

Educational Noncommercial FM Station, Use Of

Part 73 of Rules amended to improve effectiveness of use of the channels set aside for noncommercial educational FM. Stipulations include Class-D stations' obligations if their operations are found to be causing interference, and rules for operating schedules and licensing of all noncommercial educational FM stations. DO 20735

FCC 78-919

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Changes in the Rules Relating to Noncommercial Educational FM Broadcast Stations.

Docket No. 20735
RM-1974
RM-2655

MEMORANDUM OPINION AND ORDER

(Adopted: December 21, 1978; Released: January 11, 1979)

BY THE COMMISSION:

1. The purpose of this document is to respond to the issues raised in the petitions for reconsideration¹ of the actions taken in the Second Report and Order² in this proceeding.

2. In the Notice of Proposed Rule Making in this proceeding, 41 Fed. Reg. 16973 (March 17, 1976), the Commission raised a number of issues concerning possible improvements in the manner in which noncommercial educational FM stations operate on the 20 FM channels (Channels 201-220)³ set aside for such use. Based upon the record developed in this proceeding and the Commission's experience in

¹ Formal petitions for reconsideration were filed by the Intercollegiate Broadcasting System, Inc. ("IBC"), the American Council on Education ("ACE") and Westchester Community College ("Westchester"), Bryant College, Ossining High School and Abraham Baldwin Agricultural College filed informal requests for reconsideration. The National Federation of Community Broadcasters opposed reconsideration and Westchester replied to this opposition.

² The document was adopted by the Commission on June 7, 1978. It was released by it on September 1, 1978, and published in the Federal Register on September 6, 1978, 43 Fed. Reg. 39704.

³ Paragraphs 3 through 8 of the Notice of Proposed Rule Making discuss the history of noncommercial FM broadcasting and rule making actions dealing with the establishment and operation of these stations on 20 reserved FM channels.

licensing these stations, the Commission concluded that certain rule changes were necessary. These changes were made in the Second Report and Order. Other matters continue under consideration in the proceeding and await further action by the Commission.⁴

3. The central reason which led the Commission to initiate this proceeding and to take the actions it did was its concern that these channels were not being used in an effective and efficient manner. Interest in such stations had grown with the result that in many parts of the country there was no available spectrum space to accommodate new educational FM stations or increases in coverage by existing stations. The pattern of use, however, appeared to be an inefficient one. The Commission concluded that it was important to encourage improved efficiency since large portions of the country did not receive noncommercial educational FM service. With these points in mind the Commission attempted to find ways of improving the pattern of channel use.

4. In addition to its concern about these allocations issues, the Commission had been troubled by the fact that many existing stations operated only a few hours per day even though all were licensed to operate 24 hours per day. In fact, some were known to be off the air for extended periods, operating only a few hours per week when they were on the air. This created a particular problem since there often was no open frequency space for new stations. Thus, as matters then stood, there was no opportunity for someone else to step forward to provide the needed service during hours when the existing station was off the air. In the Second Report and Order the Commission dealt with both of these areas of concern and was able to take actions which were designed to improve the efficiency of educational FM channel usage.

5. One of the problems had arisen because the assignment of stations had proceeded on a demand system without any attempt (except more recently in the Mexican border area) to have a Table of Assignments of channels to particular localities or, in any part of the country, to require the use of at least minimum facilities. The consequence was an inefficient pattern of assignments. One of the largest problems centered on the effect 10-watt stations had in precluding the establishment or extension of operations to bring service where it was needed. On the other hand, the Commission recognized the service these stations provided. Thus, it did not want 10-watt operations off the air so long as another way could be found to deal with the problem.⁵ In coming to grips with this issue the

⁴ These include the possible establishment of a Table of Assignments and the other matters discussed in the Further Notice of Proposed Rule Making, 43 Fed. Reg. 27682 (1978).

⁵ At first, it appeared possible that no satisfactory alternative was available. Years ago we warned of the possible need to end 10-watt operations. Thus, in rule making Docket 14185 we observed that "In our view, . . . the time may well be at hand when proper use of the increasingly crowded educational FM band requires restrictions on

Commission operated with two sets of concerns in mind. The first was the inefficiency point, but the other was a sense of fairness to the 10-watt stations—built and operated in good faith—and to their listeners. How, the Commission wanted to know, could recognition be given to both sets of concerns. The Commission's response was to devise a system which it expected to provide for the continued existence of 10-watt stations in virtually all cases but which attempted to minimize their negative impact on allocations by requiring them to change channel and by ending their protection against interference. For the 10-watt stations not wishing to change channel, time was provided so that they could avoid this process by increasing power to the Class A minimum of 100 watts. They were given about a year and a half in which to file for such an increase. Then, commencing with the group of renewal applications to be filed on February 1, 1980, for licenses expiring on June 1, 1980, special channel change procedures were to be followed.

6. The goal was for as many 10-watt stations as possible to move to open space on commercial channels,⁶ subject to a requirement that no interference be caused to any commercial FM station. If this could not be done, the 10-watt station would be required to move to the newly created FM Channel 200 (87.9 MHz). If neither of these approaches could be followed, the 10-watt station would be required to move to the reserved educational channel where it would cause the least amount of preclusion to the establishment of new stations or power increases by existing stations. In the latter case, those already on that channel could remain there. Each station would go through this process as its renewal date approached, so that the changeover process would take three years.⁷ In the meantime, no new 10-watt stations would be established, as a "freeze" on such filings had been imposed by the First Report and Order in this proceeding. As will be discussed, several parties object to at least some of these requirements which were applied to 10-watt stations.

7. Just as with the channel use question, the issue of a minimum operating schedule involved balancing conflicting interests. On the one hand, the Commission was concerned that a number of stations operated only a few hours per week. At the same time, it recognized that there would be a severe impact on these stations if a too stringent requirement were invoked. In fact, such a requirement might force

the future authorization and continuance of 10-watt operations . . ." 31 Fed. Reg. 14755 at 14756 (1966). Although no action was taken on this issue in Docket 14185, the issue remained an important one. In fact, recent developments have given it a greater sense of urgency.

⁶ At this point it is not yet clear how this process will function in the Canadian and Mexican border areas—see paragraph 29 of the Second Report and Order and Section 73.512(a)(1) of the Rules.

⁷ Discussion of the standards applied to the channel change process and other technical aspects of these requirements is contained in paragraphs 23-32 of the Second Report and Order.

some stations off the air. To avoid such a result the Commission decided to enact a rather limited minimum operating schedule requirement of 36 hours per week (consisting of at least 5 hours per day on at least 6 days of the week).⁸ Necessarily, this requirement by itself could offer only partial response to the concern about limited hours of operation. This led the Commission to conclude that something else was needed to encourage greater use of the channel by the existing licensees. The Commission decided upon rules to foster time sharing which make it possible for another eligible entity to share the frequency on a time-sharing basis if the original licensee did not effectively use its licensed hours. Under the rule adopted, licensees desiring to avoid the possibility of time sharing had to operate 12 hours per day every day of the year. The minimum schedule requirement is scheduled to go into effect on January 1, 1979, and mandatory time sharing becomes possible if the 12 hour per day requirement is not met by January 1, 1980.⁹

8. Although some of the actions taken by the Commission form the subject matter of the petitions for reconsideration, others have provoked no response. Thus, while the process of channel changes has received some criticism, the idea that commercial channels would be used has not. Nor did the creation of Channel 200 or its use for 10-watt stations give rise to objection. Similarly, the engineering standards for Channel 200 received no mention. Finally, the idea of a minimum schedule of some variety was not disputed. Nor was using a share-time concept. Points of contention about these latter points, however, did remain.

9. In effect, three basic objections were raised to the actions taken. The first was procedural in nature and was directed to the adequacy of the Commission's notice and invitation to comment. Substantively, there were two basic objections: first, that our actions to deal with the 10-watt situation imposed an unfair or excessive burden on these stations and, second, that aspects of the minimum operating schedule and share-time requirements posed similar problems of burdensomeness. These arguments will be discussed in the order mentioned. Then, we will discuss other points in the Second Report and Order which require clarification even though no reconsideration issue, as such, has been raised. We think that the clarification we offer will prove helpful to parties affected by our decision.

10. In filing its petition for reconsideration, Westchester explains that it only recently obtained a construction permit and did not begin broadcasting until early 1978. Noting that it was not represented by legal counsel when comments were being sought in this proceeding, Westchester indicated that it had not been able to participate by filing

⁸ The minimum operating schedule, on the other hand, did not apply to stations licensed to educational institutions when the school in question was in recess or vacation.

⁹ Earlier, voluntary, time sharing was also encouraged.

comments. It asserts that it should be given that opportunity now. In Westchester's view, the Commission's procedural approach to the case was inadequate. It asserts that the Commission should have affirmatively sought out the views of affected parties, especially in view of what it sees as the consequence of the Commission's action, a possible death knell for many Class D stations. According to Westchester, the small stations most affected by the rule changes were unable to make their views effectively known, with the result that the decision making process was undermined.

11. The NFCB opposition disputes Westchester in these regards. NFCB states that in the one year period during which comments were being received by the Commission, there was extensive discussion in the educational radio community, with IBS playing a key role in the proceeding on behalf of its low-power member stations. NFCB insists that contrary to Westchester's assertions, there have been extensive filings on behalf of 10-watt stations. More, in fact, it says, than on behalf of any other definable group. NFCB also disputes Westchester's contention that the Commission did not consider the alternatives Westchester now urges upon us. NFCB insists that the Commission did consider just such proposals as these or their equivalent.

12. Westchester's reply again argued that the Commission did not consider all of the alternative proposals mentioned in the petition for reconsideration. To the extent such proposals were considered, it contended that the Commission did not give adequate reasons for rejecting the alternatives it did not follow or for deciding the case as it did.¹⁰

13. We cannot agree with Westchester that the Commission did not take the necessary procedural steps to adopt these rules. First of all, on the question of adequacy of notice, we followed all legally required procedures through publication in the Federal Register. However, we did not limit ourselves to this form of notification. The Notice of Proposed Rule Making and/or the News Release about it were given wide dissemination to various interested individuals and groups. That is not to say that we singled out Westchester for separate attention, but the Commission was under no obligation to do so. Westchester's failure to have legal counsel at the time and its inability to participate at the time are matters for which it must assume responsibility. They do not affect the adequacy of the Commission's notice at all. We would have welcomed Westchester's participation, but it cannot avoid the consequence of its own failure to file. Even without this filing, the record was a full and complete one. As NFCB observed,

¹⁰ Westchester also responded to a remark in the NFCB filing which referred to the holding of discussions and debates on this subject. Westchester does not think such discussions can be relied on if they were between the parties. It expressed the hope that such discussions would not have been between the Commission and parties to the proceeding, as that would have involved what it sees as improper *ex parte* contacts. We do not understand NFCB to have intended any such reference.

many other 10-watt stations did respond with much the same view point as Westchester's. Clearly the record included—and the Commission fully considered—the views of 10-watt stations. Also, in considering the views of 10-watt stations, it is not necessary for us to have listed every single alternative that each party offered or might have offered. The record clearly shows that we did consider their arguments and thoughtfully balanced the competing interests involved in reaching our decision. Even a casual reading of the decision indicates that we gave great weight to the concerns of the 10-watt stations, a fact which will become clear in the discussion below.

14. Westchester, IBS and ACE all express concern about the impact our action could have on 10-watt stations. Westchester asserts that the rules may be the death knell for Class D stations.¹¹ Westchester suggests five alternatives that it thinks could have been used to better effect than the procedures chosen by the Commission. Under the first, stations would be classified according to the number of people living inside their 1 mV/m coverage area. It suggests that those in what it calls the Class D category (under 1,000 persons) and the Class C category (1,000–10,000 persons) could be treated as secondary stations. Westchester asserts that this approach is preferable, arguing that it is more sensible to use a standard based on people (rather than area) served. Alternative 2 would premise the classification on then number of hours operated, with those in Class D (36 hours per week) and Class C (36 to 60 hours per week) treated as secondary. Alternative 3 would use a combination of alternatives one and two. Alternative 4 would use the factor of public service or public affairs programming as well as the previously mentioned factors in determining the classification. Finally, under Alternative 5, Westchester would follow a variation on the Commission's approach (that is one based on the station's facilities) but would employ the station's effective radiated power and antenna height to determine the stations affected.¹²

15. We cannot agree that Westchester's classification systems, whatever their descriptive value, would offer any benefits in terms of responding to the Commission's concern about efficient frequency

¹¹ This statement appears to be connected to its incorrect reading of the provisions of Section 73.512. That rule does not require a 10-watt station unable to move to the commercial part of the FM band or to Channel 200 to leave the air if another station wishes to "push them aside." Instead, that rule simply states that Class D stations remaining on the educational channels (that is, those which have not moved to a commercial channel or Channel 200) are not protected against interference. The reference in paragraph (d) to termination of operation if interference results has relevance only to Channel 200 or the commercial FM channels. In the latter case, there is a possibility that changes in FM stations or assignments could produce such a consequence, but as we noted in paragraph 27, we hope this would be rare indeed. It is even less likely to affect those moving to Channel 200. To clarify matters we are making an editorial change in the rule.

¹² The Commission's method was to apply the channel change requirement to Class D stations, that is, those which operate with 10-watts transmitter power output.

usage. Contrary to Westchester's view expressed in Alternative 1, there is no necessary correlation between the number of persons served and the efficiency of the operation in question. Westchester ignores the fact that often high power stations represent the only way to bring educational FM service to a large sparsely settled area. Westchester's approach would put such operations at a severe disadvantage compared to a low power operation in a more densely populated area. While this latter calculation based on numbers served at first glance seems efficient, it only masks the innate inefficiency of the 10-watt station's coverage when compared to its potential for causing interference. The result of labeling the inefficient as efficient is to preclude taking steps to improve matters. Consequently, Alternative 1 must be rejected.

16. We agree that consideration of the hours of operation is important, but we do not agree with Alternative 2 which would use this to determine which station operates on which channel. The engineering inefficiency remains even if the station operates many hours. We believe our approach could bring fuller use of available hours without confusing two separate issues. Because of our rejection of Alternatives 1 and 2, Alternative 3 which is a combination of the other two also must be rejected. Likewise, we are unpersuaded by Westchester's suggestion (Alternative 4) that we base the classification system on the amount of public service programming. Aside from the obvious problems involved in entering the sensitive programming area at all, the method would not function effectively. Necessarily, the station's classification would change as did its program percentages, creating uncertainty. The only way to avoid this—namely to require that the percentages be fixed—raises its own problems. The last suggestion (Alternative 5), to use effective radiated power rather than transmitter power output for the determination is really little different from what the Commission did use. Under the Commission's approach, the rules are applied to Class D stations (that is, those with a transmitter power output of 10 watts). If the station already has an ERP that far exceeds 10 watts, then the consequence is that it would face a lesser burden in increasing power to avoid the necessity to change channel. Although the particulars of our requirements are not the same as Westchester's, we do classify stations based on effective radiated power and then add a final category of Class D (secondary) stations.

17. One final observation needs to be made about Westchester's pleading. Contrary to its assertion on reconsideration, there is no obligation on the part of the Commission to carry the burden of proof to convince that party of the basis for not adopting its suggestions. The burden is on Westchester here to demonstrate error or at least to persuade the Commission of the superiority of its method. Clearly, it has not met its burden.

18. The principal thrust of the IBS petition is that the Commission

has not given adequate recognition to the importance of Class D stations.¹³ According to IBS, without an independent study of program service by various stations, spectrum efficiency alone is not a sufficient basis for the Commission's actions. IBS contends that local service is the essence of broadcasting, and it asserts that urban areas are best served by a mix of high and low power educational FM stations. Even in rural areas where wider coverage might be thought appropriate, IBS fears that local concerns could be subordinated to national or regional ones. In addition, IBS is concerned that following the requirements of the newly adopted Commission rules could be burdensome to 10-watt stations, many of which it says are operated with volunteer staffs. Because of its opinions of the possible impact of the rules, IBS suggests that the Commission change its mind and follow an alternative approach.

19. In the engineering area IBS would require 10-watt stations to move *only* when they are blocking the establishment of a *new* higher powered station and only *after* the requisite construction permit for the station has been granted. Also, under IBS's system, the permittee for the higher power station would have to pay the costs of the 10-watt station's channel change. IBS feels that the higher power stations are better able to absorb the costs, if the change needs to be made, and that changes in frequency should not be required absent a showing of need. Rather than delay establishment of such higher power stations, IBS believes that the result of its suggestion would be a reduction in the flow of channel change proposals and that this might improve the speed in which applications for higher power stations are processed.

20. Although it opposes most aspects of reconsideration, NFCB does agree with making one change. NFCB would allow 10-watt stations to remain on their present channels if they can show that one or more channels are available for full power operation in their cities of license. NFCB believes that in some areas channel space is available and does not think it necessary to require changes in channel in such cases.

21. The issue of when to call for a change in frequency was one of the most difficult we had to resolve. Although we were concerned about the impact on 10-watt stations of being asked to move in advance of the expression of need, we concluded that any other system would not be feasible. We have examined the matter and again been forced to conclude that the alternatives are not satisfactory. For example, it would introduce great delays in waiting for the change process to take place if it could not begin until the specific request were filed. Our experience with changes in channels of existing commercial FM stations suggest that years can go by before the change takes place. Perhaps even worse, doing as we have been urged

¹³ Many of the same points are echoed in the ACE petition as well as in the informal filings.

would not permit any long-range or overall planning of spectrum use. It would be a hit-or-miss, individual case, approach. Our experience has shown that this cannot be relied on to produce the best results. There is another problem with IBS' proposal. It makes no provision for applications to increase the facilities of existing stations. Such extensions of coverage to unserved areas is a vital matter. While the NFCB methodology involves less of a problem in these regards, it offers less relief to 10-watt stations and in fact imposes the biggest part of the anticipated burden of the channel change process: the need to conduct the professional engineering study.

22. The reimbursement concept appears attractive at first blush, but there would be no way to arrange reimbursement in advance of proposed use nor any way to apportion the relative share of benefits derived to the present and future beneficiaries. Also, since the time of any such reimbursement could be delayed until the party stepped forward, it would be of little benefit to the station at the time it made the change. Finally, there is one point IBS ignores. If we wait, as it suggests, there might well be no channel available to which to move. This would present the Commission with a direct choice between the 10-watt operation's continuation and the more powerful station's establishment. The disadvantage to 10-watters of being caught in such a predicament is obvious. In fact, then, our method may provide the 10-watt stations with greater protection and greater confidence in being able to continue operating.

23. The Commission has no desire to terminate the operation of 10-watt stations, and as explained above in footnote 11, Section 73.512 needs to be clarified to make it clear that the Commission has taken every possible step to protect the ability of these stations to continue their operation. Even so, it must be recognized that there will be costs and inconveniences for stations having to change channel. We hope that they will be modest. The costs of increasing to 100 watts or to change channel are relatively low to start. One way of reducing costs further would be for all affected stations in an area to join in a study of how best to work out the necessary changes. In this way, they could reduce costs by sharing the expenses for the engineering studies involved. Although we have tried to be mindful of the costs, we cannot ignore the importance of substantial gains which can be made possible through use of this process. We have already received a filing which verifies our belief that 10-watt stations will fit nicely in open spaces in the commercial FM band. With all of these points in mind it becomes clear that the private interest of these licensees in remaining where they are cannot be permitted to obscure the public interest benefits in following the approach outlined in the new rules, and they will be affirmed, with the clarification noted above.

24. IBS, ACE and others have taken issue with our operating schedule requirement. ACE supports our providing an exemption for vacations and recess periods as school stations, but it asserts that this

alone is inadequate. In its view, recognition also needs to be given to the fact that a majority of full-time students may not be in attendance even though the school is itself technically in session. ACE would count summer sessions and other examples as vacation periods under the rule so that the station would not have to be on the air then at all. It also urges us to permit an averaging of the hours operated over the year for the purpose of meeting the 12 hour per day level necessary to avoid time sharing.¹⁴ IBS expressed similar views on both points in its pleading. In addition, in the informal filings and otherwise, the Commission has repeatedly heard from licensees connected with primary and secondary education that the six-day-a-week requirement would have disastrous effects. They point out that not only are schools not in session on Saturday or Sunday but that the buildings themselves are closed. They insist that opening a building solely to operate the station would introduce great costs in addition to those necessary for operation of the station itself. Some licensees even question whether they would even be able to gain entry to these (perhaps even unheated) buildings. Thus, we are asked to interpret the weekend as vacation period under the present language of the rule or to take other steps to give recognition to this problem. In addition, several parties have informally opposed the 36-hour minimum schedule itself and asked us to remove this requirement or at least reduce it from the present 36 hours.

25. Our choice of the 36-hour minimum was based on our wish to use a low initial requirement combined with an incentive for additional hours through use of the time-sharing mechanism. The vacation exemption, too, was designed to avoid a severe initial impact. We did not think it was realistic to expect them to operate when the school is not in session. Although there are legitimate public concerns when a station is off the air for the entire weekend, no matter how good the cause, part of that concern is mollified by time sharing. Even more to the point, if we could accept the station's being off the air for the much longer period of a summer vacation, then there is no reason to refuse to accept the weekend as well. On reflection we agree that the same reasoning that supports the vacation exemption supports allowing 5-day a week operation for these stations instead of the present 6. Therefore, we will change the rule to permit them to reach the 36 hour level through operation on 5 days of the week.

26. We are not persuaded, however, by the suggestion that we exempt summer sessions and other times when the school is in operation but a majority of full-time students may not be in attendance. Unlike recess periods, the staff is on hand in summer sessions, the buildings are open, and at least some (if not all) of the students are on hand. We cannot agree that an exemption should

¹⁴ A typographical error, corrected through issuance of an Errata on October 12, 1978, pointed out that the Commission did not intend to permit such averaging.

automatically apply to these cases and we will reject that part of the petitions.

27. Finally, we turn to the few informal objections to the time sharing requirement which we have received. Time sharing comes into play if the station does not operate 12 hours per day year-round. This requirement was adopted based on our view that recognition must be given to the extreme scarcity of spectrum space and the need to use it in an effective manner. As pointed out here and explained at length in paragraphs 33-50 of the Second Report and Order, we thought it best not to do this through imposing a stringent minimum schedule obligation. Instead, we decided to give stations time (until 1980) to develop a full schedule and then, and only then, to call for time sharing if the station did not reach an essentially full-time use of the frequency. Nothing more than sharing is involved. The original licensee does not lose its license. The only effect is to require it to share its frequency so that it can be given effective use. To exempt vacation periods from this requirement would defeat the goal we are striving to achieve as the use of a vacation exemption is not consistent with the concept of full-time use. Stations cannot have it both ways. If they want the frequency to be theirs alone, they must be ready to use it to the reasonable level we specified, a level which if anything is a lenient one. If they do not, they should not be in a position to preclude another from offering additional hours of service. Therefore, these requests will be denied.

28. The NFCB opposition drew our attention to one point which needs clarification. At one place in the Second Report and Order we indicated that 10-watt stations had until January 1, 1980, to file the necessary application to increase facilities to the 100 watt level and thus avoid the channel change process. Elsewhere, we indicated that renewals would be granted for a license with secondary status. To NFCB there appears to be a conflict between the two. Our intention was to grant all renewals on a secondary basis *and* to provide an opportunity to increase facilities. It was not our intention to guarantee the ability of every 10-watt station to be able to increase, and a number already are barred from doing so by interference considerations. Rather, the period for filing a power increase had as its purpose providing a method of avoiding the need to change channel. Its purpose was not to protect 10-watt stations against receiving interference. While we did agree to exempt stations from the need to change channels if they reached the 100 watt level, that decision was not based on the efficiency of a 100 watt station. Rather, it represented the Commission's willingness to permit this lesser inefficiency under the circumstances. As a result, we cannot follow NFCB's urgings and protect the ability to increase to the 100 watt level when doing so may foreclose another much more efficient operation.

29. Accordingly, IT IS ORDERED, That effective February 21, 1979, Part 73, of the Commission's Rules and Regulations IS

AMENDED as set forth below. Authority for this action is found in Sections 4(i), and 303(r) of the Communications Act of 1934, as amended.

30. IT IS FURTHER ORDERED, That the petitions for reconsideration ARE GRANTED to the extent indicated and in all other respects ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO, *Secretary*.

APPENDIX

1. Section 73.512(d) is amended to read as follows:

§73.512 Special procedures applicable to Class D noncommercial educational stations.

- (d) Class D noncommercial educational (secondary) stations (see §73.506(a)(2)) will be permitted to continue to operate only so long as no interference (as defined in §73.509) is caused to any TV or commercial FM broadcast station. In the event that the Class D (secondary) station would cause interference to a TV or commercial FM broadcast station after that Class D (secondary) station is authorized, the Class D (secondary) station must cease operation when program tests for the TV or commercial FM broadcast station are authorized. The Class D (secondary) station may apply for a construction permit (see §1.533(a)(6)) to change to another frequency or antenna site where it would not cause interference (as defined in §73.509). If the Class D (secondary) station must cease operation before the construction permit is granted, an application for temporary authorization (pursuant to §1.542 and 47 U.S.C. 309(f)) to operate with the proposed facilities may be submitted; where appropriate, such temporary authorization can be granted.

2. Section 73.561(a) is amended to read as follows:

§73.561 Operating schedule; time sharing.

- (a) All noncommercial educational FM stations will be licensed for unlimited time operation except those stations operating under a time sharing arrangement. Beginning January 1, 1979, all noncommercial educational FM stations are required to operate at least 36 hours per week, consisting of at least 5 hours of operation per day on at least 6 days of the week; however, stations licensed to educational institutions are not required to operate on Saturday or Sunday or to observe the minimum operating requirement during those days designated on the official school calendar as vacation or recess periods.