

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

In the Matter of)	
)	MM Docket No. 97-138
Review of the Commission's Rules)	RM-8855
regarding the main studio and)	RM-8856
local public inspection files of)	RM-8857
broadcast television and radio stations)	RM-8858
)	RM-8872
47 C.F.R. §§ 73.1125,)	
73.3526 and 73.3527)	

MEMORANDUM OPINION AND ORDER

Adopted: May 25, 1999

Released: May 28, 1999

By the Commission:

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I. INTRODUCTION

1. In the *Report and Order*¹ in this proceeding, we amended our rules regarding the main studio and local public inspection file for broadcast stations. In doing so, our goals were twofold: to strike an appropriate balance between ensuring that the public has reasonable access to each station's main studio and public file while minimizing regulatory burdens on licensees, and to adopt clear rules that are easy to administer and understand.² Consistent with these goals, we provided broadcast licensees additional flexibility in locating their main studios, required the collocation of public files and main studios, and clarified and updated our rules regarding the required contents of the public inspection files. In addition, we adopted an accommodation that requires stations to make available, by mail upon telephone request, photocopies of documents in the public file, including our revised version of "The Public and Broadcasting."

2. We have received five partial or limited petitions for reconsideration of the *Report and Order* in

¹ See Report and Order in MM Docket 97-138, 13 FCC Rcd 15691 (1998).

² See Notice of Proposed Rule Making in MM Docket 97-138, 12 FCC Rcd 6993, 6999 (1997).

this proceeding and one opposition to the petitions for reconsideration.³ In response to these petitions for reconsideration, we take this opportunity to affirm, revise, or clarify certain of our actions. We will modify the rules by amending the scope of the accommodation and by revising slightly and clarifying the document retention requirements. We also address other requested changes.

II. ISSUE ANALYSIS

A. Accommodation

3. *Background.* Prior to the issuance of the *Report and Order* in this proceeding, a broadcast licensee could locate its main studio outside its community of license provided it fell within the station's principal community contour.⁴ Under the previous rule, a licensee was required to maintain its public file within the community of license, either at the main studio, if the main studio was within the community, or at another accessible location in the community, if the main studio was located outside the community.⁵

4. In the *Report and Order*, we amended Section 73.1125 of our rules to allow a station to locate its main studio at any location that is within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license, whichever it chooses. We also amended Sections 73.3526 and 73.3527 of our rules to require all stations to locate their public files, which include their political files, at their main studios. Because these rule changes could result in a station's public file being located a greater distance from its community of license than previously permitted, as an accommodation, we also amended Sections 73.3526 and 73.3527 to require all stations to make available, by mail upon telephone request,⁶ photocopies of documents in the public and political file. As adopted, the rules continue to provide that the station may require the person requesting the copies to pay the reasonable cost of photocopying in advance and require the station to pay postage. To facilitate requests for public file documents over the telephone, the new rules also require stations to provide

³ National Association of Broadcasters ("NAB") and Cornerstone Broadcasting Corporation submitted Petitions for Partial Reconsideration and Clarification. 16 Named State Broadcasters' Associations ("State Broadcasters"), 23 Named Public Broadcasters ("Public Broadcasters"), and America's Public Television Stations ("APTS") each filed Petitions for Partial Reconsideration. Each of these petitions addresses specific aspects of the *Report and Order*. An Opposition to Petitions for Reconsideration was filed jointly by Office of Communication of the United Church of Christ, Media Access Project, Center for Media Education, and Minority Media and Telecommunications Council ("MAP *et al.*,"). Cedarville College filed a Petition for Clarification or Declaratory Ruling. NAB and State Broadcasters filed responsive pleadings. Informally, Hanson Communications filed a letter in support of NAB's petition, and Hammett and Edison submitted a letter regarding a technical matter addressed below.

⁴ See *Report and Order, Amendment of Main Studio and Program Origination Rules for Radio and Television and Radio Broadcast Stations*, 2 FCC Rcd 3215 (1987) ("Main Studio and Program Origination Report and Order"). The principal community contour (5 mV/m for AM radio, 3.16 mV/m for FM radio and city-grade for TV) must encompass the entire community of license, but often extends beyond those limits in some directions. See 47 CFR §§ 73.24(i), 73.315(a), 73.685.

⁵ See 2 FCC Rcd 3215 (1987).

⁶ The Commission's rules require stations to provide local or toll-free telephone service to their communities of license. See 47 C.F.R. §73.1125(c).

callers, if they wish to receive one, a copy of the new edition of "The Public and Broadcasting" free of charge. We did not amend the requirements regarding program origination capability, staff presence or toll-free service.

5. *Repeal or Modify the Accommodation.* State Broadcasters argue that some of the newly adopted provisions are unduly burdensome and should be substantially modified or deleted. State Broadcasters specifically point to several aspects of the accommodation in support of this argument.⁷ State Broadcasters also argue that the new requirements will place stations at increased risk of defending complaints due to an increased likelihood of confusion and misunderstandings, and will inundate the Commission with complaints resulting in large forfeitures.⁸

6. State Broadcasters also claim that the Administrative Procedure Act ("APA"),⁹ the Paperwork Reduction Act ("PRA")¹⁰ and the Regulatory Flexibility Act ("RFA")¹¹ bar the Commission from lawfully adopting any of the new requirements.¹² They argue that the requirement that the new accommodation apply to all broadcasters without exemption for those who do not seek to relocate their main studios or public files makes the new requirements "fatally overbroad" under the APA.¹³ They also claim that the PRA will be violated because the additional paperwork that will result from the "orderly implementation" of the new requirements under the accommodation will substantially increase, rather than reduce, broadcaster paperwork burdens.¹⁴ Finally, they claim that the burdens of the "new requirements" will violate the RFA, again because they do not provide an exemption for any broadcasters, particularly those who choose not to relocate their public files.¹⁵ Noting how they believe the accommodation provisions will particularly affect small broadcasters, they allege that the Commission has not limited the regulatory burdens placed on small businesses

⁷ State Broadcasters interpret the accommodation to have resulted in the following "new requirements" that stations:

- (1) maintain enough trained staff to field telephone calls throughout the business day from unlimited number of people, irrespective of their location or purpose, about the organization and contents of the station's public and political files;
- (2) utilize their staff to duplicate the contents of those files, and to package, label, and mail the requested contents; and
- (3) absorb the cost for such postage and handling irrespective of the size and weight of the contents, the frequency of the mailings, etc.

⁸ *Id.* at 3-5.

⁹ 5 U.S.C. §551 *et seq.*

¹⁰ 44 U.S.C. §§ 3501 *et seq.* See also 5 C.F.R. § 1320 *et seq.* (OMB's implementing rules).

¹¹ 5 U.S.C. §601 *et seq.* as amended by Pub L. No. 104-121, 110 Stat. §47 (1996) (Contract With America Advancement Act).

¹² State Broadcasters' Petition at 3.

¹³ *Id.*

¹⁴ *Id.* at 4.

¹⁵ *Id.* at 5.

as required by the RFA,¹⁶ and therefore that the public file/political file requirements contradict the intent of the RFA.¹⁷

7. In its Opposition to Petitions for Reconsideration, MAP, *et al.*, argue that the accommodation should be retained as adopted, and apply to all broadcasters equally.¹⁸ MAP, *et al.*, oppose State Broadcasters' arguments that the new requirements violate the APA, PRA and RFA. MAP, *et al.*, note that the Commission's accommodation requirements are fully consistent with the basis of its decision to relax the main studio rule. In this connection, they argue that the Commission rationally determined that it would be reasonable to relax the main studio location rule because the public relies increasingly on telephone or mail to communicate with their local stations. Thus, they argue, it is consistent to require broadcasters to cooperate with members of the public who seek to use those means of communication to gain access to station files. MAP, *et al.*, claim that, contrary to petitioners' allegations, facilitating citizen access to broadcasters is not adverse to broadcasters' interests.¹⁹ They also argue that keeping a list of public file documents and training staff to respond to telephone inquiries would be expected of any businesses in a competitive marketplace.²⁰

8. We will retain the accommodation with modifications as discussed below. We continue to believe that the accommodation is necessary and reasonable now that broadcasters have much more flexibility in locating their public files. We disagree with State Broadcasters that our *Report and Order* in this proceeding was contrary to the APA, the PRA or the RFA. The *Report and Order* was based on a thorough record developed after a full opportunity for comment on the proposed changes to the rules in question. As MAP, *et al.*, notes, our decision reasonably met our stated goals of "balancing between ensuring that the public has reasonable access to each station's main studio and public file and minimizing the regulatory burdens on licensees."²¹ Our decision was also based on the "bedrock obligation" of each broadcast licensee to serve the needs and interests of its community of license.²² The PRA and RFA require agencies to ensure that they do not impose unnecessary burdens on members of industry, including small businesses and the public. However, neither the PRA nor the RFA requires any administrative agency to reduce burdens if to do so would undermine the agency's ability to fulfill the obligations of its originating statute.²³ Pursuant to the PRA and RFA, we sought comment on the paperwork burdens and the regulatory burdens on small businesses in the *Notice of Proposed Rule Making*²⁴ and received no comments. We also analyzed these burdens in the *Report and Order*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ MAP, *et al.*, Opposition at 2.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 6.

²¹ See 13 FCC Rcd at 15693.

²² *Id.*

²³ cite

²⁴ See 12 FCC Rcd at 7003, 7011-7017.

and found that our actions properly balanced the needs of the entities involved and the public, and imposed no unnecessary burdens.²⁵ In addition, the rules were approved by the Office of Management and Budget, which specifically analyzed any paperwork burdens.²⁶

9. At the time we adopted the *Report and Order*, we considered several different methods of accommodation and weighed the comparative burdens and public benefits associated with each. Our determination struck a reasonable balance among the competing proposals raised in the record. We considered such proposals as requiring courier, fax or e-mail delivery, or requiring stations to make their studio available at non-business hours by appointment and found that such proposals were not reasonable either because they would not serve the public universally or would unduly burden stations. We also considered a proposal to require stations either to provide transportation to requesters, or to transport the public file to them, and determined that such accommodations would be unreasonably burdensome to station owners. On the other hand, we considered such suggestions as allowing a licensee to choose the actual method of public access, and concluded that this approach would not assure reasonable accommodations for the public.²⁷ We found that the accommodation furthers our stated goals of balancing public access with regulatory burden and ease and clarity of administration. We considered comments arguing, as does State Broadcasters in its Petition, that the accommodation could discourage stations from locating outside the community,²⁸ and that it could, if not limited, result in frivolous or harassing requests.²⁹ As we noted in the *Report and Order*, we believe that the rules as adopted address many of these concerns. For example, a requestor is entitled to "The Public and Broadcasting," which should provide adequate guidance to make an intelligent request for information. In addition, the rules regarding public file contents, as revised, will be much easier to understand and administer for both licensees and the public seeking information. Again, as we stated in the *Report and Order*, the person seeking documents from a station's public file will continue to be required to pay the reasonable expenses of photocopying, which should reduce the possibility for abusive and frivolous requests.

10. In response to concerns raised by various petitioners, we will nonetheless modify the accommodation in several respects as discussed below. The modifications we adopt will more narrowly tailor the accommodation, and thereby lessen regulatory burdens without undermining the public's ability to acquire reasonable assess to relevant information about a broadcast station.

11. *Geographic Limitation.* NAB suggests that we place a geographic limit on the accommodation in two ways. First, it suggests that we exempt broadcasters whose main studios are in their communities of license, or who have been allowed to maintain their public files outside their communities pursuant to a

²⁵ See 13 FCC Rcd at 15719, 15721-15729.

²⁶ See *Public Notice Announcing Effective Date*, 63 FR 56578-01 (October 22, 1998) (citing to OMB Control Nos. 3060-0171 (October 7, 1998) and 3060-0214 and 3060-0215 (October 13, 1998)).

²⁷ See 13 FCC Rcd at 15703.

²⁸ See 13 FCC Rcd at 15704.

²⁹ *Id.*

waiver.³⁰ It argues that these stations' public files are presumably "reasonably accessible," and that the telephone request rule should only apply to stations whose main studios become "inaccessible" through operation of the new provisions.³¹ MAP, *et al.*, oppose such a limitation, noting that the accommodation should apply to all broadcasters equally.³²

12. Second, NAB proposes that the accommodation be limited so that a station need only honor requests for mailing to places within the geographic service area of the station.³³ NAB notes that the local public inspection file was created to serve the needs of the local community served by the station.³⁴ Thus, it argues, it is only those members of the public who reside within the service area and view or listen to the station who would have any need or interest in the contents of the public file.³⁵ MAP, *et al.*, disagree with NAB's suggestion that the Commission should limit the geographic location of those requesting information.³⁶ MAP, *et al.*, argue that citizen enforcement of licensee obligations depends on the availability of these documents through the mail, and that citizens outside the service area have valid reasons to seek information from a distant location. For example, local citizens may retain counsel outside the listening area, citizens may want to compare performance of local broadcasters with distant broadcasters, or national organizations and academics may need to collect information from broadcasters nationwide. MAP, *et al.*, also point out that the cost to stations to mail documents is the same regardless of the destination. NAB responds that MAP, *et al.*'s, reasons do not justify denying its suggested geographic limitation.³⁷ It claims that any listener or viewer who lives in the service area could obtain the needed material and forward it to his or her attorney.³⁸ It questions the purpose of cross-community comparison of stations and argues that the Commission has not stated that the purpose of the public file is to enable such comparisons.³⁹ NAB also argues that, consistent with the stated purposes of the public inspection file, national organizations and academics should not necessarily expect to have mail access to the public file.⁴⁰ NAB suggests that such groups should access needed information from

³⁰ See NAB Petition at 6. NAB actually requests that we exempt stations that maintain their main studios "outside the community of license pursuant to a waiver." Since the rules have allowed stations to locate their main studios outside their community of license since 1987, we assume that NAB meant to say "maintain their public files" outside the community of license.

³¹ NAB Petition, i, 10-11.

³² MAP, *et al.*, Opposition at 2.

³³ *Id* at 10.

³⁴ NAB Petition at 11.

³⁵ *Id.*

³⁶ *Id.* at 7.

³⁷ NAB Reply at 4.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ NAB Reply at 5.

the FCC.

13. On reconsideration, we will revise Sections 73.3526(c)(2) and 73.3527(c)(2) to require that only those stations whose public file is located at a main studio outside the city limits of the community of license be required to provide the accommodation. We believe that this narrowing of the accommodation is justified. We agree with NAB that stations that remain in the community of license should be reasonably accessible to the public they serve. Indeed, we adopted the accommodation in the *Report and Order* in order to compensate for the fact that broadcasters may now move their public files to more distant locations outside the community of license. If a station chooses to locate its main studio and public file in its community of license under the new rules, the public file will be reasonably accessible just as before, and there should be no need for the accommodation. We will not, however, exempt from the accommodation stations whose public files are outside the community at the main studio pursuant to a waiver granted prior to our *Report and Order* in this proceeding. Under the new rule, these stations no longer require a waiver and thus should be treated in the same manner as other stations in the same circumstances.

14. We also will revise Sections 73.3526(c)(2) and 73.3527(c)(2) to limit the required mailing area for documents requested by phone to the geographic service area of the station in question. Stations will not be required to provide this accommodation to persons outside this area. For a TV station, this area is defined by the area encompassed by the station's Grade B contour;⁴¹ for a radio station, it is the area within the station's protected service contour.⁴² This will clarify the scope of the accommodation requirement and minimize disputes over who is eligible for the accommodation. We nonetheless encourage, but will not require, stations to make the accommodation to persons living outside that immediate service area who may be able to view or listen to the station. We urge stations to act in good faith to accommodate viewers and listeners who reasonably claim to receive their signal even though they reside outside the relevant service contour.

15. We believe that narrowing the accommodation in this fashion is consistent with the underlying goals of this proceeding which focused on ensuring the continued access of local viewers and listeners of each station, even where a station relocates its main studio outside of its community of license. Given the limited purpose of the accommodation, we believe the accommodation should be tailored to the listeners and viewers that are served by the station. We acknowledge that, as MAP, *et al.*, have pointed out, the accommodation, if not limited to a station's geographic service area, could offer collateral benefits, such as mail access to local citizens' attorneys who happen to be located outside the service area, or allowing citizens to compare performance of local broadcasters with distant broadcasters, or enabling national organizations and academics to collect information from broadcasters nationwide. Such considerations, however, are beyond the scope of this process and we do not address them here.

16. *Specific Guidelines.* In the *Report and Order* we granted stations the ability to require payment

⁴¹ The Grade B contour for most stations reaches at least 40 miles, and at maximum facilities can range from 60 to 80 miles.

⁴² The radio protected service contours are the 1 mV/m contour for most FM stations (Class B FM Stations are protected to their .5 mV/m contours and Class B1 FM Stations are protected to their .7 mV/m contours) and the .5 mV/m contour for AM stations. At maximum facilities, the radii of FM protected contours range in size between 18 miles to 57 miles. AM protected contours, based on actual facilities, vary considerably from station to station and are based on frequency, power, radiation and ground conductivity.

for copies prior to mailing them and noted that stations would be required to send a copy of "The Public and Broadcasting" free of charge to anyone requesting it.⁴³ We declined to impose a numerical limit on accommodation requests a member of the public could make.⁴⁴

17. NAB suggests that we give more specific guidelines for stations on the types and amount of information to which the accommodation would apply.⁴⁵ In its reply pleading, State Broadcasters agree with NAB's request for such guidelines and also request that stations be relieved of the obligation to pay the cost of postage for documents mailed under the accommodation.⁴⁶ State Broadcasters also suggest that the Commission should "expressly permit" stations to use a "Public Inspection File Order Form," or "PIF," a form sent to the caller prior to mailing any documents, and would be returned with payment.⁴⁷ These petitioners express concern that without a limit on requests, stations will be overwhelmed by numerous and/or frivolous requests for information.⁴⁸ MAP, *et al.*, disagree with NAB's suggestions that the Commission should limit the required scope of inquiries.⁴⁹

18. We decline to adopt the petitioners' proposals that we further delineate the types and amount of information stations are to give over the telephone. We reiterate our determination in the *Report and Order*.⁵⁰ Therein, we gave an example of the type of telephone service we envisioned: stations, if asked, should describe to a caller the number of pages and time periods covered by a particular ownership report or children's television programming report, or the types of applications actually maintained in the station's public file and the dates they were filed with the FCC.⁵¹ As we stated, we also encourage stations to place the descriptions of their public files on the Internet. Again, we will not set a numerical limit on telephone requests. Particularly with the modifications we make to the accommodation today, we do not expect licensees to be unduly burdened by this requirement. Nor are we convinced that citizen requests for information will be made in bad faith to any significant extent, or that stations will be overwhelmed by such requests. A licensee, may, of course, seek a waiver or special relief from the Commission in the event such circumstances arise.⁵²

⁴³ See 13 FCC Rcd at 15703.

⁴⁴ *Id.*

⁴⁵ NAB Petition at 3.

⁴⁶ The PIF would contain (a) a list of the documents requested (b) the number of pages of each document, (c) the cost of copying each document and (d) the cost of postage. State Broadcasters Reply at 4-5.

⁴⁷ *Id.* at 5

⁴⁸ NAB Petition at 2-3; State Broadcasters Petition at 7-8; Public Broadcasters Petition at 6.

⁴⁹ *Id.* at 7.

⁵⁰ See 13 FCC Rcd at 15702.

⁵¹ See 13 FCC Rcd at 15703.

⁵² *Id.*

19. We also decline to adopt or recommend a specific form to be used by stations when fulfilling telephone requests. Stations may, of course, at their discretion, use forms to streamline the processing of requests and collection of associated charges. In addition, we will retain our original requirement that stations pay the cost of postage for mailing the documents requested by telephone. We believe this cost is reasonable considering the flexibility that the new rules grants to stations and the additional cost to the public of travelling to the more distant main studio location in order to view the file in person.

20. *Exempt Political File.* The *Report and Order* made no substantive change to the political file rules. The only change in procedure regarding the political file was that requests for the political file's contents were included in the accommodation just as any other aspect of the public file would be. Prior to the effective date of the rules, NAB requested, and we granted, a temporary and partial stay of the effective date of the accommodation provision only as it applied to requests to gain access to the contents of stations' political files.⁵³ This effective date was stayed only until the end of the Fall 1998 election season, which occurred only days after the actual effective date of the rules.⁵⁴

21. NAB and State Broadcasters request that we exclude from the accommodation all requests for information from the political file.⁵⁵ NAB argues that the disruption and burden on broadcasters to fulfill all telephone requests for the political file during a campaign is substantially greater than the burden on candidates to seek out the political file at the station's main studio, wherever located.⁵⁶ NAB points out that requests for information from the political file are especially numerous during a campaign season and stations could easily become overwhelmed by requests for information over the telephone.⁵⁷ MAP, *et al.*, support such an exclusion.⁵⁸

22. We will grant petitioners' request and not require that stations extend the accommodation to requests for the political file. We believe that this change balances the needs of broadcasters with the needs of the public. NAB states that its experience shows that candidates or their representatives are the heaviest visitors to a station's public file.⁵⁹ These persons may make daily or even more frequent requests for political file information during a campaign, because the information is in flux throughout each day of the campaign.⁶⁰

⁵³ See *Order* in MM Docket 97-138 (September 18, 1998).

⁵⁴ The rules became effective on October 30, 1998. See *Public Notice Announcing Effective Date*, 63 FR 56578-01 (October 22, 1998). Election day was November 3, 1998.

⁵⁵ NAB Petition at 7; State Broadcasters Petition at 8; Reply at 3.

⁵⁶ NAB Petition at 8.

⁵⁷ NAB Petition at 8; State Broadcasters Petition at 8.

⁵⁸ MAP, *et al.*, Opposition at iii n. 1. (MAP *et al.*, state that they do not oppose the vast preponderance of petitioners' requests for modification and clarification. "Such requests include exempting the political file from the telephone and mail accommodation requirements...")

⁵⁹ NAB Petition at 8.

⁶⁰ *Id.*

As we recognized at the time we granted the temporary stay, a heavy volume of telephone calls could unduly disrupt a station's operations.⁶¹ This volume of telephone requests could occur in any election season. In exempting the political file from the accommodation, we also expect that candidates or their representatives, when seeking political file information in their professional capacities, are more likely to have greater resources and be more able to access the main studio and public file in person than would an average citizen. Since candidates or their representatives, rather than the general public, are the persons most likely to be affected by this exemption, we do not believe that the exemption will adversely affect the public interest.

B. Document Retention Requirements

23. *Applications.* In the *Report and Order*, the Commission amended Sections 73.3526 and 73.3527 to provide that all applications be retained in a station's public file during the period each application is pending or, if granted pursuant to a waiver, during the period that the waiver remains in effect.⁶² Those rules had previously contained confusing requirements for retention which many parties requested we revise.⁶³ In the *Report and Order* we revised the rule to include *all* applications, but we clarified and shortened the period of retention to the period during which an application remains pending. We also changed the retention period of applications granted pursuant to a waiver to the period during which the waiver is in effect.

24. NAB and APTS ask that the Commission reinstate previous versions of the local public inspection file rules requiring only retention of applications for which local public notice is given. NAB and APTS state that the new rules including all applications create additional regulatory burdens which are contrary to the Commission's goals in this proceeding.⁶⁴ NAB cites to the origins of the public file provision and claims that the determination in 1965 that only certain applications be included in the public file should govern our action in this proceeding.⁶⁵

25. Public Broadcasters suggest that we exempt certain stations from the requirement that applications granted pursuant to a waiver be kept in the file for the duration of the applicability of the waiver.⁶⁶ In support

⁶¹ See *Order* in MM Docket 97-138 (September 18, 1998).

⁶² 13 FCC Rcd at 15712. The previous rules required licensees to maintain copies of applications placed on local public notice, as well as every application involving changes in program service, an extension of time in which to complete construction of a new station, consent to involuntary assignment or transfer, or to voluntary assignment or transfer, not resulting in a substantial change in ownership or control and which may be applied for on FCC Form 316.

⁶³ Sections 73.3526(e) and 73.3527(e) required retention of pending construction permit applications during the period they were pending before the FCC or the courts. 47 CFR §73.3526(e)(1). Once granted, they and all other applications retained were required to be retained "for a period beginning with the date they are tendered for filing and ending with the expiration of one license term, or until the grant of the first [license] renewal application..., whichever is later" with two limited exceptions. 47 CFR §73.3526(e)(2).

⁶⁴ NAB Petition at 6-7; APTS Petition at 2.

⁶⁵ NAB Petition at 6.

⁶⁶ Public Broadcasters Petition at 8; MAP, *et al.*, Opposition, at iii n. 1.

of this request, it claims that some waivers do not raise concerns respecting licensee performance of the kind warranting indefinite retention of documents to assure ongoing public scrutiny. As an example, Public Broadcasters cite to waivers of the main studio rule entailing satellite operation. Such operations provide service for long periods and are accepted and noncontroversial operations which do not require heightened levels of scrutiny. At the very least, they argue, the Commission should clarify which types of waiver would trigger the retention requirement.

26. We affirm Sections 73.3526 and 73.3527 as revised in the *Report and Order*. We are not persuaded by the argument that we should adhere to the spirit of the original public file proceeding in 1965 to require retention only of those applications that require local public notice. Members of the public may very well have an interest in reviewing all of a licensee's pending applications, even those not placed on local public notice. Moreover, our amendment to this rule to include all applications in the public file simplifies this rule greatly. We believe that the addition of some applications will not burden stations, because the number of additional applications is small, and inclusion of all applications relieves licensees and permittees of the need to seek counsel regarding the question of which applications need be kept. In addition, we amended this rule to change the retention period of applications to the period during which they are pending before the Commission or the courts.⁶⁷ This shortens and clarifies the retention period which previously had required that applications be retained throughout the renewal period during which they were filed.

27. With respect to retaining applications granted pursuant to a waiver, we reaffirm our decision to require retention of all applications granted pursuant to a waiver for the duration of the waiver's applicability. As we stated in the *Report and Order*, we believe these applications must remain available to the public for the entire period the waiver is in effect to ensure the public can assist the FCC in evaluating licensee performance in light of the representations made in the application and waiver request.⁶⁸ We also believe that the burden of retaining the application is outweighed by the need to keep an accurate and complete record of a station's operations. We decline to apply this requirement only to particular types of waivers. To do so could undermine the public's ability to examine licensee performance under the waiver, and could also unduly complicate what should be a straightforward and easy-to-apply requirement.

28. *Electronic Mail.* In the *Report and Order*, we amended our rules to require licensees to retain e-mail messages as well as traditional printed communications. Section 73.3526(e)(9) was amended to read:

Letters and e-mail from public. All written comments and suggestions received from the public regarding operation of the station, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Letters and electronic mail messages shall be retained for a period of three years from the date on which they are received by the licensee.

⁶⁷ 13 FCC Rcd at 15711. For purposes of this rule, an application remains pending until the Commission or the courts have taken final action on it, *i.e.*, the application is no longer subject to reconsideration, review or appeal either at the FCC or the courts. 13 FCC Rcd at 15711.

⁶⁸ See 13 FCC Rcd at 15712.

29. NAB and State Broadcasters request that we limit or exclude e-mails to be retained.⁶⁹ Both argue that the retention of e-mail encroaches on the rights of privacy of station staff because it will require review of all incoming mail to determine which e-mails must be retained.⁷⁰ To avoid this intrusion, they suggest that we limit the retention requirement to e-mails sent to a publicly advertised e-mail address, or to station management and that we specifically exclude the personal e-mails of staff members.⁷¹ MAP, *et al.*, argue that we should not limit or exclude e-mails, but acknowledges that we could limit the retention requirement to e-mails received by managers.

30. We will modify this requirement. Section 73.3526(e)(9) was modified to extend the retention requirements to the same sort of e-mail communications as have historically applied to traditional mail communications. We recognize that personal e-mails in the workplace have become quite common, much more so than letters, and that our requirement may have had an overbroad result. To ensure that only e-mails regarding the *operation of the station* be retained, we will limit the e-mail retention requirement to e-mails sent to a publicly advertised e-mail address, or to station management, and we will specifically exclude the personal e-mails of staff members. We expect this exclusion of personal e-mail to avoid the possible overbroad effect of including e-mail sent to a lower level employee that might contain an inconsequential reference to station operation. We encourage stations to advertise e-mail addresses to which comments and suggestions may be sent, but we do not require this.

31. *Donors' Lists.* Section 73.3527(a)(8) of our rules requires that noncommercial educational stations maintain the lists of donors supporting specific programs. In the *Report and Order*, we considered but denied a petition asking us to delete this requirement from the public file. That petition argued that this provision was obsolete because it is rooted in the program log requirements that were deleted in 1980.⁷²

32. Public Broadcasters and APTS argue that the Commission should delete this requirement on reconsideration because it is obsolete.⁷³ MAP, *et al.*, agree that this section could be deleted.⁷⁴ Public Broadcasters also claim that since the provision's genesis was as an optional alternative to logging, and it was adopted as a requirement without notice or comment, it should be deleted.⁷⁵ They request that, in the event we retain the requirement, we define the phrase "donors supporting specific programs," and set forth a procedure by which such donor lists can be maintained over the two-year retention period.⁷⁶

⁶⁹ NAB Petition at 5-6; State Broadcasters Petition at 9-10, Reply at 2.

⁷⁰ NAB Petition at 6; State Broadcasters Petition at 9.

⁷¹ NAB Petition at 5-6; State Broadcasters Petition at 9-10.

⁷² See *Reregulation and Oversight of the AM FM and TV Broadcast Rules*, 77 FCC 2d 251 (1980).

⁷³ Public Broadcasters Petition at 3-6; APTS Petition at 3-5.

⁷⁴ MAP, *et al.*, Opposition at iii n.1.

⁷⁵ Public Broadcasters Petition at 4-5.

⁷⁶ Public Broadcasters Petition at 6.

33. We disagree that this provision is obsolete. As we stated in the *Report and Order*, the donor list requirement is tied to our sponsorship identification requirements under Section 317 of the Act and Section 73.1212 of our rules, which require noncommercial educational stations to acknowledge donors.⁷⁷ The basic premise of these provisions is that the public is entitled to know by whom they are being persuaded.⁷⁸ The donor list requirement for noncommercial licensees is related to the Commission's determination that noncommercial educational stations are permitted to limit their on-air program sponsorship announcements to major donors or underwriters only, but must maintain a complete donor list in their public files.⁷⁹ Although donor lists originated as an optional alternative to logging, they were deliberately retained when the logging requirements were deleted, and stations retained their obligations to identify donors in accordance with Section 73.1212.⁸⁰ Parties had ample notice and opportunity to comment on this provision in this Docket, and their positions were given full consideration. The donor lists provide the only complete information regarding program sponsorship on noncommercial stations, and therefore will be retained. We note that the list for each program must be maintained for two years after broadcast of the program.

34. With respect to the definition of "donors supporting specific programs," we will apply the same definition as applies to "sponsors" under the sponsorship identification provisions. That is, we expect licensees under Section 317(a)(2)(c) of the Act to exercise "reasonable diligence" to obtain the requisite information to assure that a proper identification is made.⁸¹ We note in this regard that Section 73.1212(e) requires licensees to disclose the "true identity" of those on whose behalf a payment is made.⁸² In making this determination, unless furnished with "credible, unrefuted evidence" that a sponsor is acting on behalf of a third party, the broadcaster may rely on the plausible assurances of the person paying for the time that they are the true sponsor.⁸³

35. *Letters concerning violent programming.* Section 73.1202 of our rules requires that licensees of commercial AM, FM and Television broadcast stations retain in their public files for three years all written comments and suggestions received from the public regarding station operation. Section 73.3526 implements this provision with similar language. There is no similar provision requiring licensees of noncommercial educational stations to retain such written correspondence. In the *Report and Order* we nonetheless required

⁷⁷ See 47 USC § 317; 47 CFR § 73.1212; *Commission Policy Concerning the Noncommercial Nature of Educational Broadcast Stations*, BC Docket No. 21136, 90 FCC 2d 895, 896 n. 7 (1982).

⁷⁸ See 90 FCC 2d 895, 901.

⁷⁹ See 90 FCC 2d 895, 901 n. 18 (1982) (general reference to minor contributors must also include a statement advising the public that a complete donor list is maintained through PBS or the individual public broadcast station, whichever is appropriate). See also *Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, BC Docket 81-496, 98 FCC 2d 746, n. 23.

⁸⁰ See *Revision of Program Policies and Reporting Requirements Related to Public Broadcasting Licensees*, BC Docket 81-496, 98 FCC 2d 746.

⁸¹ See *Trumper Communications of Portland, LTD. et al.*, 11 FCC Rcd 20415.

⁸² *Id.*

⁸³ *Id.*

that all noncommercial television licensees include in their renewal applications a summary of any letters they receive regarding violent programming even though these licensees are not required to retain such letters themselves under our rules. We based this determination on Section 204(b) of the Telecommunications Act of 1996 ("1996 Act").⁸⁴ This section amended Section 308(d) of the Communications Act of 1934 to require that

[e]ach applicant for the renewal of a commercial or noncommercial television license shall attach as an exhibit to the application a summary of written comments and suggestions received from the public and maintained by the licensee (in accordance with Commission regulations) that comment on the applicant's programming, if any, and that are characterized by the commenter as constituting violent programming.⁸⁵

In the *Report and Order* we found that this requirement was appropriate in light of Congress' concern with violent programming, and would help ensure that the Commission and the public are kept informed of concerns raised by the public about such programming on both commercial and noncommercial stations.⁸⁶

36. APTS and Public Broadcasters request reconsideration of the Commission's holding that noncommercial stations are required to summarize letters concerning violent programming.⁸⁷ APTS argues that since, under the Commission's rules, noncommercial stations are not required to maintain letters from the public, and the Commission has not revised this requirement, Section 308(d) does not contemplate a summary of letters to be filed by any noncommercial educational television licensee at renewal.⁸⁸ It points out that it raised this concern in its comments filed in response to the *Notice*, because it was concerned that noncommercial stations would be subject to the more onerous burden of summarizing letters received during the entire renewal term while commercial broadcasters would be required to summarize only those letters received during the last three years of their renewal term.⁸⁹

37. On reconsideration, we grant APTS' request. Section 308(d) requires licensees to summarize only those letters maintained by licensees "in accordance with Commission regulations." In the *Report and Order*, we did not amend Section 73.3527 to require noncommercial educational licensees to retain letters from the public regarding violent programming. Since noncommercial educational licensees are not required to maintain these letters under our rules, we will not require them to file a summary of letters received with their renewal, even if they voluntarily retain the letters they receive. We believe this is consistent with the plain meaning of the statute. We also note that reports regarding violent television programming have raised little concern about

⁸⁴ Pub. L. No. 104-104, 110 Stat. 56, 113 (1996).

⁸⁵ 47 U.S.C. § 308(d) (as amended by Section 204(b) of the 1996 Act, Pub. L. No. 104-104, 110 Stat. 56 (1996)).

⁸⁶ See 13 FCC Rcd at 15718.

⁸⁷ APTS Petition at 5-7; Public Broadcasters Petition at 7.

⁸⁸ APTS Petition at 6-7.

⁸⁹ See 13 FCC Rcd 15718, n. 130.

the programming aired by noncommercial educational television stations.⁹⁰

38. *Ownership Reports for Noncommercial Educational Stations.* The *Report and Order* made an editorial amendment to the public file rule for noncommercial educational stations, 47 CFR § 73.3527, to add the requirement, previously omitted, that those stations retain in their public files, a copy of their most recently filed complete ownership report (FCC Form 323-E) "together with any subsequent supplemental report or statement filed with the FCC certifying that the current report is accurate. . . ."⁹¹ We made this change to reflect the same requirement in the rule governing ownership reports, 47 CFR § 73.3615. Public Broadcasters request that we delete the requirement that noncommercial educational stations file certifications that the current ownership report is accurate. They claim these certifications are filed only by commercial licensees because noncommercial educational licensees file their ownership reports on a different schedule than commercial licensees.⁹²

39. We will retain the rule as revised. In the *Mass Media Streamlining Report and Order*,⁹³ we amended Section 73.3615 to require noncommercial educational stations to file ownership reports with the same frequency as commercial stations are required to file.⁹⁴ The requirement in Section 73.3527 that noncommercial educational licensees retain in the public file the most recent, complete ownership report on file with the FCC for the station, and a certification that the current report is accurate, is fully consistent with this amendment to Section 73.3615.

C. Miscellaneous Matters

40. *Issuance of "The Public and Broadcasting."* In the *Report and Order* we stated that the Commission's staff would issue a revised version of the broadcast manual, "The Public and Broadcasting." NAB asks that the Commission solicit public comment on this manual prior to issuing it.⁹⁵ NAB argues that because the manual is a required element of the public file, the public and broadcasters should have the ability to preview the document to verify its accuracy and to propose changes to make sure the manual is a useful tool for the public.⁹⁶

41. We do not believe that it is necessary to solicit public comment on "The Public and Broadcasting"

⁹⁰ See *The UCLA Television Violence Report*, 1996 at 150-53.

⁹¹ 47 CFR § 73.3527(e)(4).

⁹² Public Broadcasters Petition at 9.

⁹³ See *Report and Order* in MM Docket 98-281, 13 FCC Rcd 23056, 23094 (1998) ("Mass Media Streamlining").

⁹⁴ *Mass Media Streamlining* amended that filing period to every two years. See 13 FCC Rcd at 23094. That *Report and Order* also amended Section 73.3527(e)(4) to delete the reference to any "subsequent supplemental report." *Id.* We will make that change in the rule.

⁹⁵ NAB Petition at 12.

⁹⁶ *Id.*

as requested by NAB. The manual is merely a summary of our existing policies and rules relating to broadcast stations, including the changes to the rules enacted in this docket. It will be revised from time to time and issued on the Commission's web page so that stations can keep the most updated version in their public files. We disagree that this document requires notice and comment. The manual will not effectuate any rule change, but merely provides a general summary of our rules and policies for the public.⁹⁷

42. *Official Source for City-Center Coordinates.* As stated above, in the *Report and Order* we amended the rule governing main studio location to allow a station to locate its main studio at any location that is within either the principal community contour of any station, of any service, licensed to its community of license or 25 miles from the reference coordinates of the center of its community of license. For Commission licensing purposes as set forth in Section 73.208 of our rules, a community's reference coordinates are generally the coordinates listed in the United States Department of Interior publication entitled "Index to the National Atlas of the United States" ("Atlas Index"). An alternative reference point, if none is listed in the Atlas Index, are the coordinates of the main post office.⁹⁸ In a letter filed on November 10, 1998 Hammett and Edison, Inc. argues that the Atlas Index is out-of-date and out-of-print and thus requires replacement. It claims that the problem with this source is that parties will not easily be able to determine if a community is not listed in the Atlas Index, and will thus have difficulty finding a site for their main studio using the mileage criteria. It suggests as an alternative source the U.S. Census Geographic Names Information System CD-ROM as a Commission-wide official source because it is electronically available and is continuously updated.⁹⁹

43. We are not amending Section 73.208(a)(1) at this time. We do not believe that this change is necessary at this time and is beyond the scope of this proceeding as it would affect the use of city-center coordinates for other licensing purposes. We do not anticipate many instances involving a discrepancy with city-center coordinates. In the event problems with community coordinates arise, we will address them on a case-by-case basis.

44. *Main Studio Issues.* Cornerstone Broadcasting Corporation asks that we clarify that stations operating pursuant to a main studio or public file waiver prior to the *Report and Order* in this proceeding who are now in compliance with our rules, be relieved of special obligations placed on them as a condition of grant of the waiver.¹⁰⁰ Cornerstone cites to obligations such as regular visits to the community by station management, establishment of a Citizens Advisory Board to meet with station management twice a year, coverage of local events in programming, maintenance of the public file in the community and providing toll-free telephone service to the community which it admits are a restatement of a licensee's obligation under any circumstances.¹⁰¹ To address Cornerstone's concerns, we clarify that stations whose waivers are moot because their operations now are in compliance with the Commission's rules with respect to main studio location are

⁹⁷ We have delegated the task of updating the manual to the Mass Media Bureau. The Bureau has withheld issuing this manual pending resolution of the petitions for reconsideration in this proceeding. We expect that the Bureau will issue the revised manual shortly after adoption of this *Memorandum Opinion and Order*.

⁹⁸ See 47 C.F.R. § 73.208(a)(1).

⁹⁹ Letter from Hammett and Edison dated November 10, 1998.

¹⁰⁰ Cornerstone Broadcasting Corporation Petition at 5.

¹⁰¹ Cornerstone Broadcasting Corporation Petition, Attachment at 2.

no longer subject to any conditions placed on them by a previously granted waiver of the main studio or public file rules. These stations are, however, of course obligated to comply with all Commission Rules, including those regarding toll-free telephone service and coverage of local issues, just as all other licensees.

45. Cedarville College also filed a Petition for Clarification or Declaratory Ruling requesting that noncommercial educational stations that operate as satellite stations pursuant to a main studio waiver be allowed to locate their public files at the main studio of the main "feeder" station.¹⁰² In the *Report and Order*, we stated that all stations, including those operating pursuant to a main studio waiver, would be required to locate their public files at their main studios, wherever located.¹⁰³ We hereby clarify that this includes noncommercial educational satellite stations operating under a main studio waiver. These stations must maintain their public files at the main studios of the stations at which their programming is originated, and must provide the accommodation to listeners or residents as required under the amended rules.¹⁰⁴

¹⁰² Cedarville College Petition at 1-3, 5.

¹⁰³ See 13 FCC Rcd 15701 n. 53.

¹⁰⁴ See ¶¶13-15, *supra*.

III. ADMINISTRATIVE MATTERS

46. *Paperwork Reduction Act of 1995 Analysis.* The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

47. ACCORDINGLY, IT IS ORDERED that, pursuant to the authority contained in Sections 154, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303, and 307, Sections 73.3526 and 73.3527 of the Commission's Rules, 47 C.F.R. §§ 73.3526 and 73.3527 ARE AMENDED, as set forth in Appendix C.

48. IT IS FURTHER ORDERED that, the rule changes set forth in Appendix C SHALL BE EFFECTIVE 30 days after publication in the *Federal Register*.

49. IT IS FURTHER ORDERED that the Petitions for Reconsideration in this proceeding ARE GRANTED to the extent described above, and are otherwise DENIED.

50. IT IS FURTHER ORDERED that the Commission's Office of Public Affairs, Reference Operations Division, SHALL SEND a copy of this *Memorandum Opinion and Order*, including the Supplementary Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

51. IT IS FURTHER ORDERED that upon release of this *Memorandum Opinion and Order*, this proceeding IS HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas
Secretary

APPENDIX A

SUPPLEMENTAL FINAL REGULATORY FLEXIBILITY ANALYSIS**A. Background**

1. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated into the Notice of Proposed Rulemaking in this proceeding. The Commission sought written public comment on the expected impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. Based on the comments in response to the Notice, the Commission included a Final Regulatory Flexibility Analysis ("FRFA") into the Report and Order. While no petitioners seeking reconsideration of the Report and Order raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities. Accordingly, this Supplemental Regulatory Flexibility Analysis ("Supplemental FRFA") addresses those amendments and conforms to the RFA.

2. Need for Action and Objectives of the Rule: The need for and objectives of the modifications adopted in this *Memorandum Opinion and Order* are the same as those discussed in the Final Regulatory Analysis in the *Report and Order*. The main studio and public inspection file rules seek to ensure that members of the local community have access to the broadcast stations that are obligated under the FCC's rules to serve them. Our goals here are to relieve undue regulatory burdens on licensees while retaining their basic obligations to serve their communities of license, and adopt a rule that is clear and easy to administer.

B. Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration

3. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings. We note, however, that State Broadcasters claim that the Regulatory Flexibility Act bars the Commission from lawfully adopting any of the new requirements.¹⁰⁵ They argue that the burdens of the "new requirements" will violate the RFA, again because they do not provide an exemption for any broadcasters, particularly those who choose not to relocate their public files.¹⁰⁶ Noting how they believe the accommodation provisions will particularly affect small broadcasters, they allege that the Commission has not limited the regulatory burdens placed on small businesses as required by the RFA,¹⁰⁷ and therefore that the public file/political file requirements contradict the intent of the RFA.¹⁰⁸ Our action today modifying the accommodation will alleviate some of the concerns expressed by State Broadcasters. We exempt broadcasters whose main studios and public files are located in the community of license, and narrow the scope of the mailing requirement of the accommodation to persons within the service area of the station. The first exemption will alleviate the burden on some small broadcasters and the second will relieve all broadcasters, including small broadcasters.

¹⁰⁵ State Broadcasters' Petition at 3.

¹⁰⁶ *Id.* at 5.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. § 601(6). The RFA, 5 U.S.C. § 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. § 632. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). Pursuant to 4 U.S.C. § 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register."¹⁰⁹

5. As noted, an FRFA was incorporated into the *Report and Order*. In that analysis, the Commission described in detail the various kinds of small business entities that may be affected by these rules. In this *Memorandum Opinion and Order*, we address petitions for reconsideration filed in response to the Report and Order. In this Supplemental FRFA, we incorporate by reference the description and estimate of the number of small entities from the previous FRFA in this proceeding.

D. Description of Reporting, Recordkeeping and Other Compliance Requirements:

6. The *Memorandum Opinion and Order* adopts modifications to the rules adopted in the *Report and Order*, which further modify existing recordkeeping requirements. The *Memorandum Opinion and Order* declines to repeal the accommodation. The *Memorandum Opinion and Order*, however, narrows the accommodation to require that only those stations whose public file is located at a main studio outside the city limits of the community of license provide the accommodation. It also revises the accommodation to limit the required mailing area for documents requested by phone to the geographic service area of the station in question. In addition, the item specifically exempts from the accommodation requests for documents from the political file.

7. Regarding document retention, the *Memorandum Opinion and Order* declines to adopt a requirement that stations retain only applications requiring local public notice. It also declines to delete the rules requiring noncommercial educational stations to retain donors' lists and ownership certifications of "no change." The *Memorandum Opinion and Order* amends the rule requiring retention of all e-mails pertaining to station operation and limits the retention requirement to e-mails pertaining to station operation sent to a publicly advertised e-mail address, or to station management, specifically excluding the personal e-mails of staff members.

¹⁰⁹ While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Report and Order*, we utilize the SBA's definition in determining the number of small businesses to which the rules would apply, but we reserve the right to adopt a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the rules adopted in this *Report and Order* and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities in the future. See *Report and Order* in MM Docket No. 93-48 (*Children's Television Programming*), 11 FCC Rcd 10660, 10737-38 (1996), citing 5 U.S.C. § 601(3).

8. The *Memorandum Opinion and Order* also declines to solicit public comment on "The Public and Broadcasting" prior to its issuance, and denies a request that we amend the rule designating the official source for city-center coordinates. In addition, the draft deletes the requirement in the *Report and Order* that noncommercial educational stations include with their renewal a summary of letters they received through the license term concerning violent programming. It clarifies that stations that were previously granted waivers and that now operate in compliance with the rules are no longer bound by any of the terms of the waiver. It further clarifies that stations operating under a main studio waiver, especially satellite noncommercial educational stations, are required to maintain their public files at their main studio at the station at which their programming originates and must comply with the terms of the accommodation as amended.

9. The *Memorandum Opinion and Order* restricts the application of the accommodation by geographic scope and volume of material. It reduces which materials are required to be kept in the public file, and clarifies the required retention period for public file materials. No special skills will be necessary to comply with these requirements. This reduces the burden on licensees, both by clearly defining what must be retained, and the period during which it must be retained.

E. Steps Taken to Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered:

10. By narrowing the accommodation to require that only those stations whose public file is located at a main studio outside the city limits of the community of license provide the accommodation, the *Memorandum Opinion and Order* reduces burdens on small entities who choose not to relocate outside their communities of license. By limiting the accommodation to mailing to persons within the geographic service area of the station in question, the *Memorandum Opinion and Order* reduces burdens on all licensees, including small entities. In addition, the item specifically exempts from the accommodation requests for documents from the political file, which will reduce burdens.

11. Amending the rule to exclude personal e-mail of employees and restricting the retention requirement to e-mail sent to a publicized box or to station management reduces burdens on small entities. By relieving stations that were previously granted waivers and that now operate in compliance with the rules of the conditions of their waivers we reduce burdens on small entities who previously were required to take specific steps to accomplish community outreach. By clarifying that stations operating under a main studio waiver, especially satellite noncommercial educational stations, are required to maintain their public files at their main studio at the station at which their programming originates and must comply with the terms of the accommodation as amended, we reduce burdens on those stations of maintaining separate public files.

F. Federal Rules that May Duplicate, Overlap, or Conflict With the Proposed Rules

12. None.

Report to Congress: The Commission will send a copy of the *Memorandum Opinion and Order*, including this SFRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. § 801(a)(1)(A). In addition, the Commission will send a copy of the

Memorandum Opinion and Order, including SFRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Main Studio and Public Inspection File Memorandum Opinion and Order* and SFRFA (or summaries thereof) will also be published in the Federal Register. See 5 U.S.C. § 604(b).131.

APPENDIX B

§ 73.3526 Local public inspection file of commercial stations(c) *Access to material in the file.*

* * *

(2) The applicant, permittee, or licensee who maintains its main studio and public file outside its community of license shall, (i) make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (*see* §73.3526(c)(1)), excluding the political file (*see* §73.3526(e)(6)), and the station shall pay postage; (ii) mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy; and (iii) be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

NOTE: For purposes of this section, geographic service area includes the area within the Grade B contour for TV, 1 mV/m contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

* * * * *

(e) *Contents of the file.* The material to be retained in the public inspection file is as follows:

* * * * *

(9) *Letters and e-mail from public.* (i) All written comments and suggestions received from the public regarding operation of the station, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from public inspection because of the nature of its content, such as a defamatory or obscene letter. Letters and electronic mail messages shall be retained for a period of three years from the date on which they are received by the licensee.

(ii) For purposes of this section, written comments and suggestions received from the public include electronic mail messages transmitted via the internet to station management or an e-mail address publicized by the station. Personal e-mail messages sent to station employees need not be retained. Licensees may retain e-mails either on paper or in a computer file. Licensees who choose to maintain a computer file of e-mails may make the file available to the public either by providing the public with access to a computer terminal at the location of the public file, or providing the public with a copy of such e-mails on computer diskette, upon request. In the case of identical communications, licensees and permittees may retain one sample copy of the letter or electronic mail message together with a list identifying other parties who sent identical communications.

§73.3527 Local public inspection file of noncommercial educational stations.

* * * * *

(c) *Access to material in the file.*

* * *

(2) The applicant, permittee, or licensee who maintains its main studio and public file outside its community of license shall (i)make available to persons within its geographic service area, by mail upon telephone request, photocopies of documents in the file (*see §73.3527(c)(1)*), excluding the political file (*see §73.3527(e)(5)*), and the station shall pay postage; (i) mail the most recent version of "The Public and Broadcasting" to any member of the public that requests a copy; and (3) be prepared to assist members of the public in identifying the documents they may ask to be sent to them by mail, for example, by describing to the caller, if asked, the period covered by a particular report and the number of pages included in the report.

NOTE: For purposes of this section, geographic service area includes the area within the protected service contour in a particular service: Grade B contour for TV, 1 mVm contour for all FM station classes except .7 mV/m for Class B1 stations and .5 mV/m for Class B stations, and .5 mV/m contour for AM stations.

* * * * *

(e) *Contents of the file.* The material to be retained in the public inspection file is as follows:

* * *

(4) *Ownership Reports and related materials.* A copy of the most recent, complete ownership report filed with the FCC for the station, together with any subsequent statement filed with the FCC certifying that the current report is accurate, and together with all related material. These materials shall be retained until a new, complete ownership report is filed with the FCC, at which time a copy of the new report and any related materials shall be placed in the file. The permittee or licensee must retain in the public file either a copy of the contracts listed in such reports in accordance with § 73.3615(d)(3), or an up-to-date list of such contracts. Licensees and permittees who choose to maintain a list of contracts must provide a copy of any contracts to requesting parties within 7 days.

* * * * *

(9) *Donor lists.* The lists of donors supporting specific programs. These lists shall be retained for two years from the date of the broadcast of the specific program supported.