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

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| In the Matter of | ) | |
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| Modernization of Media Regulation Initiative | ) | MB Docket No. 17-105 |
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| To: The Commission: | ) | |

**COMMENTS OF BRANTLEY BROADCAST ASSOCIATES, LLC; RED MOUNTAIN VENTURES, LLC; GREAT SOUTH WIRELESS, LLC; AND SHELBY BROADCAST ASSOCIATES, LLC**

## INTRODUCTION

In response to the FCC Public Notice released May 18, 2017, the following comments are offered. They are compiled by Brantley Broadcast Associates, LLC; Red Mountain Ventures, LLC; Great South Wireless, LLC; and Shelby Broadcast Associates, LLC) ("The Joint Commenters") whose members have been actively involved in radio broadcast for over 50 years. The premise followed in the comments basically follows the principle that "the government that governs least governs best." However, in no way are the Joint Commenters proposing the total absence of government regulations. The absence of all regulation or structure is chaos; a condition where no one achieves anything.

Over time regulations begin to accumulate and morph until their original design is lost and they become punitive to the one being regulated. History depicts that when allowed to go totally unchecked regulations compile and restrict the regulated to the point it struggles to exist. Furthermore, an atmosphere between the regulated and the regulator becomes increasingly adversarial. The argument of which party is right or wrong is lost amid the mountains of new regulations that are added to enforce previous regulations.

Terrestrial radio is today confronted by competitors that have arisen because of an exponential advancement in technology; technology that operates entirely outside the AM or FM spectrum. Many of the new aural competitors have little or no federal regulations. Therefore, they are give opportunities for advancement that terrestrial radio does not have due to 90(+) years of accumulated rules and regulations. The creativity of the American Spirit is desperately needed in terrestrial radio. Yet, ideas and concepts are crippled by excessive and often well intended regulation.

The questions must be asked; 1) if a regulation is conceived, proposed, enacted and administered, or 2) if in the alternative that regulation is stricken and totally removed, is either action done for the sake of the regulated or the regulator. **The answer is clearly obvious; it is neither.** It is for the maximum public interest, convenience and necessity to be attained (Radio Act 1926). Regulation that is focused on this concept alone is needed. **It should never be aimed at establishing a convenience or expanding profitability of the regulated, nor based on conserving the resources of the regulator**. But, profit on the part of the regulated and conserving the resources of the regulator are both necessary. The reduction of regulations eases the stress load on the regulator thus conserving its resources, while also freeing up the creativity of the regulated. New and productive creativity lead to potential profitability.

The desire of parties to remove, alter and redirect most of the regulations for terrestrial radio does not mean that those parties have disrespect for the staff at the FCC. Quite the contrary, the clear majority of the staff are quick to assist the regulated, and are also quick to admit their 'hands are tied' often due to antiquated and/or excessive regulation.

To consider many of the proposals in the instant document the attitude and philosophy towards governmental regulation must be reexamined and perhaps even completely redirected.

In fact, the premise must be accepted that the Regulatory Flexibility Act ("RFA") has lost it direction, and now wanders aimlessly among the mountains of regulations it sought to discourage in the first place. If the current evolving atmosphere of the 2017 'regulatory state' is followed and adhered to, most of the Joint Commenters' proposals sound (and appear) as only a small business, minority and ethnic broadcaster's wish list.

Recent spectrum auctions have established that the right to use parts of the RF spectrum have value. But, it also shows that those values have limits. If this is the case for large corporate entities, how much more so is it for the small business, minority and ethnic broadcasters? Therefore, under the dictates of the RFA the FCC must consider costs to both the licensee and prospective licensee as it serves as the regulator of the public spectrum. Here too, there is a vast amount of evidence that this important concept has been abandoned by the regulator.
The ability to operate a RF device capable of serving the American public is a privilege and not a right. It is the role of the FCC to grant and administer the licensing for entities to use this very limited public commodity. But, it is not the role of the regulator to allow myriads of regulations to pile up which choke, stifle and discourage creative ability.

With wide ranging discussions concerning the lack of spectrum space to meet all demands, the Joint Commenters' proposal considers this ever-widening need. The proposals on page 10 are offered with these thoughts in mind: 1) spectrum space for new or existing facility improvements that provide entry for small business, minority, and ethnic broadcasters; 2) reclaiming spectrum space that has been awarded but is not currently being used due to excess spacing; 3) several proposals when used in combination could produce spectrum space for (possibly) all AM stations to have at least one FM translator; and 4) some created spectrum

holes[1] large enough for 250 watt to 1 kW full service stations that can eventually serve as a replacement to an AM licensee interested in exchanging its license[2].

While there were some good things that came from duopoly relaxation and many good duopoly owner/operators, one of the unintended consequences was the removal of entry into the broadcast industry by small business, minorities and ethnic aspiring broadcasters. The instant Joint Commenters' proposal aspires to accomplish this result as its paramount goal.

All the above must be considered while at the same time protecting the primary signal contours of current AM and FM stations operating as full-service facilities.

[1] Spectrum holes refer to spectrum on a specific frequency over a given geographic area that is available for new or improved AM or FM service to listeners in that area. Full service holes take into account both protected and interfering contours while spectrum holes for secondary services consider given (outgoing) interference only.

[2] This is especially true when a newly designated type of FM station did not have to consider received interference similar to that of current FM translators.

## TOTAL ELIMINATION OF ALL RULES RELATED TO THE RURAL RADIO DOCKET

The FCC Audio Division policy commonly known as Rural Radio should not be altered, modified, diluted or reviewed. It must be eliminated totally with no cases decided under its tenure being used as precedence in any future cases. The entire rule was ill-conceived and in violation of the Commission's mandate for, "maximum utilization of the spectrum". The premise for Rural Radio is flawed from several different perspectives; 1) it does not consider some basic spectrum allocation considerations. Its stated purpose is to prevent the migration of rural radio facilities into the more populated centers. Spectrum allotments must be fluid and never rigid. It should be able to follow the population as it gravitates from one domicile to another.

This is demonstrated hypothetically by demonstrating the development of two communities of 20,000 populations each in the same general area, and with each community having four radio stations. Community **A** being progressive in seeking outside development and suitably located for commerce, grows its population to 150,000 residents. Simultaneously Community **B** suffers economic hardships as its population dwindles to five thousand residents. Community **A** is now an urbanized area while community **B** is considered a rural community. Under the current Rural Radio regulation limits it is not possible for any of the Community **B** stations to become licensed to Community **A** or any suburb community in the Community **A** urbanized area even if they meet the technical criteria. Nor can any station in Community **B** change community of license ("COL") to another rural community where its city grade signal covers 50% or more of the urbanized area of Community **A**.

Furthermore, if a station in Community **B** changed its COL to another rural community where it provided only 40% city grade service to Community **A's urbanized area** it must demonstrate technically that it cannot, in a subsequent move, cover 50% or more to **A**'s urbanized area. Does this mean that the Commission desires to distribute frequencies among the various communities equitably, efficiently and fairly based on population criteria, or on land area alone (square kilometers)? Does it not seem reasonable that a community of 20,000 population does not need the number of services that is needed by a city of 150,000 residents? 2) Another issue is the Audio Division hampers ethnic and minority groups by its Rural Radio policies. Few minority or ethnic groups are residents of rural communities. Therefore, the limiting of signals that are small business, minority or ethically owned and moved into population centers is to deprive these residents of much needed audio service, 3) spectrum use that is moved from one point to another usually leaves unused spectrum space behind referred to as 'spectrum holes.'

For example, before the advent of Rural Radio a FM move in the Dallas/Fort Worth created five improved Metroplex signals. But, it also created several secondary facility changes that created improvements, including KVSP Anadarko, OK. Using the spectrum hole created in the Metroplex proceeding, KVSP now operates with an ERP of 100 KW and 600 meters HAAT as it serves a minority population of 97,707 persons. KVSP is owned and operated by a very successful minority broadcaster who is regarded as one of the top broadcasters in the US. Spectrum moves that are possible after the total cancellation of Rural Radio, and combined with the instant comments' proposed rule changes proposed below will allow numerous small business, minority and ethnic entrants into audio broadcast media, 4) Rural Radio as it now stands is the main source for protection of the spectrum status quo.

The rush to consolidate created many large corporate entities and now some of them want to protect its markets from unwanted small business, minority and ethnic competition. There are basically two ways to thwart broadcast competition; 1) better sales and programming staffs combined with better community involvement makes prospective competitors apprehensive, or 2) not allow competition to enter the marketplace by freezing the grant of new licenses. This is spectrum status quo. Not all consolidators, but many who have myriads of debt need the protection of spectrum status quo so the advertising revenue market will not be further diluted. This approach flies in the face of opportunity for small business, minority and ethnic entrance or improvements into the market place.

The Commission's practice under this rule now in service is 1) punitive to all minority, ethnic and small business broadcasters desiring to enter a preferred market and provide a new or improved public service; 2) it is a major factor in maintaining the current spectrum's status quo therefore much valuable spectrum space remains unused/unavailable, and because of points 1 and 2; and 3) many large blocks of population remain without a needed aural service.

## SECTION 73.3517(e) LIMIT OF FOUR CONTINGENT APPLICATIONS

In MB Docket No. 05-210, *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 21 FCC Rcd 14212 (2006), *recons. pending*[3] ("*Limit of Four*"), the Commission imposed a limit of four contingent applications when it created the one step procedure for city of license changes and channel class changes which formerly required rule making proceedings. In the rule making context there was no limit to how many contingent changes were allowed. The reason for this limit was that it consumed a large amount of staff resources. In other words, the public interest reason given for the limit was administrative convenience. It did not matter to what extent the public interest would be served by the proposal involving more than four contingent applications. All that matters is the amount of work imposed on the staff.

In comparison, when the Media Bureau staff is faced with more than four mutually exclusive applications, it does not place a limit or "break such proceedings into smaller ones"[4], it takes on the extra work. In the contingent application context, there are rarely more than four applications filed.[5] Despite the Commission's instruction that it "reserves the right to revisit this proposal if we deem it necessary in the public interest and to preserve the integrity of the FM allotment plan", it has been more than 10 years since the Petitions for Reconsideration have been filed and as far as we can tell, no waiver requests with more than four applications have been filed and thus, the Commission has not revisited this rule. It is now time.

The Commission will find that there is not as much work involved as it might fear. These

[3] It is noted that several Petitions for Reconsideration have now been pending for more than 10 years.
[4] *Limit of Four* at para. 25.
[5] One of the Petitions for Reconsideration indicated that on average less than 5 rule making petitions (or counterproposals) per year required the processing of more than 4 contingent filings.

are not involuntary modification applications. Rather they are filed pursuant to agreements carefully planned and drafted so that they can be implemented without problems. They are not contentious. There is no greater risk of an opposition being filed than any other proceeding. It is just an additional application or two that needs to be processed which the Media Bureau staff is very capable of handling.

Allocations history has demonstrated that a static or restricted spectrum in no way contributes to the maximum utilization of the spectrum. As the demand for spectrum space increases the ability to make spectrum changes decreases proportionally. A crowded spectrum makes it more difficult to yield technical improvement to existing stations unless there is participation from multiple existing licensees. But limiting the number of participating stations in any one proceeding is, in essence, the second main contributor to a spectrum status quo which, in turn, punitively removes minority, small businesses and ethnic broadcasters from the market place. **No rule that remotely affects the use of valuable spectrum space, and its improvements for service to the listening/viewing public, should ever be implemented where that rule's worth or its limits are based solely on the resources of the Commission, but rather based entirely on the rule's contributions to the public welfare.**

Multiple Petitions for Reconsideration were filed more than 10 years ago. It is time for the Commission to "revisit" this "outdated, unnecessary and burdensome" regulation.

## DELETING §73.207(b) BY INCORPORATING §73.215 FOR ALLOTMENTS FOR ALL STATIONS

The never-ending discussion on the limited availability of spectrum and its ever-increasing value is the motivation for the instant proposal. The current method of awarding allotments is based on a geographical distance determined by class and by not by actual station signal displacements. This practice leaves large unused areas of spectrum. The conversion to actual contour use can free up much of this unused space. Options on how to use this unused space is also discussed later in the narrative.

Since the 1960s FM channels have been awarded to communities based on classes of stations. Each class was required to adhere to predetermined distance separations to all other licensed stations. As new subclasses were added the distance requirements changed because approved technical parameters inside the class changed. Additionally, in 1984 several new classes were added (MM Docket 84-231). As the approved technical parameters for new classes were adopted, a station's class determined the technical parameters it could use regarding antenna height and radiating power. That practice continues today. The all-important separations requirements were in turn determined by using the maximum technical parameters for each class. Meeting the very minimum technical parameters for a class gave that station protection for the maximum spectrum space although it may not actually use it. As of the date this narrative was composed all the technical parameters discussed previously are in effect.

The Joint Commenters' proposal requests a complete technical reexamination of the FM allotment procedure and detailed studies of steps that can free up spectrum space. Furthermore, any vacant spectrum can be used in the following ways:

1. Concerning larger markets, much of the spectrum space for FM translator to be used with AM stations was taken by the Commission allowing the use of FM translators for HD2, HD3 and HD4 channels of digital broadcast stations. Therefore, is highly possible that some AM stations will be left without any FM translator relief. Spectrum holes created by the instant proposal can be allotted for those AM stations that were not successful in previous translator attempts.
2. By combining all modifications in the instant proposal it is possible some spectrum holes will be created that allow for power levels more than the current translator limits. A new class or technical parameter FM station needs to be adopted. One in which an ERP of 1 kW, HAAT 100 meters or more can be traded to an AM licensee willing to trade its AM license for the new FM service. This new service must adhere to the present interference contour to full service stations, but not to the current received interference standards. The trading of AM licenses for a new FM signal will lessen the burden on spectrum space for an AM migration to a new band where there will be fewer AM licenses to satisfy.
3. AM licensees that create spectrum holes by securing voluntary cooperation of existing FM licensees to modify should be able to file a scenario at will with immediate cut off protection. Such industriousness and creativity, plus the financial investment of upfront cost should be awarded. This creates great opportunity for significant signal and public service improvements by small businesses, minority and ethnic broadcasters. However, such practice is impossible without the total elimination of the Rural Radio regulations, the limit of four participating stations in any one proceeding and being forced to wait for the opening of a filing window.

The noncommercial educational band has used the contour method for years with no ill effects. As stated previously, terrestrial aural broadcast is a mature medium. Only in the sparsest locations are there less than four aural signals, and this condition is always determined by the lack of demand. Considering these points and due to the proliferation in the number of aural signals, few FM stations currently maintain audiences outside their licensed primary signal. Therefore, nothing presented in the Joint Commenters proposal should be considered as an attempt to violate any full-service FM stations primary contour.

The contour method of allotments works very well in conjunction with the proposals in the following items.

## ELIMINATE CHANNEL CLASSES AND ALLOTMENT COORDINATES FROM FORM 301

The application Form 301 requires that allotment coordinates must be specified when an applicant applies for mutually exclusive channel changes or city of license changes pursuant to Section 73.3573(a) (1) (i)-(iv) of the Commission's Rules. This provision was adopted when the Commission transitioned from the rule making process to the application process in MB Docket 05-210, 21 FCC Rcd 14212 (2006), *recons. pending.* Recently, a petition was filed to add an additional class of station (Class C4) with maximum facilities of 12 kW at HAAT of 100 meters in Zone II[6] (which is between a Class C3 and a Class C2 in Section 73.211 in the Commission's Rules).

It is the opinion of the Joint Commenters that this is a piecemeal approach. Through the years, there has been a need to add more classes so that stations can increase their power when the power increase does not fit nicely into the next class due to the spacing requirements set forth in Section 73.207. As a result, there are now 8 classes of stations with a 9th under consideration. But it will not end there. Over time, additional classes will be requested as the need arises. Rather than add classes, the Joint Commenters suggest eliminating all classes of stations in Section 73.208, eliminate the allotment coordinate question in Form 301 and allow stations to change class (if it is mutually exclusive) and change community of license by the contour protection method under 73.215. This deregulatory approach is long overdue.

The FM service is a mature medium which no longer has a Table of Allotments for existing stations. The great majority of stations already utilize Section 73.215 whenever they

[6] RM-11727.

change transmitter site, change class or change community of license already. But stations are limited to a large extent by having to adhere to the anachronistic and outdated requirement of demonstrating that the change would have been approved under the earlier rule making system. Ten years after the rule making method was eliminated for existing stations there is no longer any reason to keep this requirement. The contour protection scheme for approving modifications to licenses is long overdue. Many stations will benefit from the improvements that they can make from the elimination of this old restriction. New communities (including first local service) can be served which could not otherwise be provided under the old system. Underserved areas can also be provided new service in some cases which would otherwise be excluded.

Accordingly, the Joint Commenters urge the Commission to consider eliminating the classes of channels and allotment coordinates from Form 301 and allow stations to modify their facilities based on contour protection only.

## REMOVAL OF ALL FM THIRD-ADJACENT FREQUENCY/CHANNEL SPACING REQUIREMENTS

In the technical area spectrum space is a limited and valuable commodity. A substantial amount of it lies unavailable for mass media use due to over protection to guard against interference. Nowhere is that more prevalent than the third-adjacent spectrum protection. This adjacency was installed in time periods when receivers were inferior for identifying the center frequency of a transmission and transmitters often drifted from center frequency. The vast number of radios in use today is digitally tuned with even second-adjacent channel interference easily manageable. Maximum utilization of the spectrum can only be achieved by the removal of all third adjacent channel separation requirements.

The current FCC protection awarded to third channels removes vast amounts of spectrum availability from use due to ignoring the fact that the technical rule was placed in the regulations for technology long since abandoned by receiver manufactures. For those wanting improve signals in the market place this opens an extra opportunity to modify many inferior signals.

## MODIFY §73.207 SEPARATION TABLES CONCERNING SECOND-ADJACENT CHANNELS

Previously we discussed the elimination of the third adjacent channel from consideration in determining separation between FM stations. The present required separations for second channel adjacencies can be address in a very similar manner. If there is one thing the influx of translators has shown proven is that second adjacent interference is hard to find. Do not consider the 250-watt translator giving interference to the nearby second-adjacent class C, C0 or C1, all of which can have an ERP of 100 kW. Consider instead the lack of interference of the Class C 100 kW to the nearby second adjacent 99-watt translator. Without mathematical calculations, this demonstrates proof positive that the distance or field separations on second adjacent channels can be relaxed considerably without creating interference to any full-service station.

Previously the Reynolds proposal stated that spectrum space is at a premium, but new spectrum holes must not be created at the expense of any new interference to full service stations licensed primary service. Here is an example of a move that can be made backed by empirical data since is it currently being tested nationwide with second adjacent translators.

Therefore, the separation tables must be modified to delete the numbers of the 100 dBu interfering contour [F(50,10)] to us the 60 dBu protected contour to reflect the 100 dBu interfering contour to the 75 dBu protected contour. This is basically a 15 dB change (75 – 60 = 15) and can be implemented with no disruption to full service stations.

## PROPOSED MODIFICATIONS TO §73.207 INTERMEDIATE FREQUENCY SPACING REQUIREMENTS

§73.207(b)(1) specifies spacing requirements for stations that are 53 channels (10.6 MHz) or 54 channels (10.8 MHz) apart. The instant petition seeks to either (1) eliminate this requirement altogether, or (2) to move the I.F. requirement to §73.215 protection. In current cases of I.F. waiver requests, the traditionally-held contour-to-contour protection has been F(50,50) 91 dBu (36 mV/m). In the event the Commission sees the need for continuing to acknowledge I.F. protection between stations, the aforementioned F(50,50) 91 dBu contour should act both as the protected and interfering contour for purposes of I.F. protection.

The allocations table of §73.207(b)(1) is based on much older continuous-tuned receivers that are rare in America today. Modern receivers do not have the vulnerabilities to I.F. of earlier radios. The Commission's rules should be updated to reflect this, either via the elimination of I.F. spacing requirements altogether or a migration of these requirements to §73.215.

Currently §73.207 dictates that a station may not violate the I.F. spacing requirements, regardless of the station's proposed technical facility. For example, a 100-watt, 30-meter HAAT class A station must provide the same level of I.F. protection as would a 6,000-watt, 100-meter HAAT class A station. We propose either an elimination or modification of this draconian requirement.

## ELIMINATE PERIODIC FILING WINDOWS WITH OPEN AT-WILL FILINGS FOR BOTH MINOR MODIFICATIONS AND MAJOR CHANGES

Filing windows should be opened for three days once every two months or moved to an entirely "first come/first served." If the purpose of filing windows is to create conflicting applications of which several may end up in an auction situation, the current system works well. However, if the mandate of the Commission is to allow for the most expedient and effective way to accept broadcast applications of all stripes a "first come/first served" approach, or a much less favorable alternative method of a scheduled filing window is far superior. Currently it is possibly for audio or video service to the public be delayed for years while waiting for a filing window to open. As in the case of the last AM major change window many decisions were not initially rendered for 5 to 8 years after the window closed. Combine that with the local zoning delays for antenna sites and 10 to 12 years from file date to sign on is a strong possibility. On page 8 the following statement was made. It is very applicable to this item also:

> **No rule that remotely affects the use of valuable spectrum space, and its improvements for service to the listening/viewing public, should ever be implemented where it's worth or it's limits are based solely on the resources of the Commission, but rather on that rules' contributions to the public welfare.**

Even with possible spectrum space created by implementing the changes mentioned in the instant document, filing windows that occur once every year (or in some cases every several years) minorities, small business and ethnic broadcasters will often be unable to enter the market place for prolonged periods of time. This is due primarily to the back logs of applications produced in filing windows opened only over extended time periods. Filing windows that ultimately lead to auctions in the AM and FM spectrum are not favorable to small businesses, minorities or ethnic broadcasters. Whereas, if a member of one of the three groups is aggressive

enough to create a spectrum opportunity that fits within the confines of the applicable rules only filings that give a “first come/first served” will guarantee the small business, minority or ethnic broadcaster a grant. To use the filing windows as a method of creating a revenue stream for the US Treasury is a deplorable practice that apparently originated with Congress and must be halted immediately. Removing this method of spectrum distribution is probably outside the purview of the FCC, but the Commission can take the lead in removing this egregious action against small business, minorities and ethnic broadcasters.

## ALLOW MUCH WIDER OPTIONS ON FOREIGN OWNERSHIP, FOREIGN LENDING INSTITUTIONS AND FOREIGN JOINT VENTURES

Foreign owner/operators of an American broadcast license can be fashioned with control of program content determined by American citizens under civil contract guidelines rather than federal rules and regulations. This is especially true where foreign lenders are allowed to enter into ventures with American companies classified as a small business enterprise and ethnic or minority owners. While foreign owner/operators should not be avoided, it is the foreign joint venture and foreign broadcast lender that must be encouraged to join the broadcast community. Second to the issue of the lack of spectrum space, the issue of secure financing for small business and minority broadcasters is of major concern. A total rewrite of the rules for foreign nationals lending and ownership parameters will quickly allow a new diversity in broadcast ownership. However, these rules need to be as static as possible and not on a case by case basis so foreign lenders can feel secure at the beginning of a project without waiting for FCC clearance.

The Commission's previous practices concerning the foreign ownership rules have been written with limits that eliminated the possibility of secured foreign lenders. Small businesses and minority broadcasters need lending options and joint ventures that foreign lenders and investors may be willing to take. Exact and hard fast user-friendly rules will completely change the small business/minority broadcast community with audio and video services not presently available. Previous attempts to provide domestic lending for small business/minority/ethnic financing have failed miserably while in no way did the Commission considered removing these hindrances to ready foreign capital. Since all lenders must be protected by the terms of their loan the previous FCC rules were a deterrent. These rules did not allow for foreign debt surety above the percentage level of limited ownership.

## ELIMINATION OF ALL RADIO AND TV ANNUAL REGULATORY FEES.

Most of the universal actions the Commission has taken over the last decade appear to be punitive to the regulated. In no area does is this more apparent that in the institution of regulatory fees with the regulated having no input concerning it implementation. The assessment of an added fee to compensate for the FCC's office relocation in the 2016 fee is indicative of this process being out of control. Fees for small and medium markets ranging from $1,000 to $10,000 per station per year are very painful to licensees who see absolutely no return for this payment.

The Commission's practice under this rule now in service is extremely punitive to all minority and small business broadcasters desiring provide a unique public service. In no way has the Commission considered the financial burden the regulatory fees have placed on small business.

## TOTAL ELIMINATION OF ALL RULES RELATED TO THE KEEPING AND/OR MAINTAINING OF BROADCAST TV AND RADIO STATION PUBLIC FILES

During the first 50-75 years of broadcasting when signals were often few and far between the current rules concerning public files are understandable. However, terrestrial broadcast is still held to a system that was started in the 1920s and 30s. Electromagnetic signals abound to anyone on the North American continent in 2017 yet the public files are still designed for the days of technology past. A very limited amount of pertinent data not available on the FCC website can be placed at an online address with very little local broadcaster effort and cost. Then all broadcasters will be regulated by a public file rule that is up to date, user friendly and eliminate the current public file procedure which has become a FCC revenue source due to fines caused by accidental licensee omission of specific documents.

Here again, the constant issuance of notice of apparent liability fines due to incomplete public files (regardless of licensee neglect or accidental), is being fined for something now totally unnecessary. These fines appear to be a punitive position on the part of the Commission and aimed at the minority and small broadcaster. The FCC is not an agency that should be charged with the responsibility of raising money, or in the vernacular – 'of fleecing the flock'.

## ALLOW FOR FIRST COME/FIRST SERVE SPECTRUM GRANTS (AKA APPLICANT PRIORITY)

The instant item can be considered as a continuation or expansion of the discussion of conversion from separation allotments by FM class definition to the contour method. But it differs in the basic discussion with the theme that it is time to acknowledge the entire regulatory approach to terrestrial audio transmission must revised and/or eliminated. Terrestrial audio broadcasting is a mature medium. The roots of all electromagnetic transmission regulation began with Federal Radio Commission (1926). However, the regulatory attitude towards audio transmission remains along the same lines that were prevalent 91 years ago, with few exceptions. The public's need for mass media regulation were paramount in 1920 when electromagnetic signals were few. The landscape has changed dramatically and completely. Radio's terrestrial broadcaster now competes with numerous internet audio services, two nationwide satellite audio services and an undetermined number of podcasts. Yet the broadcaster is weighted down with regulatory fees that foreign to internet audio and restrictions with which satellite services never contend. AM broadcasters' signals also compete with signals that are digital and static free. But relief comes to all broadcasters through innovation freedom, not additional regulation.

Moreover, at present innovative freedom is hampered, stifled and quenched by outdated and overly protective regulations. Nowhere is this more obvious than the current allotment process in the FM band and the minor change application process in both AM and FM. These rules MUST be modified to allow creative innovation for new spectrum opportunities. In the Introduction the term "spectrum hole" was mentioned. This is exactly what is needed for new broadcast services for minorities, small businesses and ethnic owners. The following is a list of proposed changes to the allotment/grant process that will allow these spectrum holes to be

created and placed into use expeditiously. Some hypothetical cases are given to demonstrate how restrictive well-meaning regulations can become.

The AM Band is discussed first. The following are solutions for AM broadcasters:

1) Numerous AM licenses have been surrendered, but the abandoned spectrum lies unused as the industry waits for a new AM filing window. Hypothetically speaking, during this time an existing AM licensee continues to operate with poor coverage, an expensive transmitter site and limited hours on its current frequency (it is referred to as station **A**). The frequency of another station's surrendered license (station **B**) eliminates all the above hypothetical negative criteria, but the suffering station ("**A**") can't use the forfeited frequency of station **B** because the **B** frequency is not mutually exclusive ("MX") with the **A** current frequency.
2) Another hypothetical – Station **A** who is an AM licensee has to use a highly directional antenna ("DA") system which displaces several acres of valuable rented real estate. Modifying and moving the station requires also modifying the station (**B**) the licensee in discussion protects. This is possible since there is another frequency where the second station (**B**) can relocate. However, station **B** cannot make this move since spectrum hole is not MX with its current frequency
3) A small community has no first/local aural service and there is no full service spectrum space available in the current FM Band's configuration, but due to the movement of distant AM station a spectrum hole exists for a 250 watt daytimer for this same community. The FM spectrum can also provide a spectrum hole for a 250-watt FM translator. Neither of these stations can be built under the current rules. First the AM has to wait for a filing window and then the cost to construct would be prohibitive

since all new AM stations must be full time. In over 90% of the cases this AM would require a directional antenna for nighttime, thus economic reality eliminates its existence. Finally, the FM 250-watt translator, even though available in the spectrum, cannot exits either; first it must wait for a translator window and second it does not have an AM to provide programming service for it to rebroadcast. The problems here are long time periods between filing windows allow valuable spectrum to lie dormant, and the clusters of the population remain unserved for a local aural service.

4) No provisions in the rules for a creative filing for an AM (full service)/FM (translator) in one filing or an expected grant in a timely manner. In the instant scenario, the granting and allocating functions fail the local listening public.

For FM, a hypothetical proponent identifies a community which has no service, and due to a public outcry from local residents the proponent decides to research the availability of a possible new FM station. Channel searches determine that no spectrum space exist for even the lowest FM class. However, it is also discovered that a spectrum hole can be created with very minor modifications from 5 existing FM stations. The proponent is willing to pay the negotiated cost with the 5 licensees in question only to make the following discoveries that declare the scenario can't be developed:

1) The limit of 4 rule prohibits no more than 4 existing licensees be included in one proceeding.
2) One of the stations making a modification must change city of license, but the new city has 500 feet of street that enters an urbanized area and the Rural Radio rule prohibits stations moving from a rural area to an urban allotment
3) Another of the stations making a modification with a community of license change

also was unable to prove that its channel could not make a second move and cover more than 50% of a nearby urbanized area with is a requirement of Footnote 97 in the Rural Radio rule.

4) **The proponent of the new service is not guaranteed that it will be the recipient of the FM grant even if it overcomes the hurdles of rules one and two above.** The allotment, though created by the proponent's very expensive upfront soft cost, will eventually be placed at auction to the general public. The proponent has no finder/creator/developer preference. With all the above considered, it is very unlikely that the scenario will be developed.

These are some reasons few small businesses, minorities and ethnic groups attempt entrance in to aural broadcasting.

The discussion and the hypothetical scenarios are only a few of the fatal stops to creative measures that could give greater terrestrial aural options. In fact it is easy to see that present AM/FM new signal creation is not aided by the Commission's rules and regulations, but are thwarted by them. To truly let the market place, decide the future of terrestrial aural transmission the basic FCC regulatory philosophy must be changed. It must move from one that says the regulator set the rules of the game to one where the regulator is only the referee. The following is a partial list of the changes to be implemented to change the current regulatory philosophy; 1) grants can be made by the Commission without first having public comment, 2) all rules to propagate this new approach are based on the premise of getting the maximum service before the American listening public and never on the resources of the Commission, 3) there may be some rule eliminations and/or changes that lie beyond the purview of the Commission and require legislative and executive assistance. However, the Commission can

take the lead in coordinating this endeavor. THE TRUE MEANING OF THIS ITEM IS THAT IN THE CASE OF TERRESTRIAL AURAL TRANSMISSIONS THE ROLE OF THE FCC CHANGES FROM THAT OF A REGULATOR TO ONE OF AN ADMINISTRATOR/SUPERVISOR. The proposals in most of the Joint Commenter's proposals will be difficult to install and effectuate without this change.

Once the new philosophy is adopted either in the FCC itself or by way of congressional action the following policies can be implemented very quickly.

1. The concept of a developer's or proponent/applicant preference can be adopted and put into practice. A developer's privilege would be any entity that is a licensee or aspiring new licensee taking the initiative and upfront financial risk to either modify an aural license or create spectrum space for a new license.
2. Upon filing the 100% complete scenario/package/applications the developer/proponent is given immediate cutoff protection from competing scenarios. If after a thorough engineering review by the Audio Branch engineers, they determine that the scenario is flawed at any point, a deficiency letter will be issued with 30 days to cure.
3. After a second engineering review it is determined that the applications/scenario is still technically deficient an additional deficiency letter is issued with 30 additional days to cure. However, all cutoff protection is lost with the issuance of the second deficiency letter. Other attempts to cure can be made past the second deficiency letter but with no cutoff protection given.
4. Multiple scenarios/proposals/applications can be made in compliance with the proposals submitted herein. But, no proposal should ever be accepted that puts the proponent in violation of other rules and regulations of the Commission.

5. FCC filing fees paid by qualified applicant preference candidates are a legitimate expense of doing business if they are used solely to cover the Commission's cost of processing applications. Application fees intended for the right purposes should be retained.
6. The concept of an applicant preference can be established by the Commission only because terrestrial radio is a mature medium. It can play a major part in additional aural service to the listening public.
7. Excessive regulation and spectrum creativity cannot coexist. They are mutually exclusive. For the first time in its history the FCC can create a true Applicant's Priority in terrestrial audio broadcast.

## MODIFY AM PROTECTED AND INTERFERING CONTOURS

In the Public Notice, the FCC asked all commenters to consider the modification or elimination of regulations that are outdated, unnecessary, or unduly burdensome. In its current state, any regulation that prohibits creative thinking for the AM band is burdensome. The following points must be considered by the Commission concerning AM survival:

1. In the FM discussion, the Joint Commenters proposed the elimination of third-adjacent protection altogether. They are proposing the same change for the AM band as well – the elimination of third-adjacent protection. The improvement over the years of AM receivers has rendered this protection moot.
2. For years the daytime protected-to-interfering contours for second-adjacent AMs was 5 mV/m to 25 mV/m. However, this relationship was changed years ago to 5 mV/m to 5 mV/m contours. As stated above, current AM receivers make such protection unnecessary. The Joint Petitioners propose a rollback to the former 5 mV/m to 25 mV/m protection that served the public so well for so many years.
3. For decades nighttime AM skywave coverage was needed so that large rural swaths of the country could continue to have aural service at night. Technological advances have rendered this service unnecessary. Further, man-made noise has made nighttime skywave almost unlistenable in many areas of the country where they provided service in years past. Skywave is obsolete and an unnecessary burden for smaller AM facilities to protect. Eliminating skywave protection would allow many smaller AMs to reduce the need for multiple AM tower arrays and the expense of maintaining them. It also would allow many AMs to sell valuable real estate that would no longer be needed for skywave protection. Allow for nighttime protection of class A facilities to be the 2.5 mV/m

groundwave contour. The Commission obviously does not consider nighttime skywave coverage to be a legitimate service, since this contour's use is forbidden when analyzing remaining service studies.

4. The Commission should allow all AM channel changes to be considered minor changes whether the changes are mutually exclusive or not. If the public interest will continue to be served by the channel change, the emphasis should be placed on maintaining service to the public, instead of an unnecessarily rigid adherence to rules that do not serve the public interest.
5. Allow filing for new daytime-only facilities at will so long as an existing translator can be used for the new AM facility.
6. Return AM contour protection requirements to the time before the advent of AM stereo. AM stereo was never widely accepted, yet new rules were imposed on broadcasters that prohibited site changes and facility improvements. These rules are still in effect, but they are unnecessary and injurious to AM broadcasters.

## MIGRATION OF CURRENT AM BAND OCCUPANTS

Several proposals have been made for improvements to the AM radio band. They include; 1) modifying technical rules to allow less expensive construction, 2) changes in modulation methods, 3) changes in monitoring points, 4) reducing coverage for Class A nighttime sky wave, and 5) the addition of FM translators. The rush for FM translators exemplifies two things; 1) operators of AM stations see even low power FM to breathe life into their AM facility, and 2) despite the increasing prices of this secondary service and the risk of being ordered off the air, AM stations want to operate on the FM band. All the above is necessary to reinforce the AM band as it now stands. However, nothing in these options address the basic AM problems; 1) ambient noise that, *i*) increases with each new electronic device placed on the market, *ii*) construction of each new set of AC transmission lines, *iii*) or each time a switch-mode power supply for automotive cell phone chargers is used. AM needs a band where digital frequency modulation can be used and a specific start and completion date is set by the FCC. Amazing things are currently being done by various transmission models where only 10 kHz of digital bandwidth is used. The Commission must designate a panel to study and coordinate with the FCC and the NTIA to see if such space can be identified.

Minority, small business, and ethnic broadcasters do not need spectrum space provided for them at the expense of current broadcast licensees. Reassigned spectrum from one broadcast group to another is not the goal proposed in the instant item. However, a search for a minimum of 1.16 MHz (spectrum displacement of the current AM band) should begin immediately with transmission systems that can work within the confines of a 10 kHz channel also identified. AM licensees that chose to remain behind in the current band should be reallocated to the lower part of the current AM band and allowed to do so. The spectrum of one lower VHF TV channel can

accommodate a new home for all the licensees in the AM Band that want to use FM digital technology.

Submitted by the undersigned Joint Commenters in response to the FCC Public Notice released May 18, 2017 (FCC 17-58). In the Notice the FCC requested comments from the public concerning "eliminating regulations that are outdated, unnecessary or unduly burdensome." In the instant comments particular interest was paid to the effect these regulations have on small business, minorities and ethnic broadcasters.

Signed this 5th day of July 2017

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