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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEB 10 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Review of Commission Commercial FM	)	RM-_____
Allotment and Licensing Policy	)	

NATIONAL ASSOCIATION OF BROADCASTERS
PETITION FOR RULE MAKING

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TABLE OF CONTENTS

		Page
EXECUTIVE SUMMARY		i
I.	INTRODUCTION AND SUMMARY	1
II.	EXISTING LEVELS OF OVER-THE-AIR AUDIO DIVERSITY AND FREQUENCY CONGESTION, COMBINED WITH CURRENT ECONOMIC CONDITIONS, SUPPORT WIDE-RANGING REVIEW OF FM ALLOCATIONS POLICY	5
	A. There Exists a High Level of Audience Diversity Throughout the Country	5
	B. FM Station Congestion Is Leading to Impaired FM Radio Service	6
	C. The Economic Condition of FM Radio Supports Prompt FCC Review of FM Allocation Policy	10
III.	THE COMMISSION SHOULD REINTERPRET THE SECTION 307(b) MANDATE IN LIGHT OF THE CURRENT STATE OF THE FM RADIO INDUSTRY	11
	A. The Commission Can Claim a "307(b) Victory"	11
	B. If the FCC Will Continue To License New FM Stations, It Should Revise Its Approach	15
IV.	A COMMISSION RULEMAKING PROCEEDING SHOULD ASK FOR PUBLIC COMMENT ON REVISIONS TO FM ALLOTMENT/LICENSING POLICY	16
	A. Commission Policy Should Place Greater Emphasis upon Enhancement and/or Redistribution of Existing FM Facilities	16
	B. The Commission Should Delete "Silent" Station Licenses and Allotments of Fallow Channels	17
	C. A Relevant Market Economic/Viability Showing Should Accompany Requests for New Broadcast Facilities	19
	D. FCC Allotment Policy Should Be Revised To Consider Reception Services As Well As Transmission Services	21
	E. The Commission Should Provide Greater Incentive for Minority Entry into FM Radio Broadcasting	22
V.	CONCLUSION	24

TABLE OF CONTENTS Continued

APPENDICES

APPENDIX A -- NAB National Radio Listening Study

APPENDIX B -- NAB Report: "FM Station Financial Picture"

EXECUTIVE SUMMARY

In this Petition for Rule Making, the National Association of Broadcasters urges the Commission to begin a comprehensive review of its rules and policies governing the commercial FM radio service. In conjunction with the filing of this Petition for Rule Making, NAB today also has submitted a request that the Commission suspend its acceptance and processing of all "new station" petitions to amend the FM table of allotments and all "new station" FM applications. Such a suspension would extend throughout the time period in which the Commission reexamines its FM allocations and licensing scheme. However, NAB urges that, during the pendency of this reexamination, the Commission continue to process and authorize requests for improvement of existing facilities.

NAB submits that, in light of the tremendous growth in the number of FM facilities and media outlets in general, there are policy, technical and economic reasons which necessitate a contemporary review of the Commission's FM allocations and licensing policy. Such a review would be similar to the FCC's recently completed, comprehensive reexamination of the AM broadcast service and the adoption of new AM rules designed to make that aural medium more competitive and more valuable to consumers.

With high levels of program diversity in this country, increasing FM station congestion leading to impaired technical quality of FM signals, and a severe reduction in radio stations'

economic condition, the requested Commission policy review is well justified. It is possible that the Commission could conclude that the number of radio stations in this country supports the notion that the FCC has met the "new station" mandate of Section 307 (b) of the Communications Act. But, regardless of whether the Commission reaches that conclusion, NAB believes that future and changing FM radio needs generally can be met through modification of existing facilities, including the adoption of FCC rules and policies that would provide greater incentives for transfer of facilities to minority broadcasters.

In the event the Commission, at the conclusion of this policy review, simply adopts new rules to govern new station entry, then NAB suggests several elements for such a new regulatory system. They include: (1) greater reliance on enhancing existing FM stations to meet service needs; (2) prompt deletion of "silent" station licenses and fallow FM channels; (3) requiring a market "economic/viability" showing by applicants for new FM facilities; (4) consideration of "reception" services and well as "transmission" services in any new allotment proceedings; and (5) adoption of new rules and policies that would provide greater incentives for minority entry into FM radio broadcasting.

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I. INTRODUCTION AND SUMMARY

In the years that have followed the Commission's inauguration of FM broadcast service,[1/] this medium has grown significantly, especially in the last two decades.[2/] By 1992, FM radio has evolved into a very mature service -- a service which constitutes the dominant aural medium in this country.

The current number of operating FM and AM stations serving the United States public represents the highest level of audio program diversity available anywhere in the world. The attainment of such diversity, in terms of authorized radio facilities and audience listening patterns, suggests that now is

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[1/]The Commission's first "non-experimental" authorization of FM broadcasting (in the 42-50 MHz band) was in 1940, with the first commercial FM stations beginning operation in 1941. In 1945 the FCC moved FM broadcasting to its current frequencies. See 11 F.C.C. 1511 (1945).

[2/]At the end of 1991, there were, according to FCC sources, 4,570 licensed commercial FM broadcast stations in operation. (FCC News Release, "Broadcast Station Totals as of December 31, 1991.") This compares with 912 authorized FM stations in 1960 and 2181 authorized stations in 1969. FCC 35th Annual Report/Fiscal Year 1969, at 128.

the time for a contemporary reevaluation of the statutory mandates applicable to FCC authorization of radio service.

Late last year, the FCC completed a wide-ranging reevaluation of its AM radio licensing policies.[3] The National Association of Broadcasters ("NAB")[4] believes that the Commission has an obligation to conduct the same kind of comprehensive review of its FM allotment and licensing policy. Indeed, NAB underscores the great urgency in our request. As explained in further detail below, there are compelling economic, technical and policy considerations which demand such a prompt review of the Commission's approach toward the authorization and management of the FM broadcast service.

Just as the Commission chose to suspend processing of AM broadcast applications during the pendency of its review of AM allocation, technical and licensing policy, NAB asks the Commission to adopt a similar stance here. That is, and as detailed in the "Request for Temporary Suspension of New Commercial FM Station Allotment and Application Processing," also filed today by NAB, we urge the Commission to avoid compounding the problems that are at the heart of this request for rule making. As a critical component of this needed policy review, NAB recommends that the Commission adopt a temporary suspension

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[3] See Report and Order in MM Docket No. 87-267, 6 F.C.C. Rcd 6273 (1991).

[4] NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and all the major networks.

of its processing of petitions to amend the FM Table of Allotments[5] and its processing of new FM station applications. As the sole exception to such a suspension, NAB urges the Commission to continue to engage in allotment and licensing activity that would permit existing broadcast stations to enhance their technical facilities.[6]

During the course of the substantive review of FM allocation and the licensing policy, the Commission may well come to the conclusion that the mandate of Section 307(b) of the Communication's Act[7] has been achieved. At the very least, the Commission should, we believe, reinterpret the Section 307(b) mandate. Such a reinterpretation should conclude that, in the 1990s, and in view of the incredibly high number of competing media, rational FM policy should rely upon improvement and equitable distribution of existing facilities, rather than upon an artificial increase in the number of such facilities.

At the conclusion of this overall policy review, we are hopeful that the Commission will conclude that any continued policy of simply adding more and more stations to the commercial radio environment will ultimately disserve the public

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[5] See 47 C.F.R. § 73.202 (1990).

[6] NAB, in this separate filing, also does not urge FCC suspension of its licensing of noncommercial FM stations. Nor does NAB suggest that the requested rulemaking proceeding should encompass a review of noncommercial FM licensing policy.

[7] 47 U.S.C. § 307(b).

interest.[8] Based on such a conclusion, NAB strongly advocates FCC adoption of policies that would emphasize meeting service needs by improving existing facilities technically. NAB also believes the FCC should expand the situations where such existing facilities might be transferred to minority broadcasters.

Additionally, and regardless of the Commission's ultimate decision on authorizing new facilities, we urge the agency to take steps that would terminate promptly the licenses of FM stations remaining dark for longer than six months, and cancel construction permits for stations not built within the current 18-month period allotted for such construction. Such cancellation, we believe, should also remove the underlying FM allotment, such that another party simply could not propose an operation -- also perhaps destined for failure -- on the same channel. In this regard, we point to similar steps taken by the FCC in the context of AM radio licensing and authorization.[9]

For purposes of any new station authorizations made after the conclusion of this proceeding, NAB urges that Commission policy be revised to require the petitioner seeking to add a new FM channel in the community (or construction permit applicants seeking operation on existing, fallow channels) to submit a showing that the market proposed to be served has enough

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[8] NAB explains, in the pages to follow, the adverse economic consequences being suffered by existing radio stations and their listeners, as well as the negative effects on technical reception due to increasing levels of FM station congestion.

[9] See Report and Order in MM Docket No. 89-46, 5 F.C.C. Rcd 4492 (1990).

economic activity to support the additional, proposed FM facility. Such economic/viability market data could be submitted from a variety of publicly-available sources.[10/] NAB also believes the Commission's revised allotment policy should consider the number of existing stations "receivable" in the city of license of the proposed station, thus expanding on the current allotment analysis which focuses generally on the "transmission" facilities in the community.

II. EXISTING LEVELS OF OVER-THE-AIR AUDIO DIVERSITY AND FREQUENCY CONGESTION, COMBINED WITH CURRENT ECONOMIC CONDITIONS, SUPPORT WIDE-RANGING REVIEW OF FM ALLOCATIONS POLICY.

A. There Exists a High Level of Audience Diversity Throughout the Country.

Attached to this Petition for Rule Making, as Appendix A, is a copy of the NAB National Radio Listening Study. The results of this study, published on November 2, 1988, reveal a tremendous level of program diversity for radio listeners. The report, based upon Spring 1988, Arbitron Ratings "Total Audience Listening Output" ("TALO") files, demonstrated that the average radio listener then had access to 26.4 radio stations. For the largest metropolitan areas, well over 100 radio stations were listed as available to listeners. In the smallest markets, those

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[10/] Such an FCC requirement would not require existing broadcasters to submit their own station financial data. However, as explained below, existing broadcasters opposing the entry of a new facility could submit their own station financial information as part of an overall showing to the Commission -- or as part of a rebuttal to the petitioner/applicant showing.

with under 1,000 population, many stations were still available. The average number of stations available to radio listeners in these markets was 10.5.

Now, four years later, the actual listening levels throughout the nation undoubtedly are much higher, in terms of the number of radio station choices for American listeners. Such a conclusion is based upon the four-year growth in the number of radio stations. Obviously, with such a high degree of radio listening and diversity already achieved, there is merit in assessing whether negative factors currently affecting radio stations and their service should compel a change in Commission policy toward authorizing additional facilities.

B. FM Station Congestion Is Leading to Impaired FM Radio Service.

A myriad of documents were incorporated into the record of the BC Docket 80-90 proceeding.[11/] Several of these documents directly addressed the problem of increased interference and its impact on the FM service.[12/] The interference concerns raised during the Docket 80-90 proceeding

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[11/] See Notice of Proposed Rule Making in BC Docket No. 80-90, 78 F.C.C. 2d 1235 (1980).

[12/] See, e.g., Cohen, J., A Study of FM Mileage Separations Prepared for the Technical Subgroup of the Radio Advisory Committee, November 17, 1982.; Smith, N., Potential Effects of BC Docket No. 80-90 On FM SCA Operations, November 4, 1982; NAB, FM Broadcasting Receiver Characteristics and Protection Criteria: A Report by the Technical Subgroup to the Advisory Committee on Radio Broadcasting, July 7, 1982.

have proven to be valid in many major markets where FM station totals are at saturation levels.

What was not precisely envisioned with Docket 80-90 and the present demand system of FM allocations was the need to sustain high levels of audio quality for FM radio due to competition from digital audio sources. It is interesting to note that, in earlier addressing interference ratios in the First Report and Order in Docket 14185, the Commission stated: ". . . [T]hose changes suggested were generally in the direction of higher ratios -- i.e., more protection . . . ."[13/] Unfortunately, those changes were not considered and the parties commenting, including Zenith and RCA, had their proposals tossed aside.[14/] Zenith and RCA both submitted comments, urging tighter interference ratios, based upon actual measurements of their receivers' performance.

With the advent of digital audio and the ever-increasing number of consumer digital audio devices (CD players, digital audio tape machines, cable delivered digital audio, etc.) listener expectations of audio quality have been heightened far above their expectations prior to and during the Docket 80-90 era. The maturity of the FM band over the past two decades, due in large part to Docket 80-90[15/] and the resulting demand system

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[13/] 40 F.C.C. 662, 669 (1962).

[14/] Id.

[15/] See Report and Order in BC Docket No. 80-90, 94 F.C.C. 2d 152 (1983).

of allocations, has resulted in the over-crowding of stations in many parts of the country.

Although FCC rules specifically determine spacing requirements among FM stations, these rules provide for only a 30 dB signal-to-interference ratio at the protected contour. The international (CCIR) standard provides for 50 dB signal-to-interference at the protected contour. Typical CD recordings now routinely provide listeners with greater than 80 dB signal-to-noise ratios. Although signal-to-noise and signal-to-interference ratios are different, their audible effect is the same. It is very clear that the FCC must suspend and revise its allotment system in order to halt this audio erosion and preserve the technical quality of at least those FM stations fortunate enough to be operating at greater than minimum spacings.

Heightened consumer awareness of high quality audio is now threatening FM as a quality audio medium. Though once called a "noise-free" broadcast service, FM can no longer make that claim since acceptable listening standards have changed. The Commission now has an obligation to review its policies which are resulting in increased signal congestion through the allotment of more FM channels.

FM receiver manufacturers have also expressed great concern over the amount of interference now present on the FM band. The only option for a receiver manufacturer, when faced with customer complaints of FM interference, is to narrow the receiver bandwidth. Manufacturers are taking these steps, as was

stated by Mr. Richard Zerod of Ford Motor Co.[16] This narrowing of bandwidth comes with a stiff penalty for listeners in the form of increased distortion.

Similar NAB concerns were previously expressed in the Commission's recent FM directional antenna proceeding,[17] in which NAB warned of the danger to the FM service due to tighter packing of FM stations created by the potential widespread use of directional antennas. NAB's Comments also implored the Commission to reconsider its -40 dB second adjacent channel protection ratio, which is 20 dB worse than the NCE-FM requirement and 20 dB worse than the CCIR international standard. This translates to another 20 dB noise penalty for FM radio listeners.

The economic plight of the AM band, largely brought about by years of increasing interference, led to the strong and necessary measures of interference reduction adopted in the revised AM rules.[18] The lessons learned by the Commission

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[16] See Zerod, R., Trends in FM Broadcasting: A Receiver Manufacturer's Perspective, Minutes of the National Radio Systems Committee, Sept. 15, 1989, at Appendix. "Increased spectral congestion is forcing receiver manufacturers to decrease the receiver I.F. bandwidth. Improved selectivity occurs at the expense of degraded audio performance, including increased IM distortion and decreased stereo separation." Also presented at NAB Radio '89, New Orleans (Sept. 15, 1989).

[17] See, e.g., NAB Comments on Petitions for Reconsideration in MM Docket No. 87-121, filed December 13, 1991.

[18] See Report and Order in MM Docket No. 87-267, supra note 3.

during the prolonged AM proceeding must lead to FM actions crafted to stop FM from taking the same interference-plagued economically devastating path of AM.

C. The Economic Condition of FM Radio Supports Prompt FCC Review of FM Allocation Policy.

In order to provide the Commission with a clear indication of the economic and financial state of FM radio, NAB submits, attached as Appendix B, a report titled FM Station Financial Picture. Noting intense increases in competition both within and outside the radio industry, the report demonstrates the precarious financial position of many FM radio licensees. The report observes that, in 1990, the average FM stand-alone station lost nearly $15,000, with one-quarter of these stations losing more than $154,000. The average FM radio station has seen its net revenues decline by nearly 1% annually for the last several years. So also has average profitability decreased in FM radio. After accounting for inflation, the decrease is more substantial -- 15% between 1987 and 1990.

Based upon these data, and the unquestionable relationship between the economic condition of FM radio stations and the locally-responsive service that they can provide, it is time for the Commission to consider whether these economic factors, in conjunction with other considerations, point to the need to reevaluate FM allocation policy.

III. THE COMMISSION SHOULD REINTERPRET THE SECTION 307(b) MANDATE IN LIGHT OF THE CURRENT STATE OF THE FM RADIO INDUSTRY.

A. The Commission Can Claim a "307(b) Victory."

The history of Section 307(b) points to Congressional intent regarding the distribution of broadcast outlets. As originally passed, Sections 302 and 307(b) were a holdover from the Radio Act of 1927. As did Section 2 of the Radio Act, Section 302 divided the 48 contiguous states into five geographic zones. The original purpose of the five zones actually was to prevent regional concentration of commissioners on the Federal Radio Commission, as Section 3 of the Radio Act required one commissioner to be named from each zone and that the commissioner be an actual resident of the zone from which he or she was appointed.[19]

However, a 1928 amendment to the Radio Act placed new emphasis on the zones by mandating that radio services and facilities be equally distributed among the zones and among states within the zones. This was later incorporated into the original Section 307(b) of the Communications Act:

> It is hereby declared that the people of all zones established by this title are entitled to equality of radio broadcasting service, both of transmission and of reception, and in order to provide said equality the Commission shall as nearly as possible make and maintain an equal allocation of broadcast licenses, of bands of frequency, of periods of time for operation, and of station power, to each of said zones when and insofar as there are applications therefor; and shall make a fair and equitable allocation of licenses, frequencies, time for operation, and station power to

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[19] See "A Legislative History of the Communications Act of 1934," at 22 (M. Paglin ed. 1989).

> each of the States and the District of Columbia, within each zone, according to population.

Thus, while allowing the Commission to allocate frequencies equitably by state, Congress was also concerned that there be equality in reception.

The concern was not just that a signal could be received, but whether the signal would be beneficial to the community. As one Representative from Texas stated, "We listen in on WEAF and other stations in New York when we want to, but when we get tired of listening to New York we ought to have the inherent privilege as American citizens to listen in for local matters on our own station once in a while."[20/] In order to meet this concern, Congress allowed the Commission considerable latitude from the equality requirement by giving the Commission the power to

> grant applications for additional licenses for stations not exceeding one hundred watts of power if the Commission finds that such licenses will serve the public convenience, interest, or necessity, and that their operation will not interfere with the fair and efficient radio service of stations licensed under the provisions of this section.

In 1936, Congress eliminated the zones and changed the language of Section 307(b) to its current form, forming the basis for broadcast localism.

The environment surrounding Section 307(b) has changed dramatically during the past 56 years. The goal of Section 307(b) -- to give the public access to local as well as national

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[20/] See id. at 793 (Statement of Mr. Blanton).

radio services -- clearly has been achieved. Where in 1934 there were barely 600 broadcast facilities throughout the country, there are now over 14,000. The average listener, in 1988, could receive over 26 radio broadcast signals.[21] In major markets that number can exceed 100.[22] These numbers undoubtedly are higher today.

The radio broadcast service has expanded far beyond the expectations of the framers of the Communications Act. In 1932, one Representative was alarmed by the situation then:

> We have already 612 or 615 broadcasting stations, and thousands of more applications. They are coming in all the time -- constantly -- applications for new licenses.
>
> You can not grant new licenses, there are already too many licenses, already too many radio stations. They ought to be reduced.[23]

The 60-year period since Mr. Davis's statement has seen a 20-fold increase in the number of broadcast outlets. Although FCC allocations policies have made these stations <u>technologically</u> feasible, the basic facts of business life have made a great many of them <u>economically</u> infeasible.

Probably the most significant change has been the increase in the number of FM stations. In the 1930s, FM was largely an experimental service. Even as late as the 1970s, AM

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[21] <u>See</u>, attached as Appendix A, the <u>NAB National Radio Listening Study</u>.

[22] <u>Id.</u>

[23] <u>See</u> Paglin, <u>supra</u> note 19, at 798 (Statement of Mr. Davis).

still was dominant. During the past decade, however, FM has become the preferred service among the listening audience. Correspondingly, the number of operating FM stations has increased so that currently there are 4,570 operating commercial FM stations, added to 4,985 operating commercial AM stations.[24] Furthermore, 1,015 additional commercial FM CPs have been issued,[25] making imminent a 22 percent increase in the number of commercial FM stations. NAB believes that, by and large, the Section 307(b) statutory directive to add stations has more than been met for the FM service.[26]

As detailed in Appendix B, the current financial plight of FM stations has reached the crisis stage. With the average FM standalone reporting a net loss of nearly $15,000 in 1990, it is obvious that the FM market essentially has reached the saturation point. These negative byproducts of Docket 80-90 should give the Commission pause to reflect upon its approach to licensing new FM stations. Movement from a process which emphasizes the technical feasibility of allocating a new FM station to one which also

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[24] See "Summary of Broadcasting and Cable," 61 Broadcasting (Feb. 3, 1992) 54. In addition, there are 1,507 noncommercial FM stations and 1,892 FM translators.

[25] Id. In addition, 362 CPs for FM translators, 315 noncommercial FM CPs and 232 AM CPs have been issued.

[26] In this regard, NAB notes that the Commission's newly adopted regulatory scheme for AM radio contemplates greater station consolidation and, over time, little increase, if any, in station totals. As such, no further review of AM allocations policy appears needed. The Commission, for AM, has set the prudent course.

considers the economic justification for the station clearly is in order.

B. If the FCC Will Continue To License New FM Stations, It Should Revise Its Approach.

Again, the Commission might rationally conclude that its statutorily-based mission to add FM stations to the radio marketplace has reached its ultimate goal. However, to the extent that the Commission might conclude, nevertheless, to continue authorizing new FM facilities, it is essential that it adopt several improvements and refinements to its current policy. Below, NAB suggests a number of concepts that, we believe, should be the subject of a rulemaking proceeding. The agency should seek specific public comment on these and other possible considerations that should be made part of revised Commission FM allotment and licensing policy. Only through such a wide-ranging review of FM policy can the Commission hope to avoid seeing the FM medium follow the path of AM radio, especially in light of the extensive efforts the Commission has had to undertake to reverse the decline of AM.

Conducting this policy review now, and stemming the tide of FM radio station increases, also will be of aid to the Commission as it addresses the domestic implementation of digital audio broadcasting.[27] By taking these FM-related steps the FCC will be able to attain a greater degree of certainty as to the spectrum needs and technical considerations that would guide

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[27] See Notice of Inquiry in Gen. Docket No. 90-357, 5 F.C.C. Rcd 5237 (1990).

introduction of a terrestrial DAB system. Regardless of whether DAB be introduced as an "in-band" or "out-of-band" system, or perhaps even as a "hybrid," further escalating the number of conventional FM stations will make more difficult the FCC's task, as advocated by NAB, of extending then existing radio stations a DAB opportunity.[28/]

IV. A COMMISSION RULEMAKING PROCEEDING SHOULD ASK FOR PUBLIC COMMENT ON REVISIONS TO FM ALLOTMENT/LICENSING POLICY.

A. Commission Policy Should Place Greater Emphasis upon Enhancement and/or Redistribution of Existing FM Facilities.

Earlier in this filing, NAB pointed out the tremendous number of FM stations currently serving the American population. With such a mass of facilities, and in light of the economic and technical factors addressed above, it would appear that the Commission's best course would be to adopt revised FM policies that would look more toward the service potential of existing FM facilities rather than the continued addition of new FM broadcast operations. The existing proliferation of radio facilities has led to a substantial number of failed and failing operations. In addition, there are many unbuilt radio facilities. Indeed, it may very well be that the FM market already has been saturated, in terms of viable facilities. Thus, it would appear that the time is right for the Commission to shift its FM policy goal from

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[28/] See Comments of NAB in Gen. Docket No. 90-357, filed November 13, 1990.

the creation of new allotments and assignments to one which encourages a "redistribution" of radio facilities.

Through such case-by-case redistributions, often involving modified, improved facilities, the Commission could best achieve its goal of enhancing diversity, meeting local service needs and encouraging minority ownership -- without creating an influx of new facilities, all drawing upon a finite advertising market. Population shifts could be followed by modification of station facilities to accommodate these shifts, adhering still to the most fundamental tenets of locally-oriented service. In this fashion, the FCC would foster the provision of service from healthy competitors, rather than subjecting the entire FM radio market to destructive competition from an artificially-inflated mass of stations.

B. The Commission Should Delete "Silent" Station Licenses and Allotments of Fallow Channels.

In order to increase the situations where existing FM radio facilities could expand their technical facilities, NAB urges the Commission to take swift steps to delete allotments currently fallow in the FM Table of Allotments. Moreover, where an FM station has remained silent for a period of six months or longer, we believe the Commission should take action, according appropriate due process protections, of course, that would result in the deletion of not only the station license but the underlying allotment as well. By taking these steps, the Commission will remove artificial barriers to the increases in

facilities of existing stations.[29] Moreover, the Commission would provide greater incentive for existing broadcast licensees and potential applicants to make business decisions leading either to continued, viable station operation or the cessation of such broadcast activity.

In order to further encourage holders of unbuilt CPs or licensees of silent stations to terminate operations permanently and/or open the door to enhanced operations by other broadcasters, the Commission could adopt a series of incentives, not unlike many of those adopted recently for AM broadcasting, that would encourage the turning in of station licenses/allotments, perhaps in conjunction with applications by co-channel or adjacent channel stations to improve facilities.[30]

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[29] For purposes of AM radio, the Commission's new regulatory scheme also deletes fallow allotments and requires new applicants for such "terminated" facilities to meet the more stringent interference-protection criteria now set forth in the AM technical rules. NAB recognizes, as set forth above and in NAB's filings regarding BC Docket 80-90, the FCC's implementation proceeding, MM Docket No. 84-231, and the Commission's more recent proceeding on FM directional antennas, that the technical interference rules governing FM radio authorization allow more interference than we believe would be optimum. But, for purposes of the instant petition for rule making, NAB believes that imposing new non-technical rules and policies for FM can help achieve the same kind of interference reduction that could result through imposing more restrictive technical rules. However, the Commission, in its discretion, may wish also to consider relevant technical rule changes as well.

[30] See Report and Order in MM Docket No. 87-267, supra note 3. In this regard, the Commission might well consider adopting, for FM radio, "consolidation" policies similar to those recently adopted for AM radio. In this fashion, the Commission might provide greater incentive for technical consolidation of

(continued...)

C. A Relevant Market Economic/Viability Showing Should Accompany Requests for New Broadcast Facilities.

In the event the Commission, at the conclusion of the requested rule making, decides to resume the authorization of new FM service,[31/] then NAB urges the Commission to take meaningful steps to ensure that any such new stations be those with a realistic chance of survival and making a contribution to the diversity of local voices. Also, such a more realistic approach to FM allocation would better ensure that existing FM radio service would not be impaired unnecessarily -- likely reducing the overall level of program service from FM radio and AM radio as well.

One proposed method by which the Commission could get a clearer expectation of the potential contribution and potential adverse effects of adding one more FM radio station would be if the petitioner for a new FM allotment (or the applicant seeking FM operation on an unused FM allotment) were required to submit a particularized showing. This showing would address whether the market proposed to be served has enough economic activity to

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[30/](...continued)
facilities and for the cessation of marginal FM operations. Also, we urge the Commission to explore whether a legislative change to the U.S. Tax Code, which would grant tax credits to FM broadcasters turning in licenses or entering into consolidation agreements, should also be pursued. NAB too will be exploring the merits and feasibility of such a legislative amendment.

[31/]Should the Commission continue or resume authorizing new FM service, NAB reiterates its view that the party filing the petition to amend the FM Table of Allotments should be given an advantage over other, subsequent applicants for the frequency, once it has been added to the Table. See NAB Comments in RM-7740, filed July 25, 1991.

support the additional proposed FM facility. Such economic/viability market data could be submitted from a variety of publicly-available sources.

Two of these publicly-available sources are market guides published by leading radio industry analysts. Duncan's Radio Market Guide,[32/] authored by James H. Duncan, Jr. is a widely respected and often used annual publication which details relevant local economic information for local radio markets throughout the United States. Included in that information are data on local radio advertising revenues, local retail sales, local employment, local population, and other relevant economic data that would be necessary to determine the economic viability of additional FM stations.

Another similar and also widely used book in Investing in Radio,[33/] published annually by Broadcast Investment Analysts. This book too has information for local radio markets on population, retail sales, median income levels, demographic breakouts, as well as other relevant economic data.

Under this new approach toward assessing new station proposals, the Commission would not require existing broadcasters to submit their own station financial data. However, to the extent that stations would wish to present informal objections and/or petitions to deny against the applicants/petitioners

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[32/] Published by Duncan's American Radio, Inc., PO Box 90284, Indianapolis, IN 46290.

[33/] Published by Broadcast Investment Analysts, Inc., P.O. Box 17307, Washington, D.C. 20041.