

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

In the Matter of)
)
National Association of Broadcasters)
Request for Temporary Waiver of)
Public Inspection File Requirements.)

MEMORANDUM OPINION AND ORDER

Adopted: October 25, 2001

Released: October 25, 2001

By the Chief, Mass Media Bureau

1. Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, the National Association of Broadcasters ("NAB"), on behalf of its member stations and all broadcast licensees nationwide, requests a 60-day temporary waiver of Section 73.3526(e)(9) of the Commission's Rules, 47 C.F.R. § 73.3526(e)(9), which requires that broadcasters retain in their public inspection files all written comments and suggestions received from the public regarding operation of the station. NAB also requests that the obligation of television stations to include in license renewal applications a summary of public written comments concerning violent programming, which is required for application for renewal of license,¹ be waived for mail received during the requested period.²

2. NAB reports that since the recent attacks on media outlets and other organizations designed to infect and terrorize Americans with anthrax poisoning, many broadcast licensees are following policies recommended by the Federal Bureau of Investigation or local police regarding the collecting and opening of letters and packages in order to safeguard employees and visitors to station locations. According to NAB, pursuant to the recommendations of the FBI and local police, broadcast stations are screening letters and packages for indicators of a possible threat, such as misspelled words and incorrect or missing return addresses, and returning all such mail, unopened, to the U.S. Postal Service for proper handling and disposal. NAB states that as a result of these precautions, some stations may not be retaining in their public inspection files some comments and suggestions received from the public, as required by Section 73.3526(e)(9) of the Commission's Rules. Similarly, some stations also may not be able to fully comply with the

¹ See 47 U.S.C. § 308(d); 47 C.F.R. §§ 73.3539, 73.3500 (Form Number FCC 303-S).

² See Letter of Henry L. Baumann, Jack N. Goodman and Larry Walke, Legal and Regulatory Affairs, National Association of Broadcasters to Roy J. Stewart, Chief, Mass Media Bureau and David H. Solomon, Chief, Enforcement Bureau, Federal Communications Commission (October 19, 2001).

obligation to include in license renewal applications a summary of comments concerning violent programming that reflects all such comments received during this period of caution.³

3. NAB urges the Commission to exercise its discretion to waive its rules requiring the retention of all public comments, as the circumstances described above make strict compliance with these rules inconsistent with the public interest. Stating that it hopes that this period will pass quickly, enabling broadcasters to return to their normal procedures, NAB requests a 60-day waiver of these rule, subject to possible extension. NAB also states that, at their discretion, broadcasters may deem it safe and appropriate to resume their normal procedures sooner than 60 days.⁴

4. We agree with NAB that, under the circumstances described above, it is in the public interest to grant broadcast licensees a temporary waiver of the Commission's rules with respect to the retention of all public comments. Accordingly, we will grant the requested 60-day waiver. The circumstances now prevailing are extraordinary, involving as they do, a biological attack of as yet uncertain dimensions but certainly directed, in part, against United States media outlets. We are granting the waiver in order to minimize any public health threat to station personnel. This concern outweighs the public interest factors embodied in the rule. We expect that broadcasters will use their best judgment to screen letters pursuant to the policies recommended by the FBI and police. We recognize that these procedures may evolve as the nature and scope of the threat is better understood and we commit to broadcasters' good faith belief the actual criteria used in selecting mail that will not be opened. We expect broadcasters to return to complete compliance with the public inspection file rule as soon as they believe the danger has passed. Any extension of the waiver beyond the sixty-days provided should be sought at a later date and will be dependent upon circumstances existing at such later time.

5. Accordingly, IT IS ORDERED that the request for a 60-day waiver of the Commission's rules filed by the National Association of Broadcasters, IS GRANTED, effective upon release of this Order.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

³ *Id.*

⁴ *Id.*