

F.C.C. 73-677

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

<p style="text-align: center;">In the Matter of AMENDMENT OF PART 1 OF THE COMMISSION'S RULES—PRACTICE AND PROCEDURE—WITH RESPECT TO THE ASSIGNMENT OF NEW AND MODIFIED CALL SIGNS TO AM, FM, AND TV BROADCASTING STATIONS</p>	}	Docket No. 17477
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REPORT AND ORDER

(Adopted June 21, 1973; Released June 25, 1973)

BY THE COMMISSION: COMMISSIONER HOOKS ABSENT.

1. The Commission released a Notice of Proposed Rule Making (FCC 67-634) in the above captioned matter on May 26, 1967, which was published in the Federal Register on June 1, 1967, (32 FR 7917). Interested parties were invited to file comments on or before July 3, 1967, and reply comments on or before July 13, 1967.

2. That Notice proposed specific amendments to section 1.550 of the rules to reflect Commission policy and case law applicable to broadcasting station call sign assignment matters, and to resolve related problems which had arisen since the adoption of the section in 1964. Seven comments were received. Storer Broadcasting Company supports codification of existing policy requirements that call signs be in good taste and not confusingly similar to others in the area; that only "W" call signs be assigned east of the Mississippi River and only "K" call signs west of the river; and that call signs be awarded on a first-come-first-served basis. However, Storer questions whether the public interest would benefit from a proscription of what was depicted in the Notice as "trafficking" in call signs; i.e., the manipulation of the availability of call signs which are in the process of relinquishment or deletion, and in support of its position, points to the hypothetical circumstance where the relinquished call sign has no significance to the relinquishing licensee or permittee but does to the licensee or permittee seeking to acquire it. Finally, Storer asks that provision be made to transfer a call sign from one station to another station, possibly newly acquired, under the same ownership. In particular, Storer requests that existing three-letter call signs should be conformable to other stations owned, or being acquired by, the same licensee.

3. The latter point was also addressed by King Broadcasting Company. King, then and now the licensee of stations KGW and KGW-TV, Portland, Oregon, among others, which has since acquired station KGW-FM, Portland, urged the Commission to make clear in the rules that licensees of stations having three-letter call signs will be

able to add appropriate suffixes upon the acquisition of stations in the same cities in different services. King does not address any other part of the Notice. These comments were filed on July 3, 1967; the call sign KGW-FM was assigned to the same licensee on December 5, 1967. In this connection, it was never intended that a three-letter basic call sign would *per se* bar the assignment of a conforming call sign to a commonly owned station in the same or adjoining community.

4. Columbia Broadcasting System, Inc., supports the Commission's proposal to amend section 1.550 but, like Storer, does so on the assumption that a licensee or permittee seeking to transfer a call sign from one to another of its broadcasting properties would not be deemed, by virtue of such transfer, to be relinquishing, within the meaning of proposed paragraph (h), the call sign so as to call into play the public notice procedure.

5. The Tribune Company, licensee of stations WFLA, WFLA-FM and WFLA-TV, Tampa, Florida, supports the proposed amendment to section 1.550, except for a claimed lack of precision with respect to proposed paragraph (i), i.e., that to be eligible for conforming call signs (e.g., WFLA, WFLA-FM and WFLA-TV), stations must meet certain criteria, including their being licensed to "the same or adjoining communities." Tribune would substitute therefor: "the same community or to the same urbanized area as defined by the U.S. Census." In a similar manner, the comments of Southern Broadcasting Company addressed only the question of eligibility for conforming call signs. With respect to the requirement that conformed stations be assigned to the "same or adjoining", Southern would either add "or communities in close proximity to one another" or would substitute the Standard Metropolitan Statistical Area (SMSA) concept.

6. The comments of Odessa Broadcasting Company, by its attorneys, were directed to a different aspect of eligibility for conforming call signs. In place of our proposal to determine "common control" on the basis of 50 percent or greater common ownership, Odessa would substitute "common operational control" and would make common management the *prima facie* standard of eligibility.

7. The law firm of Midlen and Harrison (now Midlen and Reddy) registers general support of the proposals contained in the Notice, but states the belief that the rules should provide for the receipt and evaluation of information from competing applicants for the same call sign covering matters other than length of service. Further, they indicate their having received numerous requests from clients desiring call signs incorporating the initials of former Presidents of the United States, and urge the inclusion of the Commission policy on this matter in the rules. That policy is that an otherwise available call sign whose last three letters form the initials in their usual sequence of the President of the United States, or of a living former President, is unavailable without suitable clearance for assignment to a standard, FM or TV broadcasting station licensed or authorized for construction by the Commission. Finally, they allude to the recurring problem of how soon a deleted call sign may be reassigned in the same community without creating undue public confusion.

8. The suggestion by *Storer* and *CBS* that multiple owners and network organizations be permitted to transfer call signs from one broadcast property to another without regard to the procedural provisions of section 1.550 (paragraphs 2 and 4, *supra*), must be rejected. Apart from affording preferential treatment to such organizations vis-a-vis the independent stations with which they compete, we see no way of assuring phonetic dissimilarity among call signs in the same market without subjecting all call sign requests, including intra-corporate call sign transfers, to the same ground rules. Moreover, under the formula proposed in section 1.550(h) for choosing among competing requests for the same relinquished or deleted call sign, the applicant with the “. . . longest continuous record of operation under substantially unchanged ownership and control” would prevail over other applicants. Since multiple owners and network organizations tend to meet this length of service test by virtue of their seniority in the industry, their concern in this regard appears to be without foundation.

9. We also decline to relax existing requirements for the issuance of conforming call signs; i.e., that qualifying stations be under common control (evidenced by 50 percent common ownership) and be assigned to the same or adjoining communities. The treatment of 50 percent or greater common ownership as a *prima facie* showing of common control accords, we think, with accepted norms of determining corporate control and avoids the morass of *de facto* control determinations outside the context of formal applications for consent to assignment or transfer of control. Further relaxation in this regard, as urged by *Odessa* (paragraph 6, *supra*), would be unworkable from an administrative standpoint and must therefore be rejected. By the same token, the substitution of urbanized areas, SMSA's, or like standards for the present requirement that conforming calls be used in the “same or adjoining communities”, cannot be justified either in practical terms or in the public interest. This requirement derives from public notices adopted in 1949 and 1965 (FCC 49-24 and FCC 65-282), and was last considered in *Eastern Oklahoma Television Company*, 28 FCC 2d 31 (1971). In *Eastern*, we reaffirmed our view that the issuance of common call signs to broadcasting stations in different services, unless under common control and assigned to the same or adjoining communities, unnecessarily confuses the listening and viewing public as to station location. This would be particularly true in AM/FM simulcast operation where, by reason of identical programming, the identification of each station with the community of license would be even further diluted. Finally, it is reasonable to assume that the use of conformed call signs by stations in non-adjoining communities would work an unwarranted and unnecessary competitive disadvantage on independent stations in the same general area. The changes proposed by *Tribune* and *Southern* in this regard (paragraph 5, *supra*) are therefore rejected.

10. *Midlen* (paragraph 7, *supra*) cites recurring problems in call sign assignment practices which have been taken into account in drafting the rules adopted herein. Perhaps the most troublesome is fixing limits on our policy of indefinitely withholding the reassignment of relinquished or deleted call signs in the same community, except to the

same station or its successor-in-interest. *Shepard Broadcasting Company*, 16 FCC 2d 718 (1969); *Great Lakes Broadcasting Corporation*, 26 FCC 2d 705 (1970). This policy is premised on the belief that the early reassignment of a relinquished or deleted call sign in the same community tends to create the erroneous impression among listeners and viewers that the same principals are involved in the new operation. Clearly, the longer reassignment of the call is withheld, the less likelihood there will be of identification, in the minds of the public, with the former licensee. We conclude that a six-month interval should be sufficient to dissipate this type of confusion, and have written the rule accordingly—section 1.550(n). *Midlen's* proposal to consider factors other than applicants' length of service as a means for choosing from among competing requests for the same relinquished or deleted call sign must, however, be rejected on the ground that it would needlessly compel us to make value judgments in an area where public interest considerations are minimal.

11. No unfavorable comment was received regarding proposed subsections 1.550 (e), (f), (g), (j) and (k). These dealt, in turn, with the availability of "W" versus "K" call signs; the unavailability of new three-letter call signs; the standards for judging claims of phonetic and rhythmic similarity; simplified procedures where the only modification is the addition or deletion of "-FM" or "-TV" suffixes in the call sign assignment; and the procedure to be followed if no call sign request for a new station is filed in compliance with the rules. Accordingly, these provisions are being incorporated into the rules. Language has been added to proposed subsection 1.550(f) to make clear that Commission policy allows the assignment of a conforming available three-letter call sign (plus FM and TV, if appropriate) to a newly acquired station under common control and assigned to the same or an adjoining community. This accords with the comments of *Storer*, and *King* (paragraphs 2 and 3, *supra*).

12. We have already touched on the problem of "trafficking" in call signs in the limited context of call sign reassignments within the same organization—paragraph 8, *supra*. The basic "trafficking" problem lies elsewhere, however, and arises as a by-product of the "first-come-first-served" principle under which our receipt of a written, non-defective application for an available call sign blocks the acceptance of competing requests therefor until the first-received request is processed to completion. Specifically, the party relinquishing a call sign and the party wishing to acquire it can, by pre-arrangement, control its "availability" date by appropriate timing of their respective requests for an effective date for the new call and for reassignment of the relinquished call. Not infrequently, these requests are made by the same attorney, acting on behalf of both. We continue to view this practice as being unfair to other parties having a legitimate interest in the relinquished call sign, and as bordering on abuse of Commission process. Experience gained since 1967 only reinforces our concern in this regard. Actually, the problem is broader than that addressed in 1967, in that there now appears to be "trafficking" in four-letter signs (or four-letter combinations commencing with "W" or "K" assigned by the Department of Transportation as signal letters to vessels), assigned

for use by licensees in the Maritime Mobile Service and to stations operated by the United States Government. Various government agencies have expressed their concern over these practices because of the disruption caused to the registration of affected stations. We find that the public interest requires that these abuses be curbed by giving public notice of relinquished and deleted call signs sought by broadcasters, thereby affording all interested parties an opportunity to compete therefor on the basis of longest continuous record of operation under substantially unchanged ownership and control. In this regard, section 1.550 (h) is adopted herein essentially as proposed.

13. Policies dealing with miscellaneous aspects of call sign assignment have also been incorporated into the rules. These concern effective dates of call sign changes; non-licensed, low-power devices operating under Part 15 of the rules; and the policy against reservation of call signs. Finally, we note that applicants frequently proceed on the erroneous assumption that if a four-letter call sign is not assigned to a Commission-licensed broadcasting station, it is automatically available for assignment. Many four-letter call signs are assigned to vessels in documentation and to other nonbroadcasting radio stations, and a paragraph has been added to indicate their non-availability—section 1.550 (m).

14. We wish to call attention to various petitions for rule making, filed after proceedings in Docket No. 17477 were initiated, involving the assignment and use of call signs in the broadcasting services: Lincoln Broadcasting Company, *et al.* (RM-1451); Straus Broadcasting Group (RM-1891); and Suffolk Broadcasting Corporation (RM-2136). *Lincoln* and *Suffolk* would prohibit the assignment of common call signs to commonly owned AM and FM stations, alleging that existing practices have an unfair competitive impact on independent FM stations; *Straus* proposes minor changes in current station identification requirements. Since these proposals are outside the scope of matters considered in this proceeding, they will be separately considered at another time. In addition, we are concerned with the spiraling workload generated by seemingly frivolous requests for call sign changes; the Office of Chief Engineer and the Re-regulation Task Force will address this problem, along with the need for any on-air call sign identification, in the near future.

15. Authority for the adoption of this Report and Order is contained in sections 4(i), 303(o), 303(p), 303(r) and 305(c) of the Communications Act of 1934, as amended. Those rules and rule revisions adopted herein for which prior notice was not given reflect policies and practices generally accepted in the industry and are therefore not viewed as controversial. Under these circumstances, we find that further notice of proposed rule making under the Administrative Procedure Act (5 U.S.C. 553) would serve no useful purpose.

16. Accordingly, IT IS ORDERED, That effective August 6, 1973, section 1.550 of the rules IS AMENDED as set forth in the Appendix.

17. IT IS FURTHER ORDERED, That proceedings in Docket No. 17477 ARE HEREBY TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary.*

41 F.C.C. 2d

## APPENDIX

Part 1 of the Commission's rules is amended to read as follows :

§ 1.550 Requests for new or modified call sign assignments.

(a) Requests for new or modified call sign assignments for standard, FM or television broadcasting stations shall be made by letter to the Secretary, Federal Communications Commission, Washington, D.C. 20554. An original and one copy of the letter shall be submitted and shall be accompanied by the filing fee, if required, specified in section 1.1111 of this chapter. Incomplete or otherwise defective filings will be returned by the Commission, and any filing fee submitted in connection therewith will be forfeited 45 days from the date the application is returned should the applicant fail to submit an acceptable call sign application for the same station within that period.

(b) (1) No request for a new call sign assignment will be accepted from an applicant for a new station until the Commission has granted a construction permit.

(b) (2) An applicant for transfer or assignment of an outstanding construction permit or license may, in accordance with this section, request a new call sign assignment at the time the application for transfer or assignment is filed, or at any time thereafter. In the absence of written consent of the proposed transferor or assignor, no change in call sign assignment will be made effective until such application is granted by the Commission and the transaction consummated.

(b) (3) Where an application is granted by the Commission for transfer or assignment of the construction permit or license of a station whose existing call sign conforms to that of a commonly owned station not part of the transaction, the assignee shall, within 30 days after consummation, request a different call sign in accordance with the provisions of this section. Should a suitable application not be received within that period of time, the Commission will, on its own motion, select an appropriate call sign and effect the change in call sign assignment.

(c) Each request submitted under the provisions of paragraphs (a) and (b) of this section shall include the following :

(c) (1) A statement that a copy of the request has been served upon each standard, FM or television broadcasting station licensed to operate, or whose construction has been authorized, in communities wholly or partially within a 35-mile radius of the main post office of the applicant's community of license, and a list of the call signs and locations of all stations upon which copies of the request have been served.

(c) (2) Subject to the other requirements of this paragraph, as many as five call signs, listed in descending order of preference, may be included in a single request.

(d) (1) No request for call signs subject to the provisions of this paragraph will be acted upon by the Commission earlier than 30 days following issuance of public notice of the receipt of such request. Applicants for new or modified call signs are cautioned to take no action in reliance on securing the desired call sign until notified by the Commission that the request has been granted.

(d) (2) Objections to the assignment of the requested call signs may be filed within the 30-day period following issuance of public notice of the receipt of such request. Copies of objections shall be served on the party making the request. Objections filed after the 30-day period will be considered only if, in the judgment of the Commission, good cause has been shown for failure to file within the time specified. A reply may be filed within 10 days of the filing of the objection, a copy of which shall be served on the objector. No further pleadings will be entertained, unless specifically authorized by the Commission.

(e) Call signs beginning with the letter "K" will not be assigned to stations located east of the Mississippi River, nor will call signs beginning with the letter "W" be assigned to stations located west of the Mississippi River, except where necessary to conform the call sign assignments of stations which otherwise qualify for common call signs.

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

(g) Subject to the foregoing limitations and provided the call sign is available for assignment, licensees and permittees are eligible to apply for call signs of their choice if the requested combination is in good taste and is sufficiently dissimilar phonetically and rhythmically from existing call signs of stations in the same service area so that there will be no significant likelihood of public confusion.

(h) Call signs are normally assigned on a "first-come-first-served" basis, in accordance with which the receipt by the Commission of a request for an available call sign blocks the acceptance of competing requests until the first-received request is processed to completion; *Provided*,

That in the case of call signs being relinquished or deleted, the Commission will announce the availability thereof by public notice. If competing requests are filed within 15 days, the assignment (if otherwise grantable) will be made to the station having the longest continuous record of broadcasting operation under substantially unchanged ownership and control. However, involuntary and *pro forma* assignments and transfers will not be taken into account in determining priority under this paragraph.

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

(j) The procedural provisions of this section shall not apply to international broadcasting stations, to stations in the experimental, auxiliary, and special broadcasting services, nor to FM or television broadcasting stations seeking to modify an existing call sign only to the extent of adding or deleting an "-FM" or "-TV" suffix. The latter additions and deletions may be requested by letter, accompanied by the necessary filing fee, if applicable.

(k) Failure by the permittee of a new station to request the assignment of a specific call sign and to complete the action required by this section will result in the assignment of identification by the Commission on its own motion.

(l) In the absence of an objection, or pending transfer or assignment of a license or construction permit, a change in call sign assignment will be made effective on the date specified in the related public notice. Postponement of the effective date will be granted only in response to a timely request and for only the most compelling reasons.

(m) Four-letter combinations commencing with "W" or "K" which are assigned as signal letters to vessels in documentation or to other radio stations are not available for assignment to stations in the broadcasting services, with or without the suffix "-FM" or "-TV".

(n) A call sign previously assigned to a station in the broadcasting services will not be reassigned to another broadcasting station in the same community within 180 calendar days from its relinquishment, except to the same licensee or permittee or to its successor-in-interest.

(o) Users of non-licensed, low-power devices operating under Part 15 of this chapter may use whatever identification is currently desired, so long as propriety is observed and no confusion results with a station for which the Commission issues a license.

(p) A call sign whose suffix forms the initials in their usual sequence of the President of the United States, of a living former President, or of the United States of America or any department or agency thereof, is unavailable for assignment to a station in the broadcasting services in the absence of suitable clearance.

(q) A call sign may not be reserved. Where a licensee or permittee declines to indicate a specific desired effective date for the requested change of call sign assignment, the Commission will effect the change in assignment on a date at least 21 days after approval thereof.

(r) Call sign assignment changes will not be made effective retroactively.