

Revised Main Studio and Public File Rules

By Peter Gutmann and John Garziglia

The FCC has substantially revised its main studio and public file rules. **(Please note that this memorandum has been updated to incorporate further revisions adopted in late May 1999.)** Its intention is to afford additional flexibility and avoid unnecessary regulatory burdens while ensuring that broadcast licensees adhere to their "bedrock obligation" to serve the needs and interests of their communities. To that end, the revised rules are intended to preserve public access to station facilities, personnel and information, so as to monitor performance and encourage a continuing dialogue between stations and their communities. To preserve a balance between public responsibility and unnecessary regulatory burdens, the Commission has lessened some responsibilities while increasing others.

Main Studio Location. Under the Commission's new rules, a broadcast station's main studio may be located either within 25 miles from its community of license reference coordinates; or within the principal community contour of any station, of any service, licensed to its community of license. This change in the rules should allow broadcast stations much more flexibility in the location of their main studios. In situations where stations are licensed to communities in which Class C FM or clear channel AM facilities are also licensed, stations may find that a main studio can be located 40 miles or more from the city of license.

Public File Location. Under the new rules, a broadcast station's public file must now be located at its main studio, wherever located. Thus, no longer do broadcasters have to maintain a separate public file location inside the community of license when the main studio is located outside of the community of license. Applicants for new stations or applicants for a change of community of license must locate their file either in the proposed community of license or at a proposed main studio.

As an option to maintaining a paper file, the Commission will afford licensees the flexibility of maintaining all or part of their public file in a computer database so long as a computer terminal is made available at the file location for members of the public. The Commission also will encourage (but not require) licensees who maintain an electronic public file to post their files on the web, so as to further increase public access.

Public Access to Files. The entire public file must still be available for public inspection at any time during regular business hours and in-person requests for copying must be honored at the requestor's cost. In addition, if a public file is located outside the city limits of a station's community of license, the Commission will now require that telephone requests for copies of all portions except the political file be honored. Specifically, licensees must assist members of the public in identifying the documents they may seek, and although the requestor may be required to pay the reasonable cost of photocopying, the station will have to pay the postage to mail the requested documents within a reasonable time which the Commission generally considers to be seven days or less to a requestor living within the station's primary service area.

Later this year, the Commission intends to revise its manual entitled The Public and Broadcasting, the most "recent" version of which was published in 1974 and is now hopelessly out of date. Once released, the new edition must be placed in a station's public file and a copy sent by mail without charge for either copying or postage to any member of

the public requesting it. The Commission anticipates that its manual will provide the public with adequate guidance to make intelligent requests for information.

The change requiring the accommodation of telephone requests for public file materials may become a greater burden on broadcast stations than the Commission envisions. Most broadcasters would now agree that it is a rare instance in which a station's public file is reviewed by a member of the public. But with the Commission now putting the burden on broadcasters to assist members of the public on the telephone, broadcasters may see a much greater interest in their public files by the public, its representatives and the news media. The Commission considered but rejected the adoption of limits to forestall abusive requests made in bad faith.

Contents and Retention Periods. Under the revised rules, operating commercial stations are to retain the following materials in their local public inspection files:

Authorizations and Contour Maps. To ensure public access to the technical parameters of station operations, licensees will now be required to retain a copy of their current authorization, together with any modifications or conditions. (Previously, these documents only had to be posted at the transmitter control point.) In addition, the public file must contain copies of any service contour maps submitted with any application filed with the FCC, together with all other information in the application showing service contours or main studio and transmitter locations. All of these documents must be retained for as long as they reflect current information about the station.

Applications and Related Materials. All applications filed with the FCC must now be placed in the public file. (Previously, only applications requiring public notice or requesting assignments, transfers or construction extensions had to be included.) Applications need be retained in the file only until final action has been taken, except that applications granted subject to waivers must be retained for as long as the waiver remains in effect and short term renewals must be retained until final grant of the next renewal application. Documentation of local public notices (broadcast and newspaper) must be retained for the same period of time as the renewal application.

Citizen Agreements and Radio Time Brokerage Agreements. The Commission will continue to require that copies of these agreements be retained in the file for so long as they are in effect.

Other Contracts. Licensees will now be afforded the option of retaining in the public file either a copy of all contracts required to be filed with the FCC or an up-to-date list identifying all such contracts. Licensees who choose the option of a list will be required to provide copies of the full contracts to requesting parties within seven days.

Ownership Reports. Only the most recent, complete ownership report need be kept, together with subsequent annual certifications of continued accuracy. These materials must be kept until replaced by a new, complete report.

Annual Employment Reports, Issues/Programs Lists, Children's Television Programming Reports (TV Only) and Records Regarding Children's Commercial Limits (TV Only). All of these must be now be retained until grant of the next renewal application becomes final.

Letters from the Public. As under the current rule, written comments and suggestions received from the public regarding operation of a station must be retained for three years. The Commission has now clarified, though, that the rule extends to e-mail communications, sent to a publicly-advertised e-mail address or to station management (but exempts personal e-mail received by staff members). Such e-mail may be stored either on paper or in a computer file; if the latter, the station must provide public access either through a computer terminal or with a copy on computer diskette. In two related deregulatory moves, the Commission no longer will require TV stations to classify letters into programming and non-programming subject categories, and licensees may retain one sample copy of identical communications, together with a list identifying all parties who sent them.

FCC Investigations or Complaints. Materials relating to a matter which is the subject of an FCC complaint or investigation must be retained until the licensee is notified by the FCC that the material may be discarded. Licensees will no longer be required to retain materials related solely to private disputes.

Political File. There has been no change to this rule; materials must still be retained for two years.

Must Carry or Retransmission Consent Election (TV Only). There has been no change here either; these materials must still be retained for the duration of the three year period to which the election applies.

Related Material. The Commission has clarified that in addition to each of the above categories, licensees are required to include all exhibits, letters and other documents filed with or received from the FCC pertaining to an application, report or other document, as well as any materials incorporated by reference and not otherwise maintained in the public file.

Non-Commercial Educational Stations. The Commission has generally conformed the public file obligations of non-commercial educational stations to those which govern commercial stations. However, in lieu of letters and e-mail from the public, educational licensees must maintain for two years lists of donors supporting specific programs. Stations fed by another and which are exempted by waiver from having their own main studios may keep their public file at the main studio of the station from which their programming is originated.

Responsibility Upon License Assignment. Under current practice, a station assignee is responsible for the full contents of the inherited file, although this often proves impossible due to record keeping lapses by the Seller (or the Seller's predecessors). The Commission will now only require the assignee to retain public file documents actually obtained from the assignor, subject to making a good faith effort through typical due diligence to correct deficiencies in the assignor's file that exist at the time of the assignment.

In sum, it appears that the Commission has substantially lessened the burden of locating the main studio and public file, but has significantly increased the burden and expense of responding to public requests for public file materials.

June 7, 1999

