, 787 F.2d 645 (D.C. Cir. 1986).

6. *Discussion.* We have tentatively concluded that the main studio and associated non-network program origination rules should be modified or eliminated altogether because their relevance to the provision of service by licensees is questionable in the context of current regulatory policies and broadcast station operations. As noted, these rules were adopted originally because it was believed that station operations in the public interest would be furthered by a governmentally mandated requirement that a station's main studio be accessible to residents of the community of license. We now believe that this rationale, as a practical matter, may no longer be valid. While transmission service will continue to be considered for Section 307(b) purposes, see *supra* para. 5, we do not see a causal relationship between the main studio rules and the provision of service to the community of license which is sufficient to warrant their retention.

7. First, a question exists as to whether the accessibility of the main studio to the community of license actually increases interaction between a station and the residents in its service area. As the Mass Media Bureau has remarked:

[I]t appears more likely that local residents would phone rather than visit the station to register any complaints about programming or [to] suggest programming to meet needs and issues of concern in the community. In all likelihood, management personnel at the station would arrange a meeting to pursue these matters a time and place convenient to the local residents. . .

AM Status Report, *supra* note 2, at 40. Also, as a station must identify issues of importance to its community and program accordingly, it is reasonable to assume that the station will take the initiative in contacting its listenership or viewership, whether by telephone, by mail, through participation in clubs or other community organizations, or through some other form of personal contact.

8. Moreover, the development of technical advances in the production and transmission of programming has severely eroded the role of a main studio and, by extension, the non-network program source rule. When the rule requiring that more than 50 percent of all non-network programming originate from the main studio was adopted, most, if not all, of the non-network programming broadcast necessarily originated in the station's main studio. However, radio and television stations now make extensive use of portable recording and transmission equipment, and can in essence bring a "studio" to any location in or out of its service area. Consequently, programs are originated now at the main studio only in the most technical sense; for example, the Mass Media Bureau points out that in the case of AM radio, origination at the main studio largely consists of playing tapes previously recorded at remote locations. *AM Status Report* at 41.

9. We also suspect that there may be substantial compliance costs associated with these rules. Requiring the location of a station's main studio in its community of license could have a significant economic impact on its operations in certain circumstances. For example, this rule could operate to forbid a licensee from upgrading its

main studio facilities by relocating to a less expensive location outside the community of license. Also, the present main studio rule proscribes co-location of commonly owned AM and FM radio stations not licensed to the same community, even in a case where the stations serve substantially the same market or the communities of license are adjacent to one another. Consequently, the stations' owner must engage in considerable extra expense to use and maintain two main studios, even when their co-location would promote operational efficiency and permit the use of additional station resources for the coverage of local affairs in the community of license.⁸ The program origination rule also appears to impose costs by restricting the origination point from which non-network programming is sent to the station's transmitter. In doing so, it appears unlikely that these costs produce any public benefit in terms of the value listeners and viewers perceive from the station's actual output.

10. Practical considerations of these kinds have led us to revise other programming-related policies. In our radio and television deregulation proceedings, we determined that the public interest would be served by the elimination of non-entertainment programming and commercialization guidelines and by the deletion of formal ascertainment and program log requirements.⁹ We found that market incentives assure generally that licensees will present programming responsive to their communities, and that revision or deletion of these policies would eliminate unnecessary costs and burdens on both licensees and the Commission. We stated that elimination and revision of these policies would provide broadcasters "with increased freedom and flexibility in meeting the changing needs of their communities."¹⁰

11. In reevaluating other related rules, guidelines and requirements, we have sought to "assure that our rules and regulations are kept relevant to a technology and industry that are subject to rapid and dynamic change." *Deregulation of Radio*, 84 FCC 2d at 969. We determined for both radio and television broadcasting that the public interest did not require guidelines as to particular amounts of issue-responsive programming, or designation of specific categories of issues. Instead, we required only that a station "program to address those issues that it believes are of importance to the general community or, depending upon the availability of other radio services in the community, to its own listenership." *Deregulation of Radio*, 84 FCC 2d at 982; see also *Deregulation of Television*, 98 FCC 2d at 1094. Because we have found that prescription of the amounts or types of issue-responsive programming licensees present is contrary to the public interest, it makes little sense as a policy matter to retain rules which mandate where a percentage of that programming must originate.¹¹

12. *Comments.* With all these considerations in mind, we request comment on elimination of the program origination rule, modification of the main studio rule to provide that a station's main studio be located within its city grade contour or within its service area¹² or, alternatively, elimination of the main studio rule. We recognize that in the past the Commission has utilized these rules as a means of implementing the mandate of Section 307(b) of the Act. Given the substantial changes in the telecommunications marketplace noted above, and the current widespread availability of broadcast service nationwide, we now question the need for these rules in implementing Section 307(b). Commenters should focus, therefore, on whether retention of the main studio pro-

gram origination and location rules are still required to implement Section 307(b) of the Act, and should present specific analysis and citations in support of their arguments. Regarding the non-network origination rule, comments are requested as to whether such a rule is necessary to assure that the interests of listeners, and viewers are responded to in terms of the issue-responsive programming requirement or otherwise. Also, information is sought on how broadcast licensees now program to satisfy the program origination rule, and on the nature of costs imposed on licensees as a result of this rule. Commenters should further address whether the main studio rule should be modified in the manner described by AJC, in some other manner, or should be abolished entirely. Comment is also requested on whether radio and television present equally meritorious cases for modification or elimination of these rules, and, if not, how and on what basis our proposals should be tailored to suit these respective media. Information also is requested on the manner in which broadcast stations now contact and are contacted by their audiences with respect to the presentation or contemplation of issue-responsive non-entertainment programming, and the costs involved in complying with the main studio rule. Finally, whether modification or elimination of the main studio rule is urged, commenters should discuss whether some other local presence, e. g., an office, in the community of license or accessible to the community of license should be required, as suggested by AJC.

Administrative Matters

13. Authority for this proposed rule making is contained in Sections 1, 3, 4(i) and (j), 303, 308, 309 and 403 of the Communications Act of 1934, as amended. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 22, 1986, and reply comments on or before January 6, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the *Report and Order*.

14. For purposes of this nonrestricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously filed written comments for the proceedings must prepare a written summary of that presentation on

the day of oral presentation. That written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission's official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, Section 1.1231 of the Commission's Rules, 47 C.F.R. Section 1.1231 (1985).

15. As required by Section 603 of the Regulatory Flexibility Act, the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth in Appendix A. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of this *Notice*, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

16. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirement or burden upon the public. Implementation of any new or modified requirement or burden will be subject to approval by the Office of Management and Budget as prescribed by the Act.

17. To file formally in this proceeding, participants must file an original and five copies of all comments, reply comments, and supporting documents. If participants want each Commissioner to receive a personal copy of their comments, an original plus eleven copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the Dockets Reference Room (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

18. For further information on this proceeding, contact Terry L. Haines, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX

Initial Regulatory Flexibility Analysis

I. Reason for Action

In this proceeding, we seek to develop a record and to elicit comments on modification or elimination of the main studio rule and elimination of the local program origination rule for radio and television broadcast stations. These rules were promulgated originally to ensure

that broadcast stations served their audiences. However, we now question whether these rules are necessary to meet that end.

II. Objective

The proposed rule changes are designed to modify or eliminate rules which are of doubtful utility in providing broadcast service to the listening and viewing public. This proceeding will elicit comments on the public interest benefits and costs of the proposed rule changes in accordance with the Communications Act of 1934, as amended.

III. Legal Basis

The legal basis for eliciting comments on these proposals to change our rules is found in Sections 4 and 303 of the Communications Act.

IV. Description, Potential Impact, and Number of Small Facilities Affected

Modification or elimination of these rules would result in wider discretion for all broadcast licensees in situating their main studios and in choosing programming to serve their audiences. Consequently, the overall costs involved in construction and operating a broadcast station could be reduced.

V. Recording, Record Keeping and Other Compliance Requirements

There is no additional impact.

VI. Federal Rules which Overlap, Duplicate or Conflict with the Proposed Rules

There is no overlap, duplication or conflict.

VII. Any significant Alternative Minimizing Impact on Small Entities and Consistent with Stated Objectives

There is no significant alternative.

FOOTNOTES

¹ The members of AJC are: Beasley Broadcast Group, Capitol Broadcasting Corporation, Communication Enterprises, Inc., Dick Broadcasting Company, Inc., Fuller-Jeffrey Group, Hicks Communications, Inc., Joyner Broadcasting Company, Keymarket Communications Group, Metroplex Communications, Sconix Broadcasting Company, Swanson Broadcasting, Twin Cities Broadcasting, Westcom, Ltd., and WHAL-WYCO Radio Stations.

² The two rules in question are Sections 73.1125 and 73.1130. Section 73.1125 states: (a) Each AM, FM and TV broadcast station shall maintain a main studio in the station's principal community which it is licensed to serve, except: (1) AM stations licensed as synchronous amplifier transmitters ("AM boosters") or, (2) AM stations whose main studio is located at the station transmitter which is situated outside the station's principal community of license or, an FM station, commonly owned with such AM station, and licensed to the same principal community, whose main studio may also be co-located at the commonly owned AM station's transmitter or, (3) AM, FM or TV stations, when good cause exists for locating the main studio outside the principal community to be served and that to do so would be consistent with operation of the station in the public interest. (b) Relocation of the main studio may be made: (1) From one point to another within the principal community or from a point outside the principal community to one within it, without specific FCC authority, but notification to the FCC in Washington shall be made promptly; however, (2) From a point within the principal community to one outside it or from one such point outside the community to another, only by first

securing modification of construction permit or license. (FCC Forms 301 for commercial stations and 340 for noncommercial educational stations.) (3) Two exceptions to paragraph (b)(2) of this section are: (i) AM stations moving their main studio to their transmitter site wherever it is located; and, (ii) FM station, commonly owned with an AM station, and licensed to the same community, whose main studio is co-located. (iii) Notification to the FCC in Washington shall be made promptly of such relocations described in paragraphs (b)(3) (i) and (ii) of this section. (c) Where the principal community to be served does not have specifically defined political boundaries, applications will be considered on a case-by-case basis by the FCC to determine if the main studio is located within the principal community to be served.

Section 73.1130 states: (a) More than 50% of an AM, FM or TV station's non-network programs shall originate from the station's main studio or from points which are remote from the main studio so long as such origination points are situated in the principal community which the station is licensed to serve. (b) Such originations shall be computed on the basis of total duration or total length of time of programs, and not on the number of separate programs.

³ Sunbelt Television, Inc. supports expansion of the inquiry to include UHF television stations; Broadco of Texas, Inc., comments on the AJC petition only insofar as it relates to permitting co-location of commonly owned AM and FM stations licensed to different communities.

⁴ *Report on the Status of the AM Broadcast Rules ("AM Status Report")*, RM-5532, released April 3, 1986 (M.M.Bur.)

⁵ *Id.* at 41.

⁶ The courts have also addressed these requirements as they relate to Section 307(b). See *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983); *FCC v. WNCN Listeners Guild*, 450 US 582 (1981).

⁷ See, e.g., *Jersey Cape Broadcasting Corporation*, 85 FCC 2d 655 (1981), recon. denied, 89 FCC 2d 984 (1982) (commercial TV station permitted to locate main studio 10 miles from community of license after assignment of license where assignment would sever station from AM/FM/TV combination and relocation would result in substantially improved facilities; main studio remained accessible to residents of community of license); *Central Virginia Educational Television Corporation*, 49 RR 2d 435 (1981) (noncommercial educational TV station applicant permitted to locate main studio 3 miles outside community of license where applicant operated another such station from studio location and would realize considerable cost savings thereby; main studio still accessible to community residents); *Arizona Communications Corporation*, 25 FCC 2d 837 (1970), recon. denied, 27 FCC 2d 283 (1971) (recorded music exempted from local program origination rule as long as a majority of news and public affairs programming originated from main studio in community of license).

⁸ We also note that requests for waiver of the main studio rules involve the Commission in an artificial and highly subjective determination into when a station's main studio is or is not "accessible" to its community of license. See, e.g., cases cited *supra* n.6.

⁹ *Deregulation of Radio*, 84 FCC 2d 968 (1981), recon. denied in part, 87 FCC 2d 797 (1981), *aff'd* in relevant part, *Office of Communication of the United Church of Christ v. FCC*, 707 F.2d 1413 (D.C. Cir. 1983) ("UCC"); *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, 98 FCC 2d 1076 (1984) ("Deregulation of Television"), recon. denied, 104 FCC 2d 357, 60 RR 2d 526 (1986), appeal pending sub nom. *Action for Children's Television v. FCC*, No. 86-1425 (D.C. Cir., filed July 25, 1986).

¹⁰ Deregulation of Television Reconsideration, *supra*, 104 FCC 2d at , 60 RR 2d at 527.

¹¹ Also, our current regulatory posture presumes that a licensee will serve its community of license, absent evidence to the contrary. See, e.g., "Berwick Doctrine" Reconsidered, *supra* para. 5; see also Suburbanaire, Inc.(WAWA(AM)), 60 RR 2d 1326, 1330 n.12 (Rev. Bd. 1986), petition for recon.pending (filed September 2, 1986).

¹² "Service area" would be defined as the Grade B contour of a FM radio ortelevision station, or the 1 mV/m contour of an AM radio station.