

August 17, 2017

Marlene Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street S.W.  
Washington DC 20554

Re: *In the Matter of Modernization of Media Regulation Initiative*, MB Docket 17-105  
*Ex Parte* Notice

Dear Ms. Dortch:

On Wednesday, August 16, 2017, officials from the offices of Multicultural Media, Telecom, and Internet Council (“MMTC”), the Salem Media Group, Wiley Rein LLP, the National Association of Black Owned Broadcasters (“NABOB”), and Brantley Broadcast Associates, LLC met with Chairman Pai, his Chief of Staff Matthew Berry, Esq. and his Media Advisor, Alison Nemeth, Esq.. Present were MMTC President Emeritus and Senior Advisor, David Honig, Esq., Salem Media Group Vice President Jim Glogowski, Wiley Rein Partner Mark Lipp, Esq., NABOB President James Winston, Esq., and radio station owner and consulting engineer, Paul Reynolds.

During the meeting, we discussed three FCC regulations which impact minority owners as well as small broadcasters and new entrants to radio ownership. These regulations involve the “Rural Radio”<sup>1</sup> policies; the pending reconsideration petitions involving the “limit of four contingent applications”<sup>2</sup> and the use of contour protection instead of spacing requirements for FM station assignments.

The Chairman and his staff were told that the rural radio policies negatively impact minorities and protect incumbents from competition. In the past, when minorities and other small broadcasters obtained stations, only those in the more rural areas were available. The larger market stations were too expensive to purchase and, as a result, these stations are in areas which do not coincide with their target markets. But whenever there are spectrum improvements available to them which would allow coverage to their intended audiences, these modifications are closed off by the rural radio policies. These improvements are not allowed even if a public interest showing can demonstrate that the rural areas will not be left unserved and, that based on past history, the spectrum made available is nearly always occupied shortly thereafter by other stations or by new allotments created. These policies are of a particular detriment to AM station owners desirous of implementing the new rules and policies created by the AM Revitalization proceeding.<sup>3</sup> It was also noted that when the “rural radio” policies were adopted, the comments were almost unanimously against these policies.

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<sup>1</sup> See *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Policies*, MB Docket 09-52, 26 FCC Rcd 2556 (2011), recons. Denied 27 FCC Rcd 12829 (2012).

<sup>2</sup> See *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), recon. pending.

<sup>3</sup> See *Revitalization of the AM Radio Service*, MB Docket No. 13-249, 30 FCC Rcd 12145 (2015).

“The limit of 4” is found in §73.3517(e) of the Commission’s Rules. This rule allows for only four contingent applications for modifications of facilities. We explained that, previously, when community of license or channel changes were made to the Table of Allotments by rule making, there was no such limit. It was believed that the rules and policies in effect for the rule making process would be continued, to the extent, possible when the application process was substituted. Although there are very few instances historically where the number of contingent applications exceed four (as documented in the pending Petitions for Reconsideration), the Commission staff considers its own administrative resources as a higher priority than the improvement of facilities by minority and other small broadcasters.

Lastly, under contour protection in §73.215 of the Commission’s Rules, interference considerations in the FM commercial band are regulated by spacing rules and allotments organized by classes of stations. If a station meets the minimum criteria for a certain class, then it receives the maximum protection for that class. However, in the restricted noncommercial educational band and in the AM band, contour protection defines interference protections. As a result, much available spectrum in the commercial band is overprotected and wasted. We propose to universally implement contour protection for the commercial band instead of the spacing limits and classes of stations. The FM service has matured to the point where there is little spectrum available for improvement and the remaining modifications and new allotments could be more effectively and efficiently administered by contour protection. It was acknowledged that one commenter opposed removing 2<sup>nd</sup> and 3<sup>rd</sup> adjacent spacing protections but those protections would remain in the proposed contour protection system. Matthew Berry brought up the issue of a potential negative impact on translators. But it was explained that translators could actually benefit from the creation of new spectrum when the overprotection of stations is eliminated.

This letter is being filed electronically pursuant to Section 1.1206 of the Commission’s Rules.

Sincerely,

*David Honig*

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cc: Chairman Pai, Matthew Berry, Esq., Alison Nemeth, Esq.