

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of
Elimination of Main Studio Rule

)
)
)
)
)

MB Docket No. 17-106

COMMENT AND/OR OPPOSITION ON PETITION FOR PARTIAL RECONSIDERATION

January 8, 2018, De La Hunt Broadcasting Corp. ("De La Hunt") filed a Petition for Partial Reconsideration ("Reconsideration") regarding *Report and Order*, FCC 17-137, *Elimination of the Main Studio Rule* ("Rulemaking").¹ Media Alliance now timely files this comment in reply to this filing.

De La Hunt requests specific relief concerning the Rulemaking which would require further decree from the FCC. We do not disagree on the action of requesting reconsideration, but are merely commenting that we are unclear how this request could be fulfilled in light of circumstances since the day of rulemaking.

On October 24, 2017 the Commission released the *Report and Order* ("R&O").² The R&O misinterpreted the 47 U.S.C. § 307(b) "Transmission Service" obligation within the Communications Act of 1934. Because of this, it is unclear how De La Hunt can request relief,

¹ *In the Matter of Elimination of Main Studio Rule*. Report and Report. MB Docket No. 17-106. October 24, 2017.

² *Ibid.*

or how the FCC can finally enact the elimination of the main studio without discompliance of § 307(b). This argument is pertinent to reconsideration because this analysis could have not been gauged until after the Rulemaking was released. This filing is in the public interest because the misinterpretation of § 307(b) profoundly affects the public's participation in broadcasting nationwide. The bedrock of localism within radio and television and *public interest, convenience, and necessity* is dependent upon half of century's precedent concerning *transmission service*.

With the FCC's final judgement within the R&O, the FCC misinterpreted the meaning and precedent of 47 U.S.C. § 307(b) in reference to *transmission service*. Transmission service defined as, "the opportunity which a radio station provides for the development and expression of local interests, ideas, and talents and for the production of radio programs of special interest to a particular community."³ Furthermore:

The accessibility of the broadcast station's main studio may well determine in large part the extent to which the station (1) can participate and be an integral part of community activities and (2) can enable members of the public to participate in live programs...⁴

The codified rules concerning the main studio aim to enforce the mandate of transmission service. However, the R&O states:

For the reasons discussed herein, the record supports our finding that a local main studio is no longer necessary to ensure that broadcast stations serve their local communities, and thus eliminating the main studio requirement will not prevent compliance with the distribution directive in section 307(b) of the Act.⁵

With that statement's footnote stating [underlining and bold added for emphasis]:

³ *Rulemaking Concerning Main Studios*, 15 FR 8993 (1950).

⁴ *Amendment of § 3.613 of the Commission's Rules and Regulations*, Memorandum Opinion and Order, 43 F.C.C. 888, 890 (1952).

⁵ R&O, paragraph 15.

We agree with NAB that any assertion that the main studio rule is needed to enforce the “transmission service” requirement is misplaced because “[t]he **Commission effectively abandoned this definition of transmission service when it eliminated the program origination requirement.**” [Quoting NAB’s Reply Comment page 4 footnote 9] (explaining that, while in the 1950s the FCC held that a station could not provide “transmission service” in the absence of a physical local studio, that is no longer true today since stations now originate programming outside of the main studio).⁶

NAB’s supposition, for which the FCC tentatively⁷ concurs with, is based upon the Commission’s assessment within *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations* (1987) (“Program Origination R&O”). Both the FCC and NAB misinterpreted that Proceeding. Within the Program Origination R&O, the following is additionally stated:

Exposure to daily community activities and other local media of communications helps stations identify community needs and interests, which is necessary to operate in today’s competitive marketplace and to meet our community service requirements. In addition, the studio will continue to be accessible to community residents participating in those local programs that, at the broadcaster’s option, are produced at the studio.⁸

This statement is clear; the program origination option is to the discretion of the broadcaster, but **the daily “exposure” of staff “ helps stations identify community needs and interests”, which heeds the transmission service obligation.** It is not merely about program origination. Moreover, the Program Origination R&O decrees, in relation to transmission service [underlining and bold added for emphasis]:

⁶ R&O, footnote 71.

⁷ The R&O prefaces in footnote on p1. “The issues referenced in this document and the Commission’s ultimate resolutions of those issues remain under consideration and subject to change.”

⁸ *Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Stations*, Report and Order, 2 F.C.C.R. 3215. Para. 38 (1987).

Section 307(b). Our action is fully consistent with Section 307(b). We have granted a substantial degree of additional flexibility to licensees **without altering any of their local service obligations** or their ability to fulfill those obligations.⁹

Thus, the Commission's view of transmission service within the Program Origination R&O was actually unchanged from their previous view. Furthermore, a year later, in 1998, the Commission states [underlining and bold added for emphasis]:

A station must maintain a main studio which has the capability adequately to meet its function, as discussed above, of serving the needs and interests of the residents of the station's community of license. To fulfill this function, a station must equip the main studio with production and transmission facilities that meet applicable standards, maintain continuous program transmission capability, and maintain a meaningful management and staff presence. Maintenance of production and transmission facilities and program transmission capability will allow broadcasters to continue, at their option, and as the marketplace demands, to produce local programs at the studio. **A meaningful management and staff presence will help expose stations to community activities, help them identify community needs and interests and thereby meet their community service requirements.**¹⁰

If that is not ample justification regarding the requirement of Section 307(b), the FCC has enforced transmission service requirements well into current digital era. In 2008 the Commission stated the following in relation to digital television [underlining and bold added for emphasis]:

Broadcasters, however, are licensed to local communities, not DMAs, and for good reason. This ensures that broadcasters are responsive to the unique interests and needs of the individual communities to which they are licensed. Section 307(b) of the Communications Act explicitly requires the Commission to "make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."... **In carrying out the mandate of Section 307(b), the Commission has long recognized that "every community of appreciable size has a presumptive need for its own transmission service."**¹¹

⁹ *Ibid*, para. 45.

¹⁰ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MM&O, MM Docket No. 86-406, 3 FCC Rcd No. 17, August 17, 1988.

¹¹ *In the Matter of Digital Television Distributed Transmission System Technologies*, Report and Order. Para 22. 73 FR 74047. December 5, 2008.

And in *In Re Application of Pacific Broadcasting of Missouri*, the Commission writes in Memorandum Opinion and Order (2003) [underlining and bold added for emphasis]:

In carrying out the **mandate of Section 307(b)**, the Commission has long recognized that **“every community of appreciable size has a presumptive need for its own transmission service.”** Indeed, the Supreme Court has stated that “[f]airness to communities [in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.” During the past fifty years, the Commission has developed allocations policies that accord **great weight** to establishing and preserving first local transmission services. Thus, except in rare cases, we prohibit an FM licensee from changing its community of license if to do so would deprive its current community of license of its sole local service.¹⁷ This is the policy underlying the condition in the Taft Construction Permit.¹²

In 2009 the Commission again recognized the worth of local cultural expression by calling upon Section 307(b) transmission service as the criterion for providing native tribes priority when applying for broadcast licenses. Within *In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures* (“Rural Rulemaking”) the Commission proposed placing the value for tribal first transmission service so high that it would eclipse second local reception service priority in importance:

[Within the tribal priority] the applicant would have to propose at least first local transmission service to the proposed community of license, which would have to be located on tribal lands....In other words, the tribal priority... would take precedence over the provision of second local reception service....The proposed tribal priority very high in the Section 307(b) analysis, we believe such placement would be justified due to the inherent sovereignty of Tribes and their obligations to their members on tribal lands.¹³

¹² *In re Application of Pacific Broadcasting of Missouri LCC*, Memorandum Opinion and Order, FCC 03-18, January 29, 2003.

¹³ *In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*. Notice of Proposed Rulemaking. para 22. MB Docket No. 09-52. April 7, 2009.

Within the *Second Report and Order* of Rural Rulemaking the Commission questioned the weight of transmission service, with the final verdict that it remains a “vital” provision [with underlining and bold added for emphasis]:

The comments show a somewhat broader range of opinion as to whether we should retain our current policies regarding the award of **Section 307(b) priorities to applicants proposing first local transmission service...we reject the suggestion of some commenters that our statutory mandate to distribute radio licenses in a fair, efficient and equitable manner is either obsolete or outdated. Section 307(b)** [as transmission service, answering the above] **remains a vital provision of the Communications Act** guiding our allotment policies, and “[o]ur obligation to implement that statutory responsibility continues and will be faithfully carried out.”¹⁴

This judgment upheld the validity of transmission service in an era of high speed broadband and current technology.

NAB additionally emphasizes the importance of transmission service in December 2009. Within a comment regarding *In the Matter of Spectrum for Broadband A National Broadband Plan for Our Future*¹⁵ (“ National Broadband Plan”) The Association for Maximum Service Television, Inc. and NAB express that transmission service is one of the “overarching” tenets of communications law upheld by the Communications Act:

...four overarching principles should be noted at the outset... the Commission must be guided in its spectrum policy decisions by Section 1 of the Communications Act and by Congress’s directive to provide local* service.¹⁶

¹⁴ In the Matter of *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures* Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rule Making, Para 18, 19. MB Docket No. 09-52, March 3, 2011.

¹⁵ *Data Sought on Uses of Spectrum, NBP Public Notice #26, In the Matter of Spectrum for Broadband A National Broadband Plan for Our Future*, GN Docket Nos. 09-47, 09-137. December 2, 2009.

¹⁶ Association for Maximum Service Television, Inc. and The National Association of Broadcasters. Comment, RE: NBP Public Notice #26. p 2. December 22, 2009.

With "" above footnoted within NAB's comment [underline and bold added for emphasis below]:

In carrying out the mandate of Section 307(b), the Commission has long recognized that 'every community of appreciable size has a presumptive need for its own transmission service.' .. During the past fifty years, the Commission has developed allocations policies that accord great weight to establishing and preserving first local transmission services.¹⁷

NAB's comment (above) is remarkable because it places paramount importance regarding local transmission service in relation to *broadband technology*. NAB proffers opinion du jour in its current NPRM comment -- sentiments regarding Section 307(b) diametrically opposed to those within their National Broadband Plan comment. NAB's National Broadband Plan comment further eulogized the indispensability of broadcast transmission service:

In addition to promoting local businesses, creating jobs and providing other economic benefits to local communities, local television produces a wide array of social benefits — social benefits that neither broadband providers or others can replace. Local broadcasting also advances consumer welfare and public safety, provides a forum for civic participation distributes educational and information programming, and promotes local organizations, causes and charities.¹⁸

NAB then distills their belief by stating, "The Commission should take into account that broadcaster services cannot be duplicated or replaced by wireless broadband or cable and satellite services."¹⁹

The FCC and NAB characterize broadcast transmission service as a requirement of the Communications Act that is unduplicatable, vital, and different than other services in the current era of "technological innovation."²⁰ This is because broadcasting has always been an

¹⁷ *Ibid.*

¹⁸ Association for Maximum Service Television, Inc. and NAB comment on National Broadband Plan, p.23.

¹⁹ *Ibid*, p. 4.

²⁰ NPRM Para. 6.

interactive human local public service. By eliminating the main studio, radio and television simply revert to a satellite, internet streaming, or cable service that is pumped into a community and broadcasted over the the public's airwaves.

In conclusion, the Commission and NAB erred in reasoning within the R&O on four accounts:

- (1) *Local program origination* is an element of transmission service, but it is not the sole element, as both the FCC and NAB insinuate in the proceeding.²¹
- (2) Just because a local program origination mandate is not codified in regulation does not mean that aspect of the public service regime disappears. This is akin to saying if there were no rules for stopping a vehicle at intersections, it is ok for us all to ignore stopping at intersections. *The obligation is inherent when required.*
- (3) It is well demonstrated from the record that transmission service did not end in 1987 as NAB and FCC purport. The record shows it is sufficiently imbibed by both the FCC and NAB well into the digital era.
- (4) Transmission service is Congressionally-mandated public interest stipulation irreplaceable by technology. **For that reason, the FCC cannot, for example, permit the relocation all the origination points of transmission for all the broadcast outlets in the U.S. all in one city; this is not “fair... and equitable distribution” of licenses among the states per Section 307(b).**

²¹ R&O para 15 with R&O footnote 71.

Conclusion

Media Alliance believes the FCC must address its rationale to comport to Section 307(b) in order to even to address the Reconsideration, as the petitioner requests the Rulemaking to extend to construction permits based upon its interpretation of the R&O. Even if the Reconsideration is denied, there are compelling public interest reasons presented here that may conclude U.S. Code of Laws not being adhered to by the R&O. This interpretation could not have been gleaned without peering into the Commission's final edict.

Submitted By,

/s/ Tracy Rosenberg
Executive Director,
Media Alliance

March 13, 2018

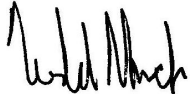
*Media Alliance
2830 20th Street, Suite 102
San Francisco, CA 94110*

CERTIFICATE OF SERVICE

I, Todd Urick, hereby certify that a copy of this comment was sent first class USPS by March 14, 2018 to:

Dan J. Alpert
2120 N. 21st Rd.
Arlington, VA 22201

Signed

A handwritten signature in black ink, appearing to read "Todd Urick", written in a cursive style.