

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

MM Docket No. 87-11

Amendment of Part 73 Relating
to Call Sign Assignments for
Broadcast Stations

NOTICE OF PROPOSED RULE MAKING

Adopted: February 4, 1987; Released: February 25, 1987

By the Commission: Commissioner Dennis concurring
and issuing a separate statement.

INTRODUCTION

1. By this action, the Commission proposes to amend its rules relating to the assignment of new or modified call signs for broadcast stations.¹ The objectives of this proceeding are to eliminate the geographical restriction with respect to the assignment of call signs beginning with the letters "K" and "W," to remove the rules that prohibit assignment of the same call signs to stations in different services where the stations are not commonly owned, and to streamline the present rules applicable to call signs of stations involved in change of ownership transactions. We believe these proposals would provide broadcast licensees with greater flexibility in choice of call letters and would expedite processing of call sign requests.

DISCUSSION

2. The current call letter provisions reflect modifications that resulted from a rule making proceeding in 1983. In the *Report and Order* in that proceeding, the Commission revised call sign procedures that had been in use for ten years.² The major changes included a shift in procedure to have call letter disputes resolved in local forums rather than at the FCC, elimination of the requirement that commonly owned stations that are assigned conforming basic call letters be located in the same or adjoining communities, and modification of the "first-come-first-served" policy for reassignment of relinquished call letters. After experience with the 1983 rules, we now believe that additional revisions in the latter two subject areas and one additional revision relating to initial letters K and W in call signs are appropriate and desirable. In our view, such changes will further reduce unnecessary delays and other burdens for both licensees and the public. In addition, we believe that the rule changes we are proposing will result in a broader range of options available to licensees in the assignment of call letters and will help to expedite such assignments.

3. *Conforming Basic Call Signs.* The current rules, as revised in 1983, provide that only commonly controlled stations in different broadcast services can be assigned common call letters.³ The effect of this rule is to reserve many call signs for the exclusive use of owners of stations

in multiple broadcast services and, conversely, to limit other owners from using those call signs in the same or different markets. If the licensee of both an AM station and a TV station, for example, does not wish to use the same basic call sign for both stations, it is not restricted from selecting two different call signs, both of which become "reserved" for that licensee and unavailable to other owners of stations in any of the broadcast services.

4. This rule was intended to prevent public confusion as to the management and operation of stations and to prohibit one broadcaster from trading on the good will of another.⁴ It has become apparent, however, through our recent decisions relating to this area that these objectives warrant neither the kinds of restraints on call sign use that had previously been enacted nor Commission involvement in commercial disputes over call signs between broadcast stations licensees. For example, in our decision in the 1983 *Report and Order* to abolish the rule that provided for a 180-day period in which relinquished call signs were not permitted to be reassigned, we concluded there was insufficient evidence of public confusion to warrant retention of this rule. This conclusion was based in part on a finding that stations often promote themselves by channel number or dial location rather than by call sign. Further, in proposing that rule change, we observed that the purpose of call signs is "to permit identification of a station and not the principals of the licensee."⁵ In an action involving *Arch Communications, Inc.*, we again rejected the public confusion rationale by permitting a new UHF television station to adopt a basic call sign that had been in use in the market ten years earlier and was presently in use by two radio stations in the same market.⁶ There we stated that, given the conclusions of the 1983 rule making, we could find no cognizable public confusion after a ten-year hiatus in the use of the requested call sign. As for instances of trading on another broadcaster's good will, such outcome may not be characteristic of all situations. For example, in the same case, we granted a waiver to permit a new UHF station to use the same basic call sign already in use by an AM/FM combination in the same market on the basis that the radio stations had consented to the arrangement.

5. In view of the above, we now believe that the present rule restricting use of the same call letters by stations in different services except where such stations are commonly owned no longer serves any valid public interest purposes and is, therefore, unnecessary. Our previous decisions noted above have indicated that the assignment of call letters does not appear to create public confusion. With respect to trading on another's good will, we believe that neither the broadcasters involved nor the public they serve would be harmed if different owners in different markets were to use the same basic call letters. We believe that assignment of conforming basic call signs of stations in different markets, regardless of station ownership, would result in no listener or viewer confusion or other problems. For example, a licensee of a television station in Los Angeles could be assigned KAAA-TV, while a different licensee of an FM station in Kansas City, Missouri, could use KAAA-FM without any adverse effects. We question, however, whether the same situation would exist if both licensees served the same market. In this respect, we believe that within the same market an element of consent may be desirable, as was part of the decision in *Arch Communications*.

6. Thus, we propose to modify Section 73.3550(i) of the rules to permit any licensee to request any call letters not assigned to another station in its own service, except that assignment of a conforming call sign within a market would require the written consent of the licensees of the other stations in the market already using the same basic call sign. In addition, we raise the issue of what market definition should be used if such a consent requirement is adopted. Interested parties are invited to comment on this proposal. We are particularly interested in comments with respect to whether we should adopt a limited requirement for consent where conforming call signs would be used in the same market. We further request commenters to consider whether consent should be required where a station seeking identical call letters is located in an adjacent market, for example, a Baltimore station requesting call letters in use by a Washington station.

7. *Call Sign Assignments in Change of Ownership Transactions.* The second issue that we address in this proceeding concerns the rule that provides for assignment of call letters on a "first-come-first-served" basis.⁷ Under the current procedures, a licensee seeking a new call sign requests the call sign change and at the same time relinquishes its existing call sign. A relinquished call sign is not available for use by another licensee until the effective date of the call sign change. At that time, the call sign would be assigned to the first applicant who requests it.

8. The staff has permitted two limited types of exceptions to this first-come-first-served policy. First, where commonly owned stations are licensed to the same city, the staff has routinely permitted call sign swaps between the stations. We propose to continue this practice. Second, the staff has permitted an exception to the present policy in instances where an existing broadcaster switched to a new frequency in the same market but retained the same staff, format, and operations.⁸ Under current rules, however, the broadcaster's only option to ensure transfer of the call letters of its former station to its new station is to request assignment of the basic call sign to another commonly controlled station, assuming one exists. Such action would preclude requests for that call sign by another broadcaster. Thus, since the call sign is not relinquished by the licensee, the first-come-first-served policy is inapplicable. The licensee could then apply to use the same basic call sign at the new station. The staff concluded in the Booth American case that this two-step procedure served no public interest goal where the transfer to another frequency occurred within the same market and was a private agreement between parties.

9. On this basis, in matters of call sign transfers in station ownership transactions, there appears to be no public interest benefit in requiring a licensee to risk losing an established call sign by relinquishing it and requesting it again for another frequency in the same market. Thus, while we generally prefer to maintain our first-come-first-served policy, we propose to modify our rules to permit exceptions to this policy in arrangements between licensees to swap or otherwise transfer frequencies in the same market. We seek comment on this proposal and how the relevant market should be defined in such cases.

10. *K or W Assignments.* The current rules provide that 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.⁹ Some exceptions to this rule exist, as call letters assigned prior to the rule's adoption were grandfathered and some waivers have been granted. In the waiver cases, the close proximity of the stations to the Mississippi River was the determinative factor. In addition, these waivers were instances of stations in different services that were commonly owned.¹⁰

11. We believe that there is no public interest justification for maintaining the geographic restriction on assignment of call signs beginning with "K" or "W" based upon the station's location with respect to the Mississippi River. We have observed no difficulties resulting where we have granted waivers to the present rule. Further, we find no public interest cause to warrant granting exceptions in instances of commonly owned stations. Thus, we propose to eliminate this restriction from the rules. Consistent with this revision, we also propose to delete a similar requirement for low power TV and TV translator stations.¹¹ We believe that this rule change will result in an increase in the options available to licensees throughout the United States in the choice of call letters.

REGULATORY FLEXIBILITY ACT - INITIAL ANALYSIS

12. *Reason for Action.* Several provisions in the rules relating to the assignment of call signs to broadcast stations limit both Commission and licensee discretion in the selection of call letters and result in needless complexities and delays in call sign assignments.

13. *The Objective.* The rules proposed herein are intended to eliminate two and modify another of the rule provisions to provide greater flexibility and choice on the part of licensees and Commission staff in call letter assignments. In addition, we seek to remove unnecessary burdens and expedite the assignment of call letters in instances affected by these rule provisions.

14. *Legal Basis.* The action as proposed in this rule making is in furtherance of Sections 1 and 303 and of the Communications Act of 1934, as amended (47 U.S.C. §151 *et seq.*).

15. *Description, potential impact on and number of small businesses affected.* The rule amendments proposed herein will apply to all broadcast licensees and potentially should reduce burdens and provide more options for all licensees seeking new or modified call signs. Inasmuch as delays and filing burdens associated with call sign assignments could impact small licensees to a more significant degree than larger licensees, our proposed rule modifications would provide greater benefits to small licensees.

16. *Federal rules which overlap, duplicate or conflict with this rule:* None.

17. *Any significant alternative minimizing the impact on small entities and consistent with the stated objective:* None.

PAPERWORK REDUCTION ACT STATEMENT

18. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burden upon the public.

PROCEDURAL MATTERS

19. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting. In general an *ex parte* presentation is any written or oral communications (other than formal written comments/pleadings and normal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy of the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state docket number by the proceeding to which it relates. See generally Section 1.1231 of the Commission's rules, 47 C.F.R. 1.1231.

20. Pursuant to applicable procedures set forth in Section 1.415 of the Commission's Rules, interested parties may file comments on or before April 17, 1987, and reply comments on or before May 4, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may consider information and ideas not contained in the comments provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

21. In accordance with the provisions of Section 1.419 of the Commission's Rules and Regulations, an original and 5 copies of all comments, replies, or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also wish each Commissioner to have a personal copy of the comments may file an additional 6 copies. Members of the general public who wish to express their interest by participating informally in the rule making proceeding may do so by submitting one copy of the comments, without regard to form, provided only that the Docket Number is specified in the heading. Responses will be available for public inspection during regular business hours in the Commission's Dockets Reference Room (Room 239) at its headquarters in Washington, D. C. (1919 M Street, Northwest).

22. As required by Section 603 of the Regulatory Flexibility Act the FCC has prepared an initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. The IRFA is set forth above. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis.

23. The Secretary shall cause a copy of this Notice of Proposed Rule Making, including the Initial Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. §601 *et seq.*).

24. This Notice of Proposed Rule Making is issued pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

25. For further information concerning this proceeding, contact Sharon A. Briley, Policy Analysis Branch, Mass Media Bureau, (202) 632-6302.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

A. Part 73 of Title 47 of the Code of Federal Regulations is proposed to be amended to read as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.3550 is proposed to be amended by revising paragraph (h) by adding a note to read as follows:

(h) * * *

Note: The provisions of paragraph (h) of this section shall not apply to a licensee requesting a transfer to another frequency in the same market.

3. Section 73.3550 is proposed to be amended by revising paragraph (i) to read as follows:

(i) Where a requested call sign, without the "-FM" or "-TV" suffix, would conform to the call sign of any other station(s) operating in a different broadcast service in the market, the applicant must obtain the written consent of the licensee(s) of such station(s).

4. Section 73.3550 is proposed to be amended by removing paragraphs (d) and (e) and redesignating paragraphs (f) through (m) as (d) through (k).

5. Section 74.783 is proposed to be amended by revising paragraph (d) to read as follows:

(d) Call signs for low power TV and TV translator stations will be made up of the initial letter K or W followed by the channel number assigned to the station and two additional letters. The two letter combinations following the channel number will be assigned in order and requests for the assignment of the particular combinations of letters will not be considered. The channel

number designator for Channels 2 through 9 will be incorporated in the call sign as a 2-digit number, i.e., 02, 03, . . . so as to avoid similarities with call signs assigned to amateur radio stations.

FOOTNOTES

¹ See 47 CFR §73.3550.

² See *Report and Order* in MM Docket No. 83-373, 95 FCC 2d 1079, 54 RR 2d 1493 (1983), reconsideration denied, 56 RR 2d 540 (1984).

³ 47 CFR §73.3550(i).

⁴ *Report and Order* in MM Docket No. 83-373, *supra*.

⁵ *Notice of Proposed Rule Making* in MM Docket No. 83-373, 48 FR 20252, 20254 (1983).

⁶ See *Arch Communications, Inc.*, 58 RR 2d 235 (MMB 1983).

⁷ §73.3550(h).

⁸ See letter of Sept. 11, 1986, from the FCC Mass Media Bureau, Video Services Division, granting Booth America Company's request to retain call letters WIOG(FM), Saginaw, Michigan, on new station in Bay City, Michigan.

⁹ 47 CFR §73.3550(e).

¹⁰ See *Doubleday Broadcasting Co. v. FCC*, 655 F. 2d 417 (D.C. Cir. 1981), and *RJR Communications, Inc.*, 49 FCC 2d 994 (1974). The Commission granted common call letters KSGM(AM) and KSGM-FM to commonly owned stations licensed to St. Genevieve, Missouri, and Chester, Illinois, both communities on the Mississippi River. This decision was referenced in the Doubleday case, following remand of which the Commission assigned call letters KWK and KWK-FM to St. Louis and Granite City, Illinois, both east of the same river. Similarly, in a more recent action, the Commission changed call letters of station WZEN(FM), Alton, Illinois, to KATZ-FM at the request of the licensee, which is also assignee of station KATZ(AM), St. Louis (Action by letter of September 8, 1986, from Video Services Division, Mass Media Bureau).

¹¹ 47 CFR §74.783(d).

STATEMENT OF COMMISSIONER PATRICIA DIAZ DENNIS

AMENDMENT OF PART 73 RELATING TO CALL SIGN ASSIGNMENTS FOR BROADCAST STATIONS

While I fully support the Commission's efforts to remove regulatory burdens which serve no valid public interest purpose, I do not favor change simply for the sake of change. In some instances, we best serve the public interest by providing an environment of orderliness, constancy, and continuity.

Our call letter assignment rules may constitute one such instance. We have already significantly revised our call letter procedures and policies to minimize the restrictions on broadcasters and the burdens on the agency. *Report and Order*, 95 FCC 2d 1079 (1983), *recon. denied*, 56 RR 2d 540 (1984). I am not yet persuaded that we need to go further at this time.

I therefore intend to look carefully at the comments responding to this Notice of Proposed Rulemaking to see, for example, whether we have accurately gauged the likelihood of public confusion and of broadcasters' trading on others' good will. I also want to know whether our current policies impose a significant burden on broadcasters or on the agency.

Without evidence that the benefits of change exceed the burdens of our current policies, I question why we should devote our scarce resources to administer further revisions to the rules. I look forward to hearing from the public on this matter.