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Before the

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C., 20554

FCC MAIL ROOM

In the Matter of)	
Petition for a Microstation Radio)	RM-9208
Broadcasting Service)	
Proposal for Creation of the Low Power)	
FM (LPFM) Broadcast Service)	RM-9242
Amendment of Part 73 of the Rules and)	
Regulations to Establish Event)	<u>RM-9246</u>

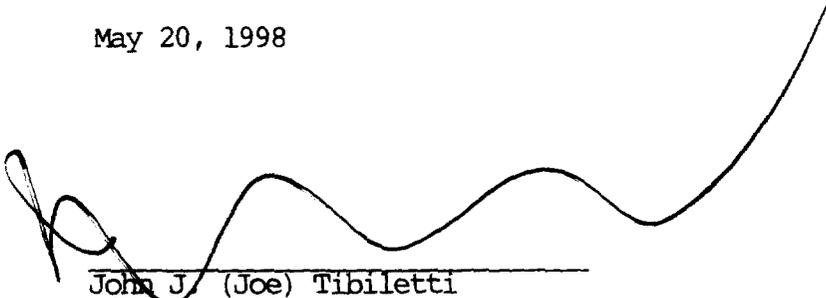
AMENDMENT TO REPLY COMMENTS OF
COSMOPOLITAN ENTERPRISES OF VICTORIA, INC., Licensee of
KTXN-FM, Victoria, Texas

And

John J. (Joe) Tibiletti, Individually

2618 FM 1685
Victoria, Texas, 77905

May 20, 1998



John J. (Joe) Tibiletti
pro se and Cosmopolitan Enterprises of Victoria, Inc.

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EXECUTIVE SUMMARY

1. Low power radio stations -- in this reply comments amendment -- limited solely to FM (or known as Frequency Modulation radio broadcasting) has been explored as to historical perspective and the allocations taboos that have existed for many years in the industry have been cited as to their development. Additionally, the most current FM allocations made by the Federal Communications Commission have been presented to rebut the allocation that somehow the agency has done away with the taboos for second and third channel removed for stations.
2. The allocations conditions are presented in a real life situation that would exist should the station classes as proposed in the low power docket be allowed to go on the air -- disregarding the taboos as presented in the Part 73 of the Commission's Rules and Regulations -- and their affect on existing stations in the Victoria, Texas, market. The conclusions are quite clear that the existing stations will be the losers.
3. Low power radio exists in another country -- Canada -- but there are definite taboos. The CHIN case points this out and in a very recent allocations or grant by the Canadian Radio Television Commission. The third channel removed is not usable for a non-co-owned radio station.
4. The attempted disregarding of the second and third channel taboos as proposed by the Skinner petition -- the base of RM-9242 -- has not been ever proven. There is no evidence to support claims that the

receivers of today are so improved that the taboos can be thrown away.

The second and third channels removed were considerations of power increases of short spaced stations who were up-dating facilities. IN NO SITUATION is there a complete disregarding of them.

5. The truth of the matter is that the matter of interference from stations on the second and third channels removed has been recognized and accepted as being there, but not removable. In these conditons, the stations involved simply chose to live with interference as it is. The normal chain of attack for complaints of interference is firstly to the station one is listening to and then to other stations and finally to the Federal Communications Commission. This statement of elimination of concern for the second and third channels removed is an absolute distortion of the truth and taken out of context. This is in reality a delusion created to make real ones desires in spite of reality. There is a long standing case of station location problem of station location searches for radio station KJLH in the Los Angeles area, more is contained in the story of the area which shows numerous short spacing and second channel usage from powerful stations. In one outstanding situation a station in the Chicago area -- Skokie licensed formerly known as WRSV and operating on 98.3 (two channels removed from WFMT on 98.7) which was applied for and licensed within the rules which allowed this type of allocation even mentioned in the rules and regulations of the commisson. Ultimately as a result of complaints, the station was moved to a higher power channel that was vacated as a result of the Carroll Music case where a license was lost.

6. The summary of all literature found to be relative to the matter of low power radio and its proposal attributes is very clear: it is not a very practical use of the radio spectrum and is counter productive in its reduction in areas of service to existing stations. In short one conclusion can only lead to a very definite stand which commentator has previously submitted in this docket area that to recommend that the Commission deny petition for the low power service.

INTRODUCTION

1. This is submitted as an amendment to previously submitted comments and subsequently filed reply comments. Commentator wishes to point out that the matter has been the subject of continuing research in many areas of resources from the proceedings of the Federal Communications Commission (the Federal Communications Commission Record and previous equivalent documents), Proceedings of the Institute of Electrical and Radio Engineers and previous numbers, Broadcasting Magazines and its successor Broadcasting and Cable, un-published manuscript (1962) by commentator while a student at the University of Houston (Texas) on the subject of FM radio development. Additional information was provided by members of the radio broadcasting profession and the Society of Broadcast Engineers (Austin, Texas chapter).

2. Commentator also submits these materials in complete agreement with the comments of the following organizations in docket RM-9242:

National Association of Broadcasters
State Associations of Broadcasters (43)
ACAMBA (small market stand alone AM Broadcasters)

These mention the limited staffing of the Commission and its concern to provide a diversity of ownership of media of mass communications. Actually where were the petitioners of RM-9242 when the Telecommunications Act of 1996 was enacted if they are so concerned about ownership.

3. Commentator wishes to point out that the tone of conspiracy to keep low power off the air and the statements of war and the rat trap of the RM-9242 site at --"[www/Concentric.net/ radiotv](http://www/Concentric.net/radiotv)" is simply an attempt to cover up reality on the part of the petitioner. If one wishes to take it out on the public and government for their hurts of life, it would be a

out of control world. The radio station owned by commentator, KTXN-FM is a stand alone FM with no associated radio or television media ownership. This station was founded by commentator during his days as a student in 1963, and subsequently operated for over twenty five years as an owner operator entity. Commentator has prepared numerous petitions and applications for commission considerations.

4. The educational background of commentator includes the following academic accomplishments:

Bachelor of Fine Arts (Radio-TV major) 1963*
 Bachelor of Business Administration (Marketing) 1965
 Bachelor of Business Administration (Advertising) 1965 (hours only)

U.S.A.F. service 1966-67
 Inventory Management Specialist AFSC 64550
 Service specialty areas of work included:
 Allowance-Authorization Unit
 Demand Processing
 Management and Procedures

First Class Radiotelephone license 1968
 studies at Elkins Institute of Radio in Dallas, Texas

Real Estate (University of Arizona) 1967
 Real Estate (Victoria (Texas) College 1967-1984
 Banking
 Astronomy
 Flight School (ground training)
 Computer Programming and Data Processing
 RPG, FORTRAN, COBOL
 Anthropology (University of Houston-Victoria) 1973-94
 Finance

Bachelor of Arts (Latin American History) 1975
 Bachelor of Arts (Psychology)
 Bachelor of Business Administration 1978
 Accounting - Personnel Management (double major)

Professional association with the State of Texas 1994-1995

Professional experience of John J. (Joe) Tibiletti (continued)

Comptroller of Public Accounts:

Purchase Audit Auditor

education in internet, computer usage including Filemaker
Pro II (preparing a 500 member database)
State of Texas Accounting System

Foreign Languages

Latin -- 2 years High School

Spanish 2 years in college

French - 3 years in junior college

Mandarin Chinese (one semester) Formosa Plastics Plant
(Point Comfort, Texas) 1993

Arabic (one semester) as a part of church activities

Syriac Aramic -- in progress as part of church activities

Self paced professional training

Radio station allocation engineering -- 1967 in Tucson, Arizona
under Oscar Leon Cuellar.

This has been used in preparation of numerous applications for
owned operated KTXN-FM including numerous feasibility studies.

Professional Organizations holding membership:

EA Entrepreneur Association (Austin, Texas) 1996-

SBE Society of Broadcast Engineers (Austin, Texas, 1998-

Professional accomplishments apart from broadcasting:

paralegal research in utilities for PUC (Texas)

participant in area code hearings

Austin freenet internet tutor

Place of residences : Austin and Victoria, Texas

BACKGROUND

1. This submission is an amendment to reply comments in action of the Federal Communications Commission in response to a petition now designated as RM -9242, in the matter of low power FM radio stations and allocation of same without regard to table of allocations as it is now done for the allocation of FM radio stations and its nested doing away with the taboos currently in place in the CFR 47 part 73 and 74 as regards allocations of FM radio stations to channels in the 88-108 megahertz band without regard to the taboos in place for the second and third channels removed (also termed adjacent channels).
2. Petitioner seeks rule amendments to allow for low power stations with as little as one watt to as much as three kilowatts and antenna heights of 50 feet to 328 feet. Albeit the top of the delineated facilities requested were up-graded several years ago because of competitive disadvantage and in-ability to cover the market of the principal city.
3. Coverage of the proposed classes of stations would be very limited to somewhere between 1.5 miles to 15 miles -- considering the protected 60 dbu (1mV/m contour) The term miles is used albeit the metric conversion occurred over five years ago and the proper terms should be kilometers and meters above average terrain.
4. Petitioner alleges that there is a stifling of private expression in the form of the absence of these low power radio stations and a disenfranchisement of minorities. Commentator will show this is not the case

at all, but rather in-experience in operating a radio station and un-researched opinion polling of the proponents. Citing the National Broadcasting Co. vs. FCC case, not every shade of meaning of issues is afforded the right to broadcast just because of constitutional rights. This concept, if taken into a religious sense would require that we have time for both the devil and religion -- how silly.

5. Commentator will show that this case hearing is a waste of resources and personnel of all parties involved from the commission to the industry professionals for this has been decided many times in the past in the negative. In fact commentator once threw a trial balloon into a daytime and pre/post sunrise/sunset docket calling for low power AM radio stations under the nom de plume of "Voice of the Master." The matter was summarily dismissed as not practical. This is one instance of where statements made by proposal are old hat re-hashed to no avail in lack of knowledge of physics and natural laws of selection, marketing and the overall society.

6. There is over-whelming evidence of commission feeling on matter of allocation taboos which will be shown by subsequent presented and researched data in the hands of the commission already for many years. No where is any data presented -- that radios of today are super selective and sensitive to the extent that second and third adjacent channels are no problem of distinguishing as was the case in Syracuse, NY and cited in commentator's unpublished manuscript. One of the reasons for FM not being successful in the 1940s and 1950's was the lack of proper allocation of channels in the same city and radios that could distinguish their signals -- a situation that

has possibly not changed as far as receivers are concerned. That is if one judges by the lack of receiver performance in Federal Communications Commission cases. Commentator has searched every case of the agency published since 1970 to no avail for a plethora of receiver data to back up petitioner's claim of receiver superior performance -- which is only his delusion to justify his taboo elimination, which is not once approached in one case of the commission published in the Federal Commission Record. Commentator calls upon petitioner to show him all the cases of taboos' elimination for all stations (2nd and 3rd adjacent channels) and the radio receivers with the superior performance. They are just not there we feel the case has not proven its allegations and is without merit.

7. In fact the Commission added taboos for the second and third adjacent channels for FM translators -- if one will read section of translators for FM in part 74 of the CFR 48. This was done in the past seven years. If the second and third adjacent channels were not of concern the commission erred in the most grand fashion in placing restrictions on the location of FM translators when supposedly, according to the proponent and petitioner, these taboos were unnecessary. Let the record speak for itself. Oh please, Mr. Skinner, show me where you found all this material!

8. Translators are the closest to petitioner's low power FM stations and here the F.C.C. adds taboos, now really who is under a long term delusion.

9. Commentator now calls attention to readers to the literature on

allocations and lets the record speak for itself. This has been a hard several weeks in research and commentator seeks understanding should a delay occur in the reaching of the commission with this document. It is hoped that the completeness is justification for any delay. In any event herein is what one properly researching the matter should find. Submitted this 20th day of May 1998, by

John J. (Joe) Tibiletti, for self and on behalf of Cosmopolitan Enterprises of Victoria, licensee of KTXN-FM, Victoria, Texas and with the assistance of Johnny Ellis of Ellis Broadcasting Company, licensee of another stand-alone FM outlet KVLV, Victoria, Texas.

LITERATURE ON LOW POWER RADIO AND TABOOS FOR FM STATION ALLOCATIONS

1. Commentator now presents a variety of articles that were gleaned from Federal Communications Commission cases and other sources that are containing material relative to allocations in a general sense. The article is summarized in the body of this comment, and in many cases, an extract is placed in the addendum.
2. In "Review of Technical and Operational Requirements: Part 73-C Noncommercial Educational FM Broadcast Stations," 2 FCC Rcd at 6754 et. sec. The proposal to base the location of new NCE stations on the signal strength contours of the proposed station and stations operating on co-channel and on the first, second, and third adjacent channels.¹ The entire case is in the addendum.
3. The Commission denied the application for a short spaced station to up-grade, even though there is a contour protection scheme to allow to do so, because the proposed site falls 8.6 km (note term metric base) from meeting the 175 km minimum spacing required by § 73.215(e) for KMGE in Eugene, OR.² Also found in addendum.
4. WBRU in Providence, RI, was the case for a change in the up-grading to allow them but only if no further increases in interference resulting from modifications and relocations of grandfathered short-spaced stations. Also new class A stations could operate with less than 100 watts provided that the resulting reference distance equals or exceeds that of a Class A station operating with minimum facilities. This from 3 FCC at

2478 et. seq.³

5. The matter of receiver(s) and their place in allocations is found in a "Review of Technical Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations," (1989), 4 FCC Rcd 3558. The I.F.-related overlap of the 36 mV/m median field strength is made a taboo, regardless of class involved. Additionally a new minimum distance separation requirement applicable only to FM channel 253 (98.5 MHz) and TV channel 6. There is a mention of several markets where a channel 6 and a FM on 98.5 co-exist. The IF interference results primarily from receiver inadequacies, there was no comments or information from receiver manufacturers. In the comments (paragraph 11) Baltimore, MD, Key Broadcasting (WQSR). This station is short spaced to an IF-related station for many years and "has never received a complaint attributable to IF interference. The company suggests that IF separations should be abolished entirely, but if they are retained, the protection level should be more restrictive than 40 mV/m. Mr. Millard K. Smith, Jr. (in paragraph 12) relates that as chief engineer (1967-1970) of WHMP-FM, Northampton, MA., he received many complaints of IF interference during that time, resulting from the operation of nearby IF-related station WFCR.
6. One of the few receiver field tests is cited in this case in paragraph 12. Smith went into the area with ten (10) consumer grade FM receivers on July 8, 1988. These he felt were typical of those held by the general public. The results are as follows: at eight (8) locations, the field strength was recorded, for each receiver, whether any IF inter-

ference was experienced. About half of the receivers experienced intger-ference. He concludes IF interference continues to be a problem and the commission would be ill advised to change the current IF distance seprartion requirements. On the contrary, Key Broadcasting states that the study is flawed because the measured signal strengths from the two stations were not equal or nearly equal at a number of the locations reported and that the inter-ference reported was not IF interference, but interference of some other type.

7. Paragraph 15 of this case mentions that most of receivers used in tests were small ones who would be penalized if the commission's proposals would be implemented, this from the Electronics Industries Association.

8. A Louisiana station WCKW in La Place received interference for many years from the placement of channel 6 and 98.5 in New Orleans, cited in ibid paragraph 16. Case is in addendum.⁴

9. In 2 FCC Rcd 5694 et seq. the matter of contours is brought up as is a proposal to do away with second and third adjacent channel interference. This is in 1987.⁵

10. The contour method of station assignments for the NCE group was specified in 3 FCC Rcd. 5763, et. seq. Prargraph 4 states "the contour method allows stations to tailor their coverage areas."⁶

11. The role of translators is covered in 5 FCC Rcd.7213 et. seq.(1990). Here the F.C.C. actually placed contour protection and overlap into the rules for the second and third adjacent channels. See included Part 74 section. Additionally, maximum power of 250 watts was specified. Page 7236 gives the

contours involved. There is no elimination of the second and third channels removed taboos, but rather the addition.⁷

12. The §74.1204 Protection of FM broadcast stations and FM transmitters codifies the preceding paragraphs.⁸

13. The new class C3 FM stations is specified in 6 FCC Rcd. 3417 et. seq. There is a specific section (paragraph 28) that deals directly with the second and third channel protection.⁹

14. The minimum power for FM stations -- in this case the educational stations was set in 70 FCC. 2d at 972. at 100 watts, further citing the 31 FR 14755-56 (1966).¹⁰

15. Recently in The Matter of Grandfathered Short-Spaced FM Stations as adopted by the Commission in 1996, FCC Rcd (1996) 7245 et. seq. the matter of short spaced stations relationship to the second and third adjacent channel stations was addressed.¹¹ The recognition that these channels, while creating problems of interference, are not the concern of allocations of transmitter sites for co and adjacent channel stations. This is not to say that there is an elimination of these taboos solely for these station and can be applied without limit to all stations.

16. The matter of location of one's tower site for optimum service is uppermost in the mind of KJLH in the Los Angeles area. It is a second channel to a powerful station and short spaced, along with causing IF interference to KUSC. The following citations are mentions of its attempt

16 (cont'd). : 46 FCC d. 234, 50 1172, 51 727, 55 897, 56 468, 58 271
 addresses the issues of inteference to KIIS and KUSC, 58 1066, 58 1387,
59 976, 59 1519, as well as 53 1263. Additionally 35 FCC 2d 877, 24 RR
2d 871 (.972) and finally 12 FCC 2d 660, 662 (1968). The matter of the
 Los Angeles channel utilization is included ina later paragraph in this
 reply comments addendum.¹²

17. The United States is not the only country to have low power FM
 stations. Canada has had them for years, but used primarily in the extreme
remote areas, and more recently as a fill-in for AM station signals. In a
 recent case in Decision CRTC 97-539, Radio 1540 Limited Toronto, Ontario-
199616348, a grant was made for a Toronto area LPFM on 103.1 and an effect-
 ive radiated power of 22 watts to fill in the night coverage of CHIN --
 which is programmed for the Italian community in Toronto. A potential
 applicant for a third adjacent channel (CHRY) and a new campus/instructive
 FM radio station expressed an interest in using the third adjacent channel,
 however a mention is made that Industry Canada does not allow such operation.
 This is the latest from north of the border on low power FM.¹³

18. "A Licensing Policy for Low-Power Radio Broadcasting," is a part
 of the broadcast regulations in Canada and regulates the low power stations.
 The citing is "public notice CRTC 1993-95."¹⁴

19. Trade publications and technical publications have taken notice of
 the problem of FM crowding. As previously mentioned, the Los Angeles area
 is home to numerous short spacing and IF problems. The article by Eldon

J. Haakinson and Jean E. Adams of the Institute for Telecommunication Sciences and the National Telecommunications and Information Administration of Boulder, Colorado, 80303 as published in the IEEE Transactions on Broadcasting, Vol. BC-26, No. 4, December 1980, Pp. 133-138. is included in its entirety in the addendum (number 15) with its technical detail and findings.¹⁵

20. "In the Matter of Grandfathered Short-Spaced FM Stations," 1997 as contained in the FCC Rcd, the whole matter is enclosed as addendum number sixteen (16). Attention is called especially to the following paragraphs: twelve (12) concerning co-channel and first adjacent channel areas receiving interference free service, twenty (20) concerning the elimination of second and third adjacent channel spacing requirements for grandfathered short-spaced stations. Paragraph twenty-three (23) concerns receivers. Half of the receivers in the sample did not meet the criteria for interference rejection. NAB specifically states in this paragraph that:

...refinements to radio receiver design to provide, in some cases, better rejection of second and third adjacent channel interference that should be considered here. These developments might form the basis for granting some relief for some grandfathered short-spaced stations. However, and this must be emphasized, NAB believes the examination of such receiver characteristics should be limited only to the possibility of revised regulatory approach to some grandfathered short spaced FM stations, not to the FM medium as a whole.

See further D. Projected Compliance Requirements of the Rule and seq. second adjacent and third adjacent channel grandfathered stations will be no longer be required to submit interference exhibits, therefore

reducing the filing burden. In "E" the second sentence states "The burden on second-adjacent channel and third-adjacent channel grandfathered applicants will be reduced." IT DOES NOT SAY ELIMINATED, let alone taken out of context eliminated for them or for any FM station of any class. This proceeding entitled :

"In the Matter of Grandfathered Short-Spaced FM Stations," MM Docket 96-120, RM-7651, as released August 8, 1997 as found in FCC RCD (1997) Pp. 11840 et. seq.

speaks the latest from the Commission.¹⁶

21. In a previous docket (MM Docket no. 88-375) several areas of interference are graphically presented. See pages 5956 through 5963 for more information.¹⁷

22. Finally, the commission has not eliminated the matter of second and third adjacent channels from its rulemaking. The enclosed addendum 18 gives a illustration of the most recent rulemakings that require a site restriction and the reason therefor.¹⁸

23. This filing now takes up the matter of other considerations for low power FM.

OTHER CONSIDERATIONS

1. Commentator cites several cases which is felt are showing parallel situations to this low power docket and the results to fully operating licensed stations. In the case of Ramapo Indian Hills Regional High School for the modification of noncommercial educational station WRRH(FM) in Franklin Lakes, New Jersey, 3 FCC Rcd, 4859, it was pointed out that a power increase could be used as a sword over existing stations when a license renewal came along. See paragraph 4.¹⁹

2. In the case of the Empire State Broadcasting Corporation (WWKB) and renewal of license of Bursam Communicatios WIHE, Mineola, NY. commentator calls attention to the following paragraphs of enclosed document as addendum 20. In the discussion paragraph three (3) is the renewal exclusivity of a scondary station versus the primary station. Subsequently in paragraph five (5) further exclusivlity and renewal problems are specified. In paragraph six (6) there is a mandate of a comparasion under Section 307(b) between the gains in service area and population that would result from increasing the power of (WIHE-AM) (emphasis on low power FM here) and the loss ofservice by WWKB (in this case the existing fullservice station). In paragraph sight (8) mention is made of the conflict of allocation and the premise that the Commission cannot grant an application **that** fails to comply with the fundamental protection standards set forth in the rules to the detri- ment of a station entitled to relyon that protection. See The Audio House 2 FCC Rcd at 3172.²⁰

3. The concern of commentator and Ellis Broadcasting Co., licensee of KVLIT, Victoria, Texas, that this low power will be the means to an end for further encroachments into already protected and served territory of the existing stations. This is illustrated in the addendum twenty one (21).

CONCLUSIONS AS TO LOW POWER RADIO AND MINORITY RADIO OWNERSHIP,
PRACTICALITY VERSUS CONTRARY

1. 1. Conclusions on the matter of low power radio and minority radio ownership are as follows:

Low power radio will stack hundreds of low power signals and and very limited coverage areas into already fully served areas. The ultimate losers will be the public for the loss of already long established listening habit driven fullservice FM stations who will have signals melanged with all sorts of puny power FM operators who serve very small areas. Advertisers will tend to ignore the situation and ultimately broadcasters and their owners -- in many cases one of a kind sole proprietors -- will suffer. I refer to "Denver's Tangle of Tunes" in Business Week in the 1960s. showing so many stations that advertising age.ncies ignore the market.

Minorities... They need to work with experienced broadcasters before they venture into the field. See original comments of this commentator relative to Victoria, Texas, hispanic market.

The Following Parties Have Filed Reply Comments:
 Communications Transmission, Inc.
 Utilities Telecommunications Council

FOOTNOTES

¹ See *Third Report and Order*, in Gen. Docket No. 82-334, 2 FCC Rcd. 1050 (1987), 52 FR 7136 (March 9, 1987).

² Common Carriers are also permitted to use these bands for mobile TV operations provided that they are engaged by an eligible broadcaster. See section 21.801(b) of the Commission Rules.

³ SHBC claims that there has already been an instance of destructive interference to users of the 1.9 GHz band caused by the failure of non-broadcast users to coordinate their operations. However, SHBC provides no information to support its claim. Further, it is not clear how this interference occurred since there are no other operators now licensed in the 1.9 GHz band other than broadcast users.

⁴ Also a TV broadcast pickup, studio transmitter link (STL), or TV relay station may be used for the transmission of material to be used by others, including but not limited to other broadcast stations, cable television systems, and educational institutions. See section 74.631(f) of the Commission's Rules.

⁵ Section 21.808 of the FCC Rules states that the licensees of stations authorized pursuant to section 21.807 shall notify the Commission prior to each period of operation. Although a 5 day notification requirement was also included in section 21.808, it was recently eliminated. See *Common Carrier Docket No. 86-128*, FCC No. 87-284 (August 27, 1987).

⁶ The Commission recently held a tutorial that included a discussion by the Society of Broadcast Engineers regarding the efforts of Broadcasters to develop an accurate frequency data base of all broadcast auxiliary users.

⁷ See descriptive notes in sections 74.644, 74.108, and 94.79. Existing private users are exempt from compliance with the minimum path length requirements whereas cable and broadcast auxiliary users are only grandfathered through April 1, 1992.

**STATEMENT OF
 COMMISSIONER JAMES H. QUELLO
 CONCURRING IN PART AND DISSENTING IN PART**

in the Establishment of a Spectrum Utilization Policy for the Fixed and Mobile Services' Use of Certain Bands Between 947 MHz and 40 GHz

See Commissioner Quello's statement released February 23, 1987, associated with *General Docket No. 82-334*, FCC 86-523.

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

MM Docket No. 87-140

In the Matter of

Review of Technical and Operational
 Requirements: Part 73-C
 Commercial Educational FM
 Broadcast Stations

REPORT AND ORDER

Dated: October 21, 1987; Released: November 4, 1987

By the Commission:

INTRODUCTION

The Commission has before it a *Notice of Proposed Making*¹ (*Notice*) recommending that the same domestic standards apply to noncommercial educational FM (NCE-FM) broadcasting stations within 199 miles (320 kilometers) of the United States-Mexican border (border area) as are used in the rest of the United States. No change in the international procedures was contemplated. This *Report and Order* adopts the proposed rules, which allow applicants to submit applications based on the overlap of predicted signal strength contours (contour areas) with respect to domestic NCE-FMs, provided that minimum mileage separation requirements are satisfied with respect to Mexican stations. Domestic NCE-FM stations will still be subject to the obligations of the international agreement concerning FM broadcasting between the United States and Mexico (*Mexican Agreement*).²

BACKGROUND

Applicants for NCE-FM stations in affected communities of Arizona, California, New Mexico, and Texas, must consult a table of NCE-FM allotments (separate from the Table of Allotments for commercial FM stations) in order to determine available reserved band channels (channels 201-220, inclusive) allotted for these communities. They may be allowed to use vacant allotments only upon application to amend the table. In order to amend the table, the applicant is required to observe mileage separation from Mexican and domestic stations as prescribed in section 73.207(b)(3) of the Commission's rules. The table included vacant border area allotments from which application, was developed in order to protect and encourage the development of the NCE-FM service in that region.

In the *Notice*, the Commission concluded that requiring applicants to observe the same set of mileage separation from domestic NCE-FM stations as from Mexican stations might be unwarranted. We noted that there were no problems in the Canadian border area as

that it will result in faster service to the public with less expense to the NCE-FM broadcasters. It noted the allotment-assignment procedure has caused delays in issuing federal funds through NTIA, and that potential broadcasters may have been discouraged from submitting applications for stations because of the excessive time and expense involved under the current frequency assignment procedure. CLU observed that the elimination of the table would be consistent with our decision in previous proceedings not to adopt a nationwide assignment table for NCE-FM stations.⁷

7. Not all commenters are in favor of eliminating the allotment table for the border area, however. NPR suggested that we seek alternate methods to implement the contour method without eliminating the table, due to what it perceives as a detrimental side-effect of the table's demise. NPR contends that expansion by commercial FM stations broadcasting on the three lowermost commercial FM channels (221, 222, and 223), could deny the future availability of the three uppermost reserved band channels (218, 219, and 220).⁸ In addition, NPR is concerned that the need to protect from intermediate frequency (IF) interference⁹ those commercial stations broadcasting at 10.6 or 10.8 MHz above the frequencies assigned for the reserved band, would limit availability of useable NCE-FM spectrum. NPR is also concerned that the constraints, comprised of mileage separation, power limits and other requirements, that are imposed by operation of TV Channel 6 (which is just below the reserved band and adjacent to it) could further infringe upon useable NCE-FM spectrum. RMCPB expresses concerns similar to NPR, although it does not mention TV-6 constraints.

8. The arguments favoring retention of the allotment table for border area NCE-FM stations are not convincing. We believe the allotment-assignment procedure has been shown to be unnecessary by the adequate handling of frequency assignments for NCE-FM in the rest of the country using the demand system. Also, desired assignments in relatively unpopulated areas (for which NPR and RMCPB expressed particular concern) are readily available under the demand system, regardless of commercial growth on the adjacent channels. Thus, we conclude that the concerns raised by some of the commenters are unwarranted in light of the adequacy of already existing rules for NCE-FM stations. Accordingly, we will eliminate the table of allotments for the border area from our rules as proposed.¹⁰

CONCLUSION

9. The action we take herein will allow border area NCE-FM station applicants to base their spacings to domestic NCE-FMs on the contour method, provided they observe required mileages to Mexican assignments as established in the Mexican Agreement. We will also eliminate the table of allotments for NCE-FMs in the border area. Although our method of spectrum assignment will change as a result of this rule-change, application procedures will remain the same for new stations and for stations requesting to upgrade existing facilities. This policy should encourage the growth of the NCE-FM service in the border area, and make our NCE-FM assignment policy consistent throughout the United States.

PROCEDURAL MATTERS

10. The rules contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified requirements or burdens on the public.

11. The Secretary SHALL CAUSE a copy of this Report and Order, including the Final Regulatory Analysis in Appendix A, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. §601 et seq., (1981)).

12. Accordingly, IT IS ORDERED that under authority contained in Section 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, Part 73 of the Commission's rules IS AMENDED as set forth in Appendix C below, effective December 18, 1987.

13. IT IS FURTHER ORDERED that this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION

William J. Tricarico
Secretary

APPENDIX A

FINAL REGULATORY FLEXIBILITY ANALYSIS

I. Need for and Purpose of this action: This action is needed in order to encourage the future growth of NCE-FM in the border area, in addition to establishing a uniform NCE-FM station application procedure throughout the United States.

II. Summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result.

A. Issues raised. No commenting parties raised issues specifically in response to the initial regulatory flexibility analysis.

B. Changes made as a result of comments. No significant changes were made as a result of comments.

III. Significant alternatives considered and rejected. We have considered the proposals in the Notice and the comments in this proceeding. After full consideration of all of the issues raised throughout the course of this proceeding we have adopted the rules that we believe are the most reasonable.

IV. Impact on Small Businesses. This rule-change should benefit small businesses by allowing small NCE-FM broadcasters to obtain station assignments in an easier, quicker and less costly manner. Additionally, increasing the number of NCE-FM stations benefits many types of small businesses, as the demand increases for services related to the operation of those stations.

APPENDIX B

List of Commenters

Initial Comments

1. John J. Davis, P.E.
2. Joint Comments filed by The Regents of the University of California, California State University Long Beach Foundation, and California Lutheran University
3. National Public Radio
4. National Telecommunication and Information Administration (Informal)
5. California Lutheran University
6. Rocky Mountain Corporation for Public Broadcasting

There were no reply comments.

APPENDIX C

Part 73 of Title 47 of the Code of Federal Regulations is amended to read as follows:

1. The authority citations for Part 73 continue to read as follows:

Authority: 47 U.S.C. Secs. 154 and 303.

2. § 73.202 is amended by revising subparagraph (a)(1) to read as follows:

§ 73.202 Table of Allotments.

(a)(1) Channels designated with an asterisk may be used only by noncommercial educational broadcast stations. The rules governing the use of those channels are contained in § 73.501.

3. § 73.501 is amended by removing paragraph (c).

4. § 73.504 is amended by revising the title, revising paragraph (a) and removing the table of channel assignments following paragraph (a); revising paragraph (b); removing paragraph (c); revising paragraph (d) and changing the designation of paragraph (d) to (c). The section is read as follows:

§ 73.504 Channel assignments in the Mexican border area.

(a) NCE-FM stations within 199 miles (320 km) of the United States-Mexican border shall comply with the separation requirements and other provisions of the agreement between the United States of America and the United Mexican States Concerning Frequency Modulation Broadcasting in the 88 to 108 MHz Band" as amended.

(b) Applicants for noncommercial stations within 199 miles (320 km) of Mexican border shall propose at least facilities (see § 73.211(a)). However, commercial educational stations may, at the discretion of the Commission, be licensed within the educational portion in accordance with the requirements set forth in this section.

(c) Section 73.208 of this chapter shall apply to the determination of reference computations used in applications for channel assignment or authorization, distance will be determined as follows: (1) If a transmitter site has not been established, on the basis of the site; if a transmitter site has not been established, on the basis of the site; if a transmitter site has not been established, on the basis of the site; if a transmitter site has not been established, on the basis of the site.

5. § 73.509 is amended by revising paragraph (a) as follows:

§ 73.509 Prohibited overlap.

(a) An application for a new or station other than a Class D (second) shall not be accepted if the proposed operation would result in a prohibited overlap of signal strength contours with licensed by the Commission and operated in the same band (Channels 200 - 220, inclusive) a

FOOTNOTES

¹ See Notice of Proposed Rule Making, 87-140, released June 19, 1987, 52 FR 2387.

² "Agreement between the United States and the United Mexican States Concerning Frequency Modulation Broadcasting in the 88 to 108 MHz Band," ratified in Washington, D.C., 1972. Pertinent provisions of the agreement are found in CFR §§ 73.207 and 73.504. See Report and Order, 50 FCC 2d 172 (1974).

³ Use of the contour method for domestic spacing in the Canadian border area is provided for in the "Canada-U.S.A. FM Broadcast Agreement."

⁴ CLU and other parties involved in the allotment proceeding, MM Docket No. 87-140, requested that we exempt their pending border area applications from the effects of this proceeding. The request contemplated nor did we propose that penalties for the border area should be immune from new rule.

⁵ We did not address in the Notice the issue of overheight power reduction (in which the maximum antenna height, provided that the maximum distance to the station is no farther than it would were the station maximum power/height combination) Accordant with the request, we have attempted to resolve it here. Nevertheless, it is different for the border area than it is for the United States. Any change in this regard must await agreement with Mexico.

⁶ "Demand basis" frequency assignment allows the applicant to propose to locate a station virtually anywhere, provided the location, in conjunction with the proposed facilities, satisfies the technical standards designed to prevent objectionable interference between FM stations. Thus, if the location of a station would result in its compatibility with the existing radio environment, it would be technically acceptable to the Commission.

⁷ In the Second Further Notice of Proposed Rulemaking in Docket No. 20735, Changes in the Rules Relating to NCE-FM, 47 FR 24144, 153, (1982), for example, we considered this issue and refused to adopt a nationwide allotment table for NCE-FM stations.

⁸ NCE-FM applicants on the uppermost three reserved band channels are required to observe mileage separations to commercial stations on the lowermost three commercial channels. See 47 CFR § 73.507.

⁹ IF interference is a phenomenon that can occur in the FM receiver if two relatively strong signals are received whose channels are 10.6 or 10.8 MHz (53 or 54 channels) apart. To prevent reception of two such strong FM signals mileage separations between two such stations have been imposed. See 47 CFR § 73.207.

¹⁰ Although the domestic border area NCE-FM table of allotments will be eliminated from our Rules, this does not affect the original list of allotments contained in the Mexican Agreement nor subsequent revisions accepted by the U.S. and Mexico.

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

In the Matter of

Abbreviated Dialing Arrangement and
the Application of Premium Access
Charges in Docket 78-72 Phase III

MEMORANDUM OPINION AND ORDER

Adopted: October 8, 1987; Released: November 5, 1987

By the Commission.

INTRODUCTION

1. In July 1986 the National Exchange Carrier Association, Inc. (NECA) petitioned this Commission for a declaratory ruling that an abbreviated dialing arrangement (ADA) developed by several smaller exchange carriers (ECs) satisfies our equal access requirements for independent telephone companies (ITCs) and qualifies for premium access charges. On behalf of ECs that would offer this service, NECA also requested a waiver of our equal access notice and presubscription requirements relative to these arrangements. We received eleven comments and seven reply comments in response to the NECA request.¹ In this Order, we find that ADA appears to represent an improvement over existing non-premium access, and accordingly encourage its development and provision as an optional alternative service, as discussed below. To the extent that NECA requests a modification of our equal access policy and requirements for ITCs implementing ADA, however, we deny its petition.

II. BACKGROUND

2. In a series of orders in Phase I of CC Docket No. 78-72, we have established a discount for non-premium access until equal access becomes available.² First, in the Access Charge Order, we determined that, to reflect the superior access that would continue to be available to AT&T until equal access was implemented, AT&T should pay a lump-sum premium charge during the transition period, and that the premium charge should be phased out at approximately the same rate as equal access was phased in. On reconsideration we reaffirmed our commitment to the objectives described in the Access Charge Order, and provided that the lump-sum premium charge on AT&T could be replaced with a differential between premium and non-premium access. We stated that this differential would be based upon the competitive advantages that flowed from the premium interconnection that AT&T received compared with the interconnection offered to interexchange carriers (IXCs) other than AT&T (other common carriers or OCCs).³ We determined that a differential of 35% on Carrier Common Line charges should enable the OCCs to compete for customers successfully because it should adequately offset the competitive advan-

tage that AT&T enjoyed from its further reconsideration we amended to 55% and applied it to all access charges that this discount would be phased by - end-office basis as equal access under the current rules the dis premium access connections in equal access and is eliminated.

3. In Phase I of CC Docket 78-72 six-month notice/presubscription provision of equal access. We stated *Reconsideration Order* that if equal access an OCC chose not to use it, the premium rate.⁴ We added that we an OCC to pay the premium rate failed to provide at least six months access would be available; the OCC counted rate until the expiration after it in fact received such notice notice period was necessary to provide opportunity to engage in technical activities, such as consumer education of customers (i.e. convincing customers OCC as their "1+" or "primary" ITC).

4. In Phase III of CC Docket 78-72 ITCs to implement equal access a phased approach analogous to the Operating Companies (BOCs) in the Judgment (MFI)⁵ and for GTE Decree.¹⁰ In that proceeding we determined that should be required to implement certain circumstances and under certain from those set forth in the two con-

5. In establishing equal access we recognized the following characteristics of the GTE sector, which distinguish it from BOCs: (a) the variability in installed (SPC) equipment types, (b) electromechanical equipment, (c) severe constraints on capital spending and OCCs alike, will be less. We that we should not apply a uniform access conversion by the ITCs. Sp a general requirement that end of switches be converted to offer equal in type and quality to that three years of the receipt of a real access services from any OCC. I offices equipped with electromechanical not be required to convert to equipment specified timetable, but should be practicable according to the guidance in our Phase III Notice.¹¹ We proposed a three-year timetable or of the requirement of certain specific equal access applicant could show that the timing of such features was not feasible clearly outweighed potential benefits of communications services.¹² We also considered circumstances we anticipated that access would be concluded in less than a reasonable request.¹³