16. IT IS FURTHER ORDERED that LTLD's earth station authorization is subject to coordination with other administrations in accordance with Article 11 of the ITU Radio Regulations;

17. IT IS FURTHER ORDERED that the Petitions to Deny the subject applications ARE HEREBY DISMISSED.

18. The Commission retains jurisdiction over this matter to ensure that carriers and other authorized users have non-discriminatory use of and equitable access to the communications satellite system and the earth station authorized herein for off-island services.

19. No substantial changes inconsistent with this or any other relevant Commission order shall be made before final execution of an IRU agreement between LTLD and Teleglobe Canada, and a copy of the agreement shall be filed with the Commission within 30 days of its execution.

20. This order is issued under Section 0.291 of the Commission's rules and is effective upon adoption.

FEDERAL COMMUNICATIONS COMMISSION

Gerald Brock

Chief, Common Carrier Bureau

FOOTNOTES

[1] The captioned applications were originally filed by the Puerto Rico Telephone Company (PRTC). By amendment dated August 23, 1988, PRTC and LTLD filed amendments to the pending applications to substitute LTLD as the applicant.

[2] All America Cables and Radio, Inc. v. F.C.C., 736 F.2d 752 (D.C. Cir. 1984). After receiving authorization for the Canada service, PRTC provided the service with Teleglobe Canada using facilities leased from the ITT Companies and AT&T. Following the Court's decision, the service was terminated on August 22, 1984.

[3] On March 17, 1987, PRTC amended these applications to reflect, 1) use of a 15 meter antenna which shall meet INTELSAT revised Standard A technical parameters, instead of the 30-meter antenna originally requested; 2) use of a fiber optic cable rather than a microwave facility to connect the proposed facility with the international switch in San Juan; 3) use of PRTC's DMS-300 switch at Caparra in San Juan rather than its DMS-200 equipment to switch international traffic from the local network to the proposed facility; 4) use of up to 289 voice-grade circuits, instead of up to 224 such circuits, to reflect revised traffic projections; 5) changes in the overseas countries to be served; and 6) use of access arrangements first described by PRTC in the Commission's pending Rule Making regarding policies to be followed in authorization of service to and from Puerto Rico. On April 9, 1987, PRTC amended its application to reflect a change in the proposed location of the earth station. PRTC has completed the necessary frequency coordination in the United States.

[4] AT&T Acquisition of ITT Communications Services, Inc. Subsidiaries, File No. ENF-87-07, DA 87-825 (released June 26, 1987), app. rev. pending.

[5] Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Provide Telecommunications Service Off of the Island of Puerto Rico, Notice of Proposed Rule Making, CC Docket No. 86-309, FCC 86-319, Mimeo 36783 (released July 18, 1986); Report and Order, 2 FCC Rcd 6600 (1987).

[6] Although off-island services will be provided by LTLD, PRTC must comply with these conditions before LTLD can be authorized to enter the off-island service market.

[7] MCI, General Comserve Corporation, A-Plus Information Processing Corporation and Call U.S. Inc. also filed petitions for reconsideration of the Commission's Report and Order in CC Docket No. 86-309.

[8] On August 19, 1988, PRTA filed a petition for declaratory ruling requesting a determination that the provision of off-island telecommunication services by a wholly-owned, separate subsidiary of PRTA would qualify the separate subsidiary for treatment as a non-dominant carrier. By separate order released today, we granted PRTA's request that its separate subsidiary, LTLD, would be non-dominant in the provision of off-island services. In light of LTLD's status as a non-dominant carrier, no further action is required on LTLD's pending Section 214 applications to provide services in the domestic off-island market. However, LTLD's continued operation in the domestic off-island market is contingent on PRTC's compliance with the conditions adopted in the Report and Order in CC Docket No. 86-309.

[9] See MTS and WATS Market Structure, 81 FCC 2d 177, 202 (1980); International Relay, Inc., 77 FCC 2d 819, 824 (1980), on reconsideration, 82 FCC 2d 41 (1981); MCI Order, at para. 8; Satellite Business Systems, 91 FCC 2d 941, 946-7 (1982); Western Union Telegraph Co., 91 FCC 2d 1051, 1061-3 (1982).

[10] The Report and Order in CC Docket No. 86-309 also found that competition was reasonably feasible in the domestic off-island market. In light of LTLD's non-dominant status, there is no need for further action on LTLD's pending Section 214 applications to provide service in the domestic off-island market.

[11] We note that interntional frequency coordination in accordance with Article 11 of the International Telecommunications Union (ITU) Radio Regulations has not been completed. Thus, authorization of LTLD's Humacao earth station is conditioned on final coordination of the earth station with other administrations in accordance with Article 11 of the ITU Radio Regulations.

[12] NECA Tariff F.C.C. No. 1, Transmittal Nos. 274 and 285, effective February 16, 1988. NECA Tariff F.C.C. No.1 has since been replaced by NECA Tariff F.C.C. No. 5.

[13] This condition is subject to reconsideration in the CC Docket 86-309 proceeding.

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

MM Docket No. 88-375

In the Matter of

Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations	RM-6236 RM-6237

NOTICE OF PROPOSED RULE MAKING

Adopted: July 20, 1988; Released: September 12, 1988

By the Commission.

INTRODUCTION

1. The Commission hereby gives notice of proposed rule amendments that would permit improvements in the facilities of the majority of Class A FM broadcast stations in the United States.[1] Specifically, this *Notice of Proposed Rule Making* proposes the creation of a new "C3" class of FM broadcast station and a general increase in the maximum transmitting power permitted for Class A FM broadcast stations. By providing additional opportunities for expanded coverage areas, both proposals would potentially enable Class A FM broadcast stations to provide better service to their audiences. We believe that adoption of the proposed regulations would further promote a competitive marketplace for the development and use of broadcast facilities and services, further develop a regulatory framework that permits markets for broadcast services to function effectively, and improve efficiency in the allocation, licensing, and use of the electromagnetic spectrum.

BACKGROUND

2. Commercial FM stations are allotted to communities throughout the United States.[2] These allotments are listed in a Table of Allotments contained in the Commission's Rules.[3] For FM station classification purposes, the country is divided into three zones: I, I-A and II.[4] Zones I and I-A represent areas of greater population density. FM facilities are classified on the basis of the zone in which the transmitter is located, the transmitter power and the effective antenna height.[5] There are currently six classes of commercial FM broadcast stations: A, B1, B, C2, C1 and C. Each class has a minimum power requirement and a maximum power limit.[6] Stations and vacant allotments in each class are afforded protection from interference from other FM stations on the same channel and adjacent channels by means of required distance separations. Class A and B1 stations are assigned only in Zones I and I-A. Class C, C1 and C2 stations are assigned only in Zone I. Class A FM stations are assigned in all three zones

lated to provide a primary service area for the Class C3 bounded by the 1 mV/m (60 dbu) contour, rather than the 0.7 mV/m (57 dbu) contour suggested by Petaz.

7. For example, JAB argues that using the 0.7 mV/m (57 dbu) contour would be counterproductive, because the minimum first adjacent channel spacing between a Class C and a Class C3 station would then need to be 193 kilometers (120 miles), which is larger than that currently required between a Class C and a Class C2 - 188 kilometers (117 miles). However, if the 1 mV/m (60 dbu) contour were used instead, the first adjacent channel spacing would need to be only 175 kilometers (110 miles). Other adjacent channel comparisons yield similar results. Thus, JAB claims more station assignments would be possible if spacings for Class C3 stations were based on providing a primary service area bounded by the 1 mV/m (60 dbu) contour, rather than the 0.7 mV/m (57 dbu) contour.

8. *The New Jersey Petition.* The New Jersey petition requests a "blanket" power increase for all Class A FM broadcast stations from the current 3,000 watts to 6,000 watts. New Jersey states that Class A stations are at a severe competitive disadvantage in today's radio market because they now compete with Class B and C stations which have much larger service areas. New Jersey believes that if Class A stations are afforded the requested power increase, their competitive position in the radio marketplace will be improved.

9. New Jersey advances two principal reasons why it believes that Class A stations today are less able to compete for advertising revenue: (1) Commission policy favoring stations with more powerful facilities over Class A stations;[14] and (2) dramatic urbanization, which is to say that the small towns and communities Class A stations originally served have expanded in area over the years, or have been assimilated into larger communities, whereas the Class A stations' primary service areas have remained constant.[15]

10. New Jersey notes that the Commission recently eliminated a rule that had reserved twenty channels for Class A operation only.[16] However, it estimates that only ten percent of Class A stations can actually take advantage of the opportunity to upgrade on those twenty channels because the required distances to other existing FM stations cannot be met, or because a substantial investment in new equipment would be necessary. New Jersey believes that most Class A stations could take advantage of the power increase it requests, at far less expense, merely by adjusting existing equipment or by installing higher gain antennas.

11. To address the effects of the requested power increase on existing stations and the methodology by which the power increase could be accomplished, New Jersey provides an engineering study and a number of specific recommendations. The study, which employs contour overlap ahalysis to assess the effects of the requested power increase on existing stations, indicates that there would be no incursion into the primary service area of any class of station except Class B.[17]

12. New Jersey proposes that all Class A stations meeting current channel separation requirements be allowed to increase their power to 6000 watts ERP at 100 meters height above average terrain (HAAT), or equivalent.[18] It claims that existing separations would protect Class B stations to their 58 dBu (0.794 mV/m) contour.[19] New Jersey further proposes that grandfathered short-spaced Class A stations be [illegible] short-spaced by less than 10 km and (2) those short-spaced by 10 km or more. Stations in the former group would be allowed to increase power provided that the 60 dBu (1.0 mV/m) contours of other short-spaced stations would be protected. Stations in the latter group would be allowed to increase power provided that the 64 dBu (1.585 mV/m) contours of other short-spaced stations are protected, or if equivalent protection between the two stations is provided.

13. The majority of the comments in response to the New Jersey petition (118 of the 127) were filed by licensees of Class A FM stations from all over the United States. These commenters unanimously support New Jersey's proposal, and most indicate that they would take advantage of any permitted power increase at the earliest opportunity.

14. Many of the remaining comments were filed by licensees of Class B or B1 FM stations. They strongly oppose the New Jersey proposal, asserting that if nearby Class A stations were permitted to increase power in the manner New Jersey requests, interference within the primary service area of Class B and B1 stations would result.[20] National Public Radio (NPR) also opposed New Jersey's petition, but on the grounds that a power increase for Class A stations might limit development of the upper portion of the non-commercial FM band.

15. The comments of the National Association of Broadcasters (NAB) suggest a compromise between the two positions. NAB is sympathetic to the New Jersey request for additional power, but is also concerned that there be no loss of service within any portion, no matter how small, of the primary service areas of Class B stations. NAB suggests that Class A stations be allowed to increase power, but upon individual application, and provided they are able to meet the requirements of a new table of separations. The table of separations NAB provides differs from the current table in Section 73.207 only in that the minimum required distances between Class A stations and co-channel and first adjacent channel Classes A, B1 and B stations are increased slightly. The increased distances, in kilometers, are as follows (the existing required distance is given in parenthesis).

NAB Recommended Separation Distance Increases for 6000 Watt Class A FM Stations

	Class A	Class B1	Class B
co-channel	111 (105)	141 (138)	168 (163)
1st adjacent channel	68 (64)	90 (88)	113 (105)

16. The Association for Broadcast Engineering Standards, Inc. (ABES), in its comments, also favors increased separation distances if Class A power is raised. However, the table of increased distances suggested by ABES differs from NAB's table. The increased distances recommended by ABES, in kilometers, are as follows (current distances in parenthesis):

Increases for [illegible] FM Stations

	Class A	Class B1	Class B	Class C3	Class C
co channel	116 (105)	144 (138)	178 (163)	no change	no change
1st adj	71 (64)	97 (88)	114 (105)	no change	no change
2nd/3rd adj	28 (27)	no change	no change	75 (74)	107 (105)

PROPOSALS

17. Having considered the petitioners' showings and the comments filed in response thereto, we are persuaded that significant public benefits may indeed result from the creation of a new FM Class C3 in Zone II and a modest increase in transmitting power for Class A stations. We tentatively conclude that each of these actions would result in a net increase in service to the listening public. To the extent that the potential audience for Class A FM stations is expanded, beneficial competition and program diversity are likely to be enhanced.

18. Originally, Class A stations were intended to provide local service to smaller communities. However, in order to meet the demand for FM service, they are now also assigned to larger communities in order to provide additional service where no additional higher class stations can be assigned.[21] Also, to encourage the improvement of FM service, the Commission has in recent years amended its rules to reduce the expense, inconvenience and risk incurred by FM stations, including Class A stations located in smaller communities, seeking upward reclassification of their allotment and station facilities.[22] Consequently, many Class A FM stations today find themselves competing directly with the much larger Class B1, B, C2, C1, and C FM stations in the same communities.[23] The actions we propose have the potential to offset some of the competitive disadvantages currently faced by Class A stations.

19. Class A stations, although they have comparatively small service areas, play a very large and vital role in the broadcasting marketplace, particularly by providing service with a local focus and by serving smaller or specialized programming listener groups. Allowing these licensees to improve their facilities, either through increased transmitting power or upgrading to a higher class, will enable them to better serve the listening public.[24]

20. *Class C3 proposal.* The Commission has initiated preliminary studies which indicate that FM spectrum utilization in Zone II may be increased if an additional intermediate classification is created along the lines of those suggested in the petition filed by Petaz. As demonstrated in BC Docket No. 80-90, which involved a similar action, the creation of such an intermediate classification could further increase the availability of channel assignments while affording full protection to the service of the existing allotments and stations. This would create new opportunities for parties interested in broadcasting, and would permit a number of current Class A stations to upgrade to the higher level facilities. Both results would bring more and better service to the radio audience. Therefore, we propose to add a new class of station, Class C3 (an intermediate class between Class A and C2) with maximum facilities of 25 kW ERP and antenna height of 100 meters (328 feet) above average terrain.

21. For expediency, Petaz chose these particular maximum parameters (25 kW ERP, 100 m HAAT) consistent with those of the Class B1, so as to be able to utilize the

to preserve as many opportunities as possible for stations to achieve high power and serve wide areas. Those opportunities have largely been exploited, and the addition of the C3 Class would not now have the preclusive effect it could have had then. Therefore, we believe that creation of the proposed new Class C3 would constitute an appropriate refinement of our allotment and assignment processes.

25. *Class A power increase proposal.* We propose to raise the maximum ERP limit for Class A FM stations from 3000 watts to 6000 watts.[27] (*See* the proposed amendments to Sections 73.210 and 73.211 in Appendix A.) The reference HAAT would remain at 100 meters. We invite comments, however, as to whether a different maximum ERP limit (e.g. 5000 watts) or a different maximum ERP and reference HAAT combination (e.g. 4000 watts and 125 meters) would be more appropriate to accomplish the objectives of a general upgrading of Class A station facilities.

26. We are considering two possible methods for implementing the proposed power increase. The record developed in response to the petition reveals disagreement within the industry as to whether all Class A stations should be allowed to increase power or just those able to meet increased separation distances. We believe that further public comment addressing the advantages and drawbacks of each of these approaches will assist us to determine which would best serve the public interest.

27. Using the first method (METHOD 1), we would raise the maximum ERP limit for *all* Class A FM stations from 3000 to 6000 watts while retaining the co-channel and adjacent channel spacings currently applicable to Class A stations. We would, however, increase slightly the intermediate frequency channel spacings, consistent with our proposal in MM Docket 86-144.[28] (*See* the proposed amendments to Section 73.207 in the Appendix, and further discussion under the heading *IF separation distances, infra*.) Grandfathered short-spaced Class A stations[29] would be allowed to increase ERP up to 6000 watts, but would remain subject to the provisions of Section 73.213 of the rules. Grandfathered short-spaced stations would therefore have to relocate, or reduce antenna height, or employ a directional antenna in order to increase power.[30]

28. Initially, it appears that allowing all Class A stations to increase power (METHOD 1) would have little effect on other existing stations. There are relatively few stations located at the minimum separation distances,[31] and for those stations that are, any loss in service area would be much smaller than the gain in Class A station service area (*See* Appendix B). Maintaining the current separation distances (except for the IF separation distances) would also serve to minimize preclusionary effects. However, the staff will examine these matters further during the pendency of this proceeding.

29. The second method we are considering for implementing the proposed Class A power increase (METHOD 2) is based on the suggestion made by NAB (and ABES) to allow the increase in power for only those Class A stations able to meet increased separation distances. The NAB suggestion is the result of extensive study of the Class A power increase by members of NAB's FM Transmission Subcommittee. This Subcommittee, which has members who represent both Class A and Class B station licensees, examined the issues involved in a series of monthly meetings which began in June 1987. The Subcommittee's recommendations form the basis for NAB's comments.

30. Using METHOD 2, we would allow only those Class A stations able to meet appropriate separation distances (to existing licensed stations, applications, or construction permits, but not vacant allotments) to increase power. Service gains would not be as great as under METHOD 1, but any adverse effects on existing stations would be minimized. The effect of this approach would be to create two categories of Class A station - one would consist of 6000 watt Class A stations; the other would comprise those Class A stations that could not reach 6000 watts ERP because of their inability to meet the increased separation requirements. All grandfathered short-spaced stations would apparently fall into the latter category. However, some grandfathered short-spaced stations might be allowed to increase power (pursuant to existing policy) if mutual agreements could be reached with all of the stations involved, and if it were shown that such an increase would serve the public interest.[32]

31. METHOD 2, with its two categories of stations (3000 watts and 6000 watts), implies different separation distance requirements for each power level. Alternatively, we could employ a single set of distances based on the higher power. However, that would unnecessarily restrict the ability of lower power stations to change sites. Both choices appear to add a measure of complexity to what is intended to be a straight-forward proposal. We seek comment on this.

32. Regardless of which method were to be selected, we would prefer to minimize administrative burdens. We note that NAB has recommended that we consider an increase in Class A maximum power only upon individual application. Although the Commission generally proceeds upon individual applications in upgrading FM facilities, we are concerned that employment of such a procedure here would result in undue delays, even for applications that present no problems. Nevertheless, we solicit comments on the procedural aspects and implications of a case-by-case approach.

33. We believe, however, that the application processing burden can be lessened and unnecessary delays in authorizing the proposed power increase can be avoided if we employ procedures combining elements of both the "blanket" increase requested by New Jersey and the strictly case by-case method suggested by NAB. Therefore, we are proposing the following procedures for handling administration of the Class A power increase. We propose to allow those Class A stations that can effect the power increase by simply adjusting transmitter output power, replacing an omnidirectional antenna with a higher gain omnidirectional antenna, replacing the transmission line or components within the transmission line, or by a combination of these methods, to do so without individual prior approval.[33] In such cases, the station licensee would be required only to file Form 302, together with a supplemental exhibit addressing environmental and coordination matters[34], within ten days after the power increase is made.[35] In all other cases, such as a change in location or an increase in antenna height, individual prior approval would be required and the station licensee would need to file Form 301 before making the change. Also, in cases where the power increase could result in exposure of workers or the general public to levels of radio frequency radiation in excess of American National Standards Institute guidelines (ANSI C95.1-1982), approval by the Commission in advance of implementation would be required.[36] Use of these procedures would enable many Class A stations to take advantage of the increase quickly, and would avoid undue burden on our application processing staff. (*See* the proposed amendments to Section 73.1690 in Appendix A.)

34. The rule amendments proposed differ only slightly between METHOD 1 and METHOD 2. Specifically, in the proposed revisions to Section 73.211, proposed new paragraph (b)(1)(iv) would be included if METHOD 2 were employed, and excluded if METHOD 1 were employed. (*See* proposed amendments to Section 73.211 in Appendix A.) Also, additional revisions to Section 73.207 would be necessary if METHOD 2 were chosen *and* applications from all classes of stations, rather than just applications from Class A stations, were required to comply with the additional separation distance requirements. We invite suggestions for any additional rule changes that might be needed to administer the proposed power increase.

35. With regard to NPR's concern that Class A upgrades may adversely affect public broadcast services, (particularly in areas where TV Channel 6 operation reduces the spectrum available for non-commercial operations), we note that we already developed a policy to address this issue in the *First Report and Order* in MM Docket 86-144.[37] We would apply the same policy to the Channel 221 Class A to Class C3 upgrades that would result from our proposal herein. Nevertheless, we invite comments as to whether and how this policy should be modified to prevent public radio service from being constricted if bilateral increased separation requirements are employed in connection with the proposed Class A power increase.

OTHER MATTERS

36. *IF separation distances.* Earlier this year we adopted a *Further Notice of Proposed Rule Making* (*Further Notice*) in MM Docket 86-144 in which we proposed to adjust the FM domestic intermediate frequency (IF) distance separation requirements to provide a uniform level of protection from IF interference.[38] The distances we set forth in that proposal were calculated to prevent overlap of the predicted 36 mV/m (91 dBu) contours of IF-related stations, regardless of the station classes. Consistent with that proposal, we have calculated IF separation distances for the proposed new Class C3 based on the same technical criterion, and have incorporated them into our proposed rules here.[39] (*See* the proposed Section 73.207 in the Appendix.)

37. In view of the proposed power increase for Class A stations, however, we find it necessary to propose an increase in the required Class A- to-Class A IF distance separation and slightly less reduction (than proposed in the *Further Notice*) in the required IF distance separations between Class A and all other classes of stations. If Class A power were to be increased as we propose, and the Class A-to-Class A distance remained at 8 km, as the rules currently require, overlap of the 50 mV/m contours, rather than the 36 mV/m contours, would be prevented. We considered the 50 mV/m level in our IF proposal, but found that the record in that proceeding did not support, on technical grounds, relaxation to that level.[40] We are not seeking comment here on the appropriate level of protec-

propose to inform the licensees of these stations of their particular status, then provide a three year period during which they may modify facilities to meet the criteria for station classification under their current class, or otherwise be subject to reclassification. This proposal is consistent with the procedures we used in BC Docket 80-90 to insure that FM station classifications are commensurate with the size of the area that they serve. Implementation of these procedures would ensure that stations that do not meet minimum service requirements do not receive excessive protection and thereby preclude other operations.

COMMENT PROCEDURE

42. Under procedures set out in Section 1.415 of the rules and regulations, 47 CFR §1.415, interested persons may file comments on or before **November 22, 1988** and reply comments on or before **December 22, 1988.** All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in Report and Order.

43. In accordance with the provisions of Section 1.419 of the Rules and Regulations, 47 CFR §1.419, formal participants shall file an original and 5 copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

EX PARTE CONSIDERATIONS

44. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* presentations are permitted except during the Sunshine Agenda period. *See generally* Section 1.1206(a). The Sunshine Agenda period is the period of time which commences with the release of a public notice that a matter has been placed on the Sunshine Agenda, and terminates when the Commission (1) releases the text of a decision or order in the matter; (2) issues a public notice stating that the matter has been deleted from the Sunshine Agenda; or (3) issues a public notice stating that the matter has been returned to the staff for further consideration, whichever occurs first. Section 1.1202(f). During the Sunshine Agenda period, no presentations, *ex parte* or otherwise, are permitted unless specifically requested by Commission or staff for the clarification or adduction of evidence or the resolution of issues in the proceeding. Section 1.1203.

45. In general, an *ex parte* presentation is any presentation directed to the merits or outcome of the proceeding made to decision-making personnel which (1) if written, is not served on the parties to the proceeding, or (2), if oral, is made without advance notice to the parties to the proceeding and without opportunity for them to be present. Section 1.1202(b). Any p[illegible] written *ex parte* presentation must provide on the same day it is submitted a copy of same to the Commission's Secretary for inclusion in the public record. Any person who makes an oral *ex parte* presentation that presents data or arguments not already reflected in that person's previously-filed written comments, memoranda, or filings in the proceeding must provide on the day of the oral presentation a memorandum to the Secretary (with a copy to the commissioner or staff member involved) which summarizes the data and arguments. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. Section 1.1206.

INITIAL REGULATORY FLEXIBILITY ANALYSIS

46. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IFRA) of the expected impact on small entities of the proposals suggested in this document. Comments on the IFRA are invited. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the IFRA 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. Section 601 *et seq.*,(1981)).

I. Reason for action

The Commission is proposing to add an additional Zone II FM broadcast station classification (Class C3), and to increase the permitted maximum power for Class A FM broadcasting stations. The principal reason for these proposals is to provide additional options for improvement of facilities of Class A FM stations. In particular, the proposed action would provide means for Class A FM broadcast stations to expand their signal coverage areas and to provide a stronger signal within their existing coverage areas, while providing reasonable levels of protection to other classes of existing stations and allotments. These proposed actions are intended to increase FM broadcast service to the public and to encourage beneficial competition between broadcast facilities.

II. The objective

The objectives of the proposed rules are to promote a competitive marketplace for the development and use of broadcast facilities and services, to provide a regulatory framework that permits markets for broadcast services to function effectively, and to encourage efficiency in the allocation, licensing, and use of the electromagnetic spectrum.

III. Legal basis

The legal basis for the action proposed herein is contained in Sections 4 and 303 of the Communications Act of 1934, as amended. Specifically, paragraphs 303(a), 303(b), 303(c), 303(d), 303(f), 303(h) and 303(r) of the Communications Act apply.

IV. Description, potential impact, and number of small entities affected

There are appr[illegible] most of which are small entities. Changes in operating parameters as proposed herein have the potential to affect the balance between the number of stations that can be authorized in a given market and the extent of primary service each can provide.

V. Reporting, Recordkeeping, and Other Compliance Requirements

There would be no additional reporting, recordkeeping or other compliance requirements. However, under the proposed rules, those Class A licensees able to increase transmitting power without prior approval would be required to file, together with existing Form 302, a supplementary exhibit comprising responses to a few of the questions that are contained in existing Form 302.

VI. Federal Rules which Overlap, Duplicate, or Conflict with the Proposed Rules

No federal rules overlap, duplicate or conflict with the proposed rules.

VII. Any Significant Alternatives Minimizing Impact On Small Entities and Consistent with stated Objective

Two of the parties filing initial comments suggested that additional or increased distance separations be required for Class A FM stations wishing to increase power. These suggestions could affect the impact of this proposal on small entities. The Commission will consider all relevant and timely comments filed that address these alternatives.

PAPERWORK REDUCTION

47. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and has been found to impose a modified information collection requirement on the public. Implementation of any modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

ORDERING CLAUSE

48. IT IS PROPOSED, pursuant to authority contained in Sections 4 and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154 and 303, That Part 73 of the Commission's Rules be AMENDED as set forth in the attached Appendix A.

FEDERAL COMMUNICATIONS COMMISSION

H. Walker Feaster, III.
Acting Secretary

B1 to C3	175 (109)	114 (71)	50 (31)	14 (9)
B1 to C2				
B1 to C1	(no changes to other distances)			
B1 to C				
B to B				
B to C3	211 (131)	145 (90)	71 (44)	17 (11)
B to C2				
B to C1	(no changes to other distances)			
B to C				
C3 to C3	153 (95)	99 (62)	43 (27)	14 (9)
C3 to C2	177 (110)	117 (73)	56 (35)	17 (11)
C3 to C1	211 (131)	144 (90)	76 (47)	24 (15)
C3 to C	237 (147)	176 (109)	96 (60)	31 (19)
C2 to C2				
C2 to C1				
C2 to C	(no changes to other distances)			
C1 to C1				
C1 to C				
C to C				

(2) Under the Canada - United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Canadian allotments and assignments by not less than the distances given in Table B, which follows. When applying Table B, U.S. Class C2 allotments and assignments are considered to be Class B; also, U.S. Class C3 allotments and assignments and U.S. Class A assignments operating with more than the equivalent of 3 kW effective radiated power and 100 meters antenna height above average terrain are considered to be Class B1.

* * * * *

(3) Under the Mexico - United States FM Broadcasting Agreement, domestic U.S. allotments and assignments within 320 kilometers (199 miles) of the common border must be separated from Mexican allotments and assignments by not less than the distances given in Table C, which follows. When applying Table C, U.S. Class C2, C3 and B1 allotments and assignments are considered to be Class B; U.S. Class C1 allotments and assignments are considered to be Class C; also, U.S. Class A assignments operating with more than the equivalent of 3 kW effective radiated power and 100 meters antenna height above average terrain are considered to be Class B.

* * * * *

(c) The distances listed below apply only to allotments and assignments on Channel 253 (98.5 MHz), after , 1988. The Commission will not accept petitions to amend the Table of Allotments, applications for new stations, or applications to change the channel or location of existing assignments where the following minimum distances (between transmitter sites, in kilometers) from any TV Channel 6 allotment or assignment are not met:

MINIMUM DISTANCE SEPARATION FROM TV CHANNEL 6 (82-88 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	21
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

3. 47 CFR 73.210 would be amended by revising paragraphs (a), (b)(1), (b)(2), and (b)(3) to read as follows:

§ 73. 210 Station classes.

(a) The rules applicable to a particular station, including minimum and maximum facilities requirements, are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located, or proposed to be located. The zones are defined in §73.205. Allotted station classes are indicated in the Table of Allotments, §73.202. Class A, B1 and B stations may be authorized in Zones I and I-A. Class A, C3, C2, C1, and C stations may be authorized in Zone II.

(b) The power and antenna height requirements for each class are set forth in §73.211. If a station has an ERP and an antenna HAAT such that it cannot be classified using the maximum limits and minimum requirements in §73.211, its class shall be determined using the following procedure.

(1) Determine the reference distance of the station using the procedure in paragraph (b)(1)(i) of §73.211. If this distance is less than or equal to 28 km, the station is Class A; otherwise,

(2) For a station in Zone I or Zone I-A, except for Puerto Rico and the Virgin Islands:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class B1.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class B.

(3) For a station in Zone II:

(i) If this distance is greater than 28 km and less than or equal to 39 km, the station is Class C3.

(ii) If this distance is greater than 39 km and less than or equal to 52 km, the station is Class C2.

(iii) If this distance is greater than 52 km and less than or equal to 72 km, the station is Class C1.

(iv) If this distance is greater than 72 km and less than or equal to 92 km, the station is Class C.

* * * * *

4. 47 CFR 73.211 would be amended by revising paragraphs (a)(1), (a)(2), the table in the introductory text of paragraph (b)(1), paragraphs (b)(1)(ii) and (b)(3) to read as follows:

§ 73. 211 Power and antenna height requirements.

(a) *Minimum requirements.* (1) Except [illegible] paragraphs (a)(3) and (b)(2) of this section, FM stations must operate with a minimum effective radiated power (ERP) as follows:

(i) The minimum ERP for Class A stations is 0.1 kW.
(ii) The ERP for Class B1 stations must exceed 6 kW.
(iii) The ERP for Class B stations must exceed 25 kW.
(iv) The ERP for Class C3 stations must exceed 6 kW.
(v) The ERP for Class C2 stations must exceed 25 kW.
(vi) The ERP for Class C1 stations must exceed 50 kW.
(vii) The minimum ERP for Class C stations is 100 kW.

(2) Class C stations must have an antenna height above average terrain (HAAT) of at least 300 meters (984 feet). No minimum HAAT is specified for Classes A, B1, B, C3, C2, or C1 stations.

* * * * *

(b) *Maximum limits.* (1) Except for stations located in Puerto Rico or the Virgin Islands, the maximum ERP in any direction, reference HAAT, and distance to the class contour for each FM station class are listed below:

Station Class	Maximum ERP	Reference HAAT in meters (ft)	Class contour distance in kilometers
A	6kW (7.8 dBk)	100 (328)	28
B1	25kW (14.0 dBk)	100 (328)	39
B	50kW (17.0 dBk)	150 (492)	52
C3	25kW (14.0 dBk)	100 (328)	39
C2	50kW (17.0 dBk)	150 (492)	52
C1	100kW (20.0 dBk)	299 (981)	72
C	100kW (20.0 dBk)	600 (1968)	92

* * * * *

(ii) If a station's ERP is equal to the maximum for its class, its antenna HAAT must not exceed the reference HAAT, regardless of the reference distance. For example, a Class A station operating with 6 kW ERP may have an antenna HAAT of 100 meters, but not 101 meters, even though the reference distance is 28 km in both cases.

* * * * *

(iv) Class A stations, other than stations located in Puerto Rico or the Virgin Islands, are further limited to a maximum ERP in any direction of 3kW (4.8 dBk), with height power reduction based on a class contour distance of 24 kilometers, unless the following minimum separation distances to other FM assignments are met:

MINIMUM DISTANCE SEPARATION FROM FM CHANNEL 253 (98.5 MHz)

FM Class	TV Zone I	TV Zones II & III
A	16	21
B1	19	23
B	22	26
C3	19	23
C2	22	26
C1	29	33
C	36	41

7. 47 CFR 73.1690 would be amended by revising paragraph (b)(2) and adding a new paragraph (c)(4).

§ 73. *1690 Modification of transmission systems.*

* * * * *

(b) * * *

(2) Change in the operating power from that specified on the station authorization, except as provided in paragraph (c)(4) of this section.

* * * * *

(c) * * *

(4) Increase in the effective radiated power of a Class A FM station pursuant to MM Docket 88-375, when such increase is effected by:

(i) replacement of a non-directional antenna with another non-directional antenna having higher gain, provided that the height above ground of the center of radiation is within ±2 meters of that specified in the station authorization, and/or

(ii) increase in the power input to the antenna, as a result of adjustment of the transmitter output power, change in the type or length of the transmission line, and/or installation of filters or diplexers.

APPENDIX B

ANALYSIS, USING PROTECTED CONTOUR METHOD, OF THE EFFECTS OF A POWER INCREASE FOR CLASS A FM STATIONS

Basis for evaluating the effects of a Class A power increase. The primary service areas of FM stations are protected solely by FCC rules requiring that stations must be separated from each other by certain minimum distances. These distances are set forth in §73.207 of FCC rules. Originally, distances were chosen to provide primary service areas having mileage radii as follows: Class A - 15 miles, Class B - 40 miles, Class C - 65 miles. Later, when Classes B1, C2, and C1 were added, separations for these classes were chosen to protect primary service areas having mileage radii of 28, 32 and 45 miles, respectively. For administrative convenience, the resulting separations were rounded to the nearest mile, or converted to metric and rounded to the nearest kilometer. It can be said that the current distances in §73.207 of the FCC rules protect service generally within the 60 dBu contour for Class A, C2, C1, and C stations, within the 57 dBu contour for Class B1 stations, and within the 54 dBu contour for Class B stations. The distances from the station location to these "desired signal" contours are derived from F(50,50) propagation data, whereas the distances to the "undesired signal" contours are derived from F(50,10) propagation data. F(50,50) means that the signal strength exceeds the specified level at 50% of the locations 50% of the time. F(50,10) means that the signal strength exceeds the specified level at 50% of the locations 10% of the time. These three basic signal strengths (54 dBu, 57 dBu and 60 dBu) are used for computations in this analysis instead of the numerous signal strengths that could be derived from the separation distances. For example, instead of using 59.3 dBu (0.927 mV/m) for Class A and 59.5 dBu (0.944 mV/m) for Class C, 60 dBu (1 mV/m) is used for both. It is understood that in the absence of interfering signals, usable service is provided well beyond the boundaries of these contours, and that this secondary service could be adversely affected by the Class A power increase requested. However, the effects on secondary service are not considered here. This analysis also ignores the effects of terrain and directional antenna characteristics, which could serve either to lessen or to exacerbate the effects shown. These simplifications are acceptable because the purpose of this analysis is to show only in a relative sense the theoretical magnitudes of the effects of a power increase, from 3000 to 6000 watts ERP, for Class A stations.

Attached table and charts. Attached is a table showing the minimum separation distances necessary, currently and if the Class A power increase were implemented, to maintain protection ratios (undesired to desired signal ratios) as follows: -20 dB for co-channel, -6 dB for first adjacent channel, and +40 dB for 2nd and 3rd adjacent channel. Also, there are eight charts showing the effects of increasing Class A power from 3,000 to 6,000 watts on other existing stations. On each chart, the shaded areas represent the predicted 60 dBu coverage area gained by the Class A station. Solid areas represent lost area (i.e. protection ratios exceeded) within the appropriate signal contour (54, 57 or 60 dBu).

Class A service area gains. The predicted 60 dBu contour of a Class A station operating with the current maximum facilities (3000 watts ERP and 100 meters antenna HAAT) is located approximately 24.2 kilometers (15.0 miles) from the transmitter. Increasing Class A transmitting power from 3,000 to 6,000 watts would provide a modest increase in this distance, from 24.2 to 28.3 kilometers (15.0 to 17.6 miles). Consequently, the approximate predicted area within the 60 dBu contour would increase from 1839.8 to 2516.1 square kilometers (710.7 to 971.9 square miles). This is an increase of 36.8% in area.

Impact on existing Class A stations. Where two co-channel Class A stations are at the minimum spacing permitted by §73.207, and both increase power from 3,000 to 6,000 watts (CHART A), no coverage within the 60 dBu contour is lost. However, each station gains less area than it would in a non-interference- limited situation. If one Class A station increases power, and the other doesn't (CHART B), the station with increased power receives the benefit of the full increase in predicted coverage area (as in the non-interference- limited situation), while the other station would lose an essentially negligible amount of coverage within its 60 dBu contour (approximately 14 square kilometers). Exactly the same analysis applies for the first adjacent channels (CHARTS C & D), except that the area lost is even less. It should be noted here that each Class A station increasing power could theoretically affect a maximum of six other co-channel Class A stations, plus 12 first adjacent channel Class A stations. Currently required spacings for second and third adjacent channel stations are sufficient to protect existing Class A stations from increased power Class A stations. However, there may be some minor impact in the gained coverage area for minimum spaced Class A stations that increase power, as a result of second and third adjacent channel signals.

Impact on stations in Zone II. Zone II contains Class A, C2, C1 and C stations. Strictly from a contour analysis perspective, the requested Class A power increase would not cause any loss of coverage within the 60 dBu contour of any Class C, C1, or C2 FM broadcast station.

Impact on stations in Zone I. Zone I (an area of greater population density in the northeastern portion of the continental U.S.) contains Class A, B1 and B stations. For the hypothetical situation where a Class A station is at the minimum spacing to a co-channel Class B or B1 station (CHARTS E & G) or a first adjacent channel Class B or B1 station (CHARTS F & H respectively), the power increase would result in a small loss of area within the 54 dBu (or 57 dBu, as applicable) contour. These theoretical area losses are as follows:

Class A to B, co-channel	232 square km or 1.7% of the area within the 54 dBu contour.
Class A to B, 1st adjacent channel	200 square km or 1.5% of the area within the 54 dBu contour.
Class A to B1, co-channel	28 square km or 0.4% of the area within the 57 dBu contour.
Class A to B1, 1st adjacent channel	115 square km or 1.8% of the area within the 57 dBu contour.

It appears that there are currently no situations where a Class A station is located closer than 170 kilometers to a Class B station on the same channel. In fact there are only 5 instances where a Class A and B station on the same channel are located within 250 km of each other. Consequently, there is actually very little likelihood of Class B service area (within the 54 dBu contour) being lost as a result of a co-channel Class A station increasing power from 3000 to 6000 watts.

With regard to Class B1 protection, at this time there are only 29 Class B1 stations. These B1 stations are either new, upgraded former Class A stations, or downgraded former Class B stations. Of these, only the downgraded former Class B stations could be short-spaced. Although spacing data for these Class B1 stations vs. Class A stations has not been analyzed here, there is not, in the aggregate, much potential for lost service (within the 57 dBu contour) from only 29 stations, each potentially losing only a small percentage.

above average terrain and the primary service area radius established when each class was created.

Station Class	Power Minimum	(watts) Maximum	Reference antenna height above average terrain	Approx. primary service radius
A	100	3000	100 (328) m (ft)	24 (15) km (mi)
B1	3100	25000	100 (328)	45 (28)
B	25500	50000	150 (492)	64 (40)
C2	3100	50000	150 (492)	52 (32)
C1	51000	100000	299 (981)	72 (45)
C	100000	100000	600 (1968)	105 (65)

[7] There are approximately 4111 commercial FM broadcast stations of all classes.

[8] The term "primary service area" means the area within which an FM station's signal is protected from interference by other FM stations. In the commercial portion of the FM broadcast service, such protection is provided solely by means of required distance separations between the individual stations. The distances are specified by station class in §73.207 of the Commission's rules.

[9] Petaz Communications, Inc. is the licensee of FM station WGLO in Pekin, Il. WGLO is a Class A station (with an application for Class B1 facilities pending). It is located in Zone 1. However, Petaz claims that it would benefit from establishment of an intermediate Class C3 because it would then be allowed to "contemplate situations where existing and future limited service Class A allocations could be upgraded." The Petaz petition was assigned the number RM-6236, and appeared on Public Notice Report No. 1709, on January 27, 1988.

[10] The petition describes New Jersey Class A FM Broadcasters Association as "an ad hoc group representing virtually all of the Class A FM broadcast stations licensed to communities in the State of New Jersey." The petition further states that the association was formed in 1986 in order to press for revisions in FCC rules that it believes unfairly handicap Class A FM stations in that state. The New Jersey petition was assigned the number RM-6237 and appeared on Public Notice Report No. 1709, on January 27, 1988.

[11] Pursuant to a joint request from New Jersey and the National Association of Broadcasters, the Commission extended the deadline for filing comments to March 14, 1988, and replies to March 30, 1988. *See* DA 88-235, released February 25, 1988.

[12] *See* the *Report and Order* in BC Docket No. 80-90, 94 FCC 2nd 152 (1983), 48 Fed. Reg. 29486, June 27, 1983, in which Classes B1, C1, and C2 were created.

[13] The approximate radius and calculated areas of primary service for maximum facility stations in these three classes are as follows:

Station Class	Radius (mi)	Area (mi²)
A	15	707
proposed C3	24	1,810
C2	32	3,217

[14] New Jersey claims that the Commission, through various policy decisions over the years, has favored the larger Class B and C stations to the detriment of Class A facilities, necessitating the requested action. To support this allegation, New Jersey cites as examples the following: (1) the *First Report and Order* in Docket 14185, 10 FCC 2nd 662 (1962), in which the Commission *inter alia* increased the maximum power for Class B stations from 20000 to 50000 watts; (2) the *Second Report and Order* in BC Docket 80-130, 90 FCC 2nd 88 (1982), where the Commission allowed Class B and C allotments in smaller communities; (3) the smaller facilities afforded to Class A stations relative to the larger classes; and (4) the protection, in effect, of areas served by weaker signal strengths of Class B and B1 stations, as compared to Class A protection.

[15] New Jersey offers as specific examples of such areas the counties of Monmouth, Ocean, Morris, and Middlesex, NJ. Much of the population of these areas can not receive the signals of local (Class A) stations, New Jersey claims.

[16] This rule prevented the Class A stations operating on these reserved channels from upgrading to one of the larger classes without changing to another channel. *See First Report and Order* in MM Docket 86-144, 2 FCC Rcd 660 (1987).

[17] On December 21, 1987, New Jersey filed a supplement to its petition, revising its proposal with regard to Class A to B adjacent channel required spacing and to the methodology under which grandfathered short-spaced Class A FM stations would be allowed to increase power. In its original filing, New Jersey had recommended an increase in the required separation between Class A and adjacent channel Class B stations, from 105 to 109 km. New Jersey's proposed treatment of grandfathered short-spaced Class A stations had originally relied on a table of permissible modifications contained in §73.213 of the Commission's rules at that time. The supplement differs from the original filing principally in that New Jersey no longer recommends an increase in the Class A to B first adjacent channel minimum separation. New Jersey now states that existing separations will provide adequate protection for Class B stations. New Jersey also revised its recommended procedure for handling grandfathered short spaced stations as is explained further in the main text.

[18] The phrase "or equivalent", used in the context of maximum facilities limits, means any combination of higher antenna HAAT and lower ERP that produces a reference distance, computed in accordance with §73.211 of the rules, equal to the reference distance produced by the stated antenna HAAT and ERP.

[19] By protecting a contour, New Jersey means that the ratio of the undesired signal strength to the desired signal strength at the protected contour does not exceed the specified protection ratios. The protection ratios generally used for commercial FM stations are as follows: (1) co-channel, -20 dB, (2) first adjacent channel, -6 dB, (3) second and third adjacent channel, +40 dB.

[20] This assertion is based upon the premise that the primary service area for a Class B station is that area within which the provided signal has a predicted median strength of 0.5 mV/m or greater (the 54 dBu contour), and for a Class B1 station, the area within which the provided signal has a predicted median strength of 0.7 mV/m or greater (the 57 dBu contour). *See*, for example, the comments of Greater Media, Inc. and Cox Enterprises, Inc. However, §73.209 of the Commission's rules provides that the extent of protection accorded commercial FM broadcast stations is limited solely to that which results from the application of the rules specifying minimum distance separation between stations, and maximum power and antenna height of stations. Such protection does not correspond exactly to protection of the area within any particular signal strength contour (unlike the situation for non-commercial FM broadcast stations, whose 1 mV/m signal contour is protected by the Commission's rules).

[21] In the *Second Report and Order* in BC Docket 80-130, the Commission rescinded its policy that prevented intermixture of the classes in the same community. *See* 90 FCC 2nd 88 (1982), at page 97, paragraphs 21-30.

[22] *See* the *Report and Order* in MM Docket No. 83-1148, 98 FCC 2nd 916 (1984). Citing its policy encouraging broadcast licensees to upgrade their facilities (in order to better serve their audiences), the Commission amended its rules to provide for the modification of existing licenses in the course of a rule making proceeding to amend the Table of Allotments, for licensees seeking to upgrade to a newly allotted superior class, provided at least one additional equivalent channel is available to accomodate other parties expressing interest in the new channel. *See also* the *Report and Order* in MM Docket No. 85-313, 60 RR 2nd 114 (1986). The Commission further expanded the applicability of this procedure to include certain types of situations in which no additional equivalent channel is available. *See also* the *First Report and Order* in MM Docket No. 86-144, 2 FCC Rcd 660 (1987). The Commission removed a rule that had reserved 20 channels for Class A stations only. This rule had prevented Class A stations operating on these channels from upgrading to one of the larger classes of station without changing to another channel.

[23] There are currently approximately 310 communities where both Class A and higher class FM stations are allotted. But there are many additional small communities that are suburbs of larger ones, thus setting up competition between large stations allotted to the larger communities (but whose signals cover the smaller communities also) and Class A stations in those smaller communities.

[24] Increased power (that would be made available to Class A stations by either of the two proposals) offers two distinct benefits. First the existing audience would receive a stronger and therefore more reliable signal. This is of particular value to those who are currently in a fringe area. Second, a usable signal would be extended into new areas and thereby offer an additional choice to the radio audience in those areas.

[25] A Class C2 station with maximum facilities is expected to serve an area having a radius of approximately 52 km (32 mi). A Class C2 station with minimum facilities (3100 watts ERP and 30 meters HAAT), on the other hand, may serve an area having a radius of only 13 km (8 mi). However, other FM allotments for that region are precluded on the basis of the projected full service radius (32 miles).

[26] *See* the *Report and Order* in BC Docket 80-90, paras 53-58, and Appendix B, Option 5.

[27] New Jersey terms the objective of its request "coverage relief", although the coverage of an FM station is determined by many factors such as terrain, antenna height, transmitting power, and proximity to other FM stations. The Commission is considering herein only a possible increase in the maximum permitted effective radiated power. A major benefit of such an increase would be a stronger (and therefore more reliable) signal within the current coverage area. However, most stations would also realize a significant increase in coverage. Class A stations that raise power by the full amount proposed would potentially increase their predicted 1 mV/m coverage area by 37 percent.

[28] *See Further Notice of Proposed Rule Making* in MM Docket 86-144, (FCC 88-87, released March 22, 1988) 3 FCC Rcd 1661 (1988).

[29] Grandfathered short-spaced stations are stations at locations authorized prior to November 16, 1964 that did not meet the minimum distance requirements (*see* §73.207) on that date and that have remained short-spaced since that date. *See* §73.213.

[30] Consistent with our determination in MM Docket 86-144 that licensees should not be allowed to modify the facilities of grandfathered short-spaced stations in ways that increase the likelihood of interference, we would not allow the power increase to extend a grandfathered short spaced Class A station's 1 mV/m contour

[41] Class A stations in Puerto Rico and the Virgin Islands currently have much greater coverage than their mainland counterparts will even if the Commission ultimately adopts the power increase proposal set forth herein. The maximum area within the 1 mV/m (60 dBu) contour of a Puerto Rican Class A station today is approximately 5442 km² (2140 mi²), while the maximum area within that same contour of a mainland Class A station assuming the power increase were in effect would be only 3516 km² (972 mi²). Without the power increase, it is only 1840 km² (711 mi²).

[42] For example, while Class A stations in the mainland U.S. must operate with less than full power (3000 watts ERP) if their antenna HAAT exceeds 100 meters, Puerto Rico/Virgin Islands Class A stations may operate with full power (3000 watts ERP) with any antenna HAAT up to 335 meters. For antenna HAAT above 335 meters, a lower ERP must be used, such that the distance to the station's 1 mV/m contour is not greater than it would be with 3000 watts ERP and 335 meters HAAT. See 47 C.F.R. §73.211(b)(3).

[43] For a more comprehensive explanation of the maximum benefit minimum requirements and classification system for commercial FM stations, see *Second Report and Order* in MM Docket No. 84-2, 2 F.C.C. Rcd. 5693 (1987), recon. granted (FCC 88-152, released April 29, 1988), and also 47 C.F.R. §§73.210 and 73.211.

[44] See 47 C.F.R. 73.211(b)(1) for method for determining reference distance (in essence it is the metric distance to the predicted 60 dBu contour rounded to the nearest kilometer.

MINIMUM DISTANCE SEPARATION BETWEEN CLASS A FM STATIONS AND OTHER FM STATIONS
(kilometers)

	situation now			under power increase proposal		
Class of station "X"	to protect Class A from station "X"	to protect station "X" from Class A	FCC rule §73.207	to protect station "X" from Class A+	to protect Class A+ from station "X"	channel relationship
A	100.1	100.1	105	110.9	104.2	-co-channel
	60.8	60.8	64	67.9	64.9	-1st adjacent
	26.5	26.5	27	27.0	30.6	-2nd & 3rd adjacent
A+				115.0	115.0	-co-channel
				72.0	72.0	-1st adjacent
				31.1	31.1	-2nd & 3rd adjacent
B1	137.8	131.3	138	142.9	141.9	-co-channel
	84.4	88.4	88	96.3	88.5	-1st adjacent
	28.3	47.4	48	48.0	32.4	-2nd & 3rd adjacent
B	161.9	163.3	163	177.6	166.0	-co-channel
	102.3	116.6	105	124.7	106.4	-1st adjacent
	30.2	68.4	69	69.1	34.3	-2nd & 3rd adjacent
C3 (proposed)				125.8	141.9	-co-channel
				82.8	88.5	-1st adjacent
				41.9	32.4	-2nd & 3rd adjacent

CHART A

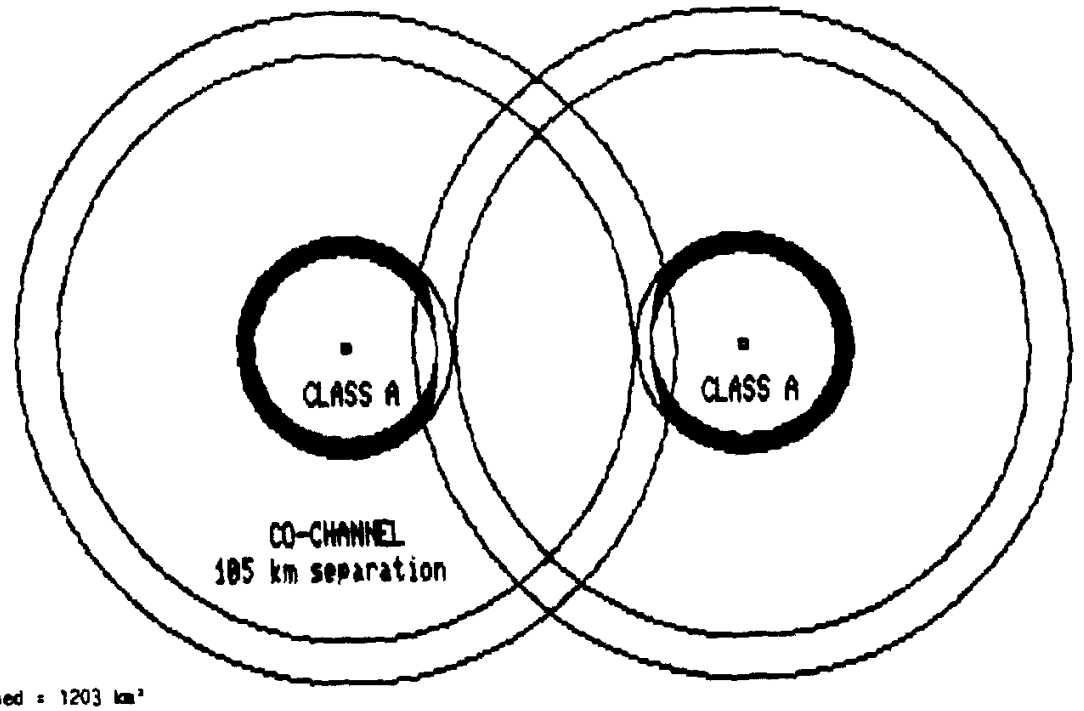


CHART A

This chart represents the 1 mV/m (60 dBu) coverage of two co-channel Class A stations at minimum spacing (105 km), where both increase power from 3000 watts to 6000 watts.

There are about 300 instances where two co-channel Class A stations are located within 111 km of each other.

Total new area gained = 1203 km²

Total existing area lost = 0 km²

Net area gained = 1203 km²

5956

CHART B

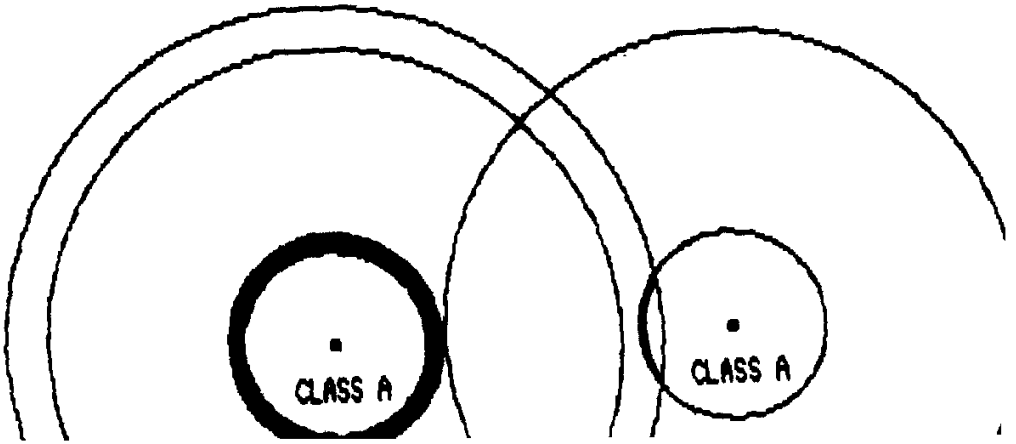


CHART B

This chart represents the 1 mV/m (60 dBu) coverage of two co-channel Class A stations at minimum spacing (105 km), where one increases power from 3000 watts to 6000 watts, but the other

5957

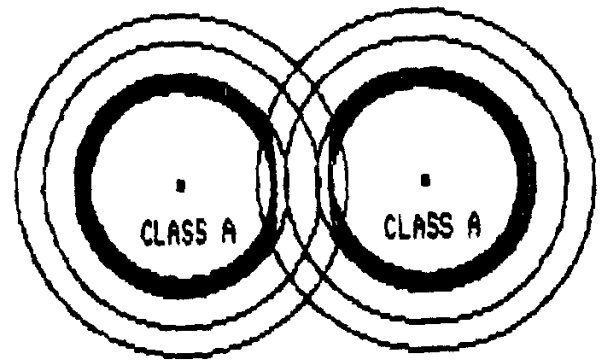
[redacted]

CHART C

CHART C

This chart represents the 1 mV/m (60 dBμ) coverage of two first adjacent channel Class A stations at minimum spacing (64 km), where both increase power from 3000 watts to 6000 watts.

There are about 12 instances where two first adjacent channel Class A stations are located within 75 km of each other.



FIRST ADJACENT CHANNEL
64 km separation

Total new area gained = 1260 km²

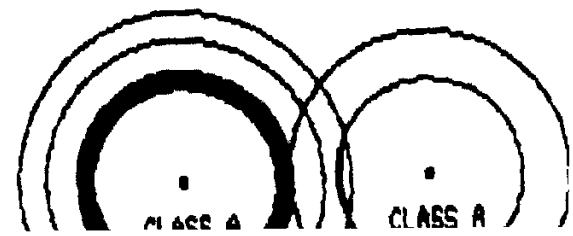
Total existing area lost = 0 km²

Net area gained = 1260 km²

CHART D

CHART D

This chart represents the 1 mV/m (60 dBμ) coverage of two first adjacent channel Class A stations at minimum spacing (64 km), where one increases power from 3000 watts to 6000



[redacted]

5960

CHART E

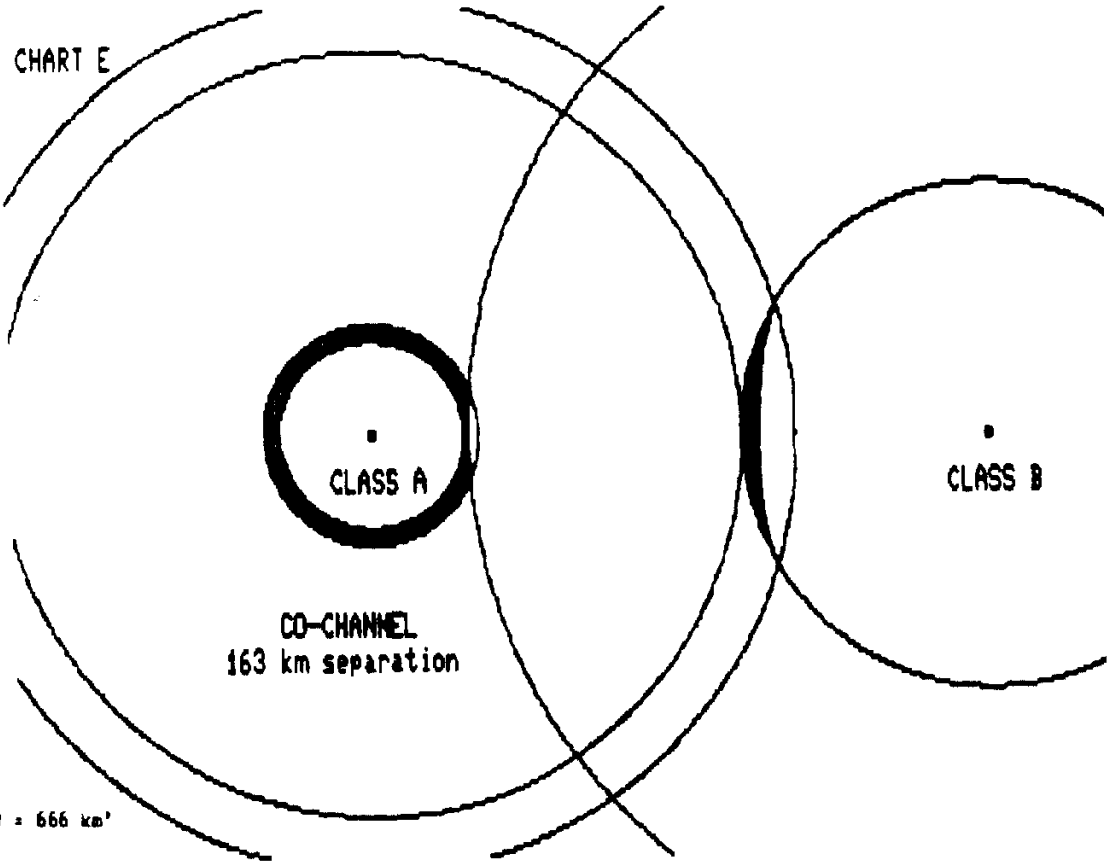


CHART E

This chart represents the 1 mV/m (60 dBμ) coverage of a Class A station and the 0.5 mV/m (54 dBμ) coverage of a co-channel Class B station at minimum spacing (163 km), where the Class A station increases power from 3000 watts to 6000 watts.

There are only 5 instances where a Class A station and a Class B station on the same channel are located within 250 km of each other.

Total new area gained = 666 km²

Total existing area lost = 232 km²

Net area gained = 434 km²

5961

CHART F

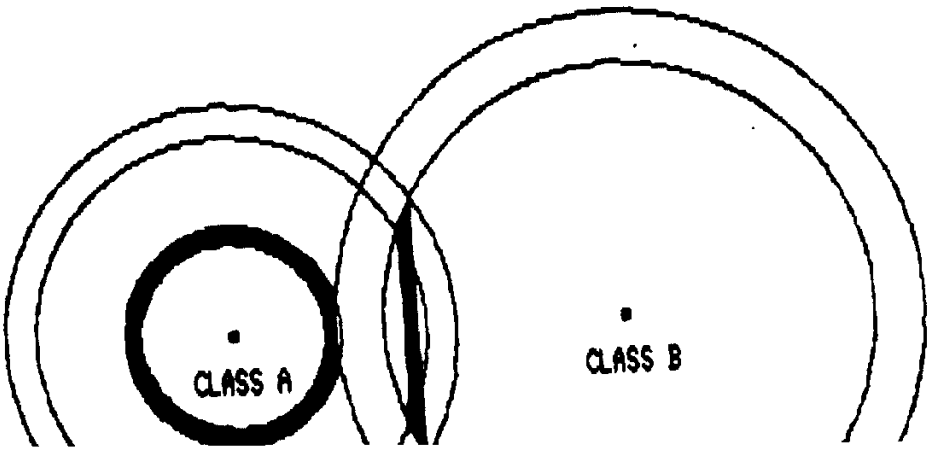


CHART F

This chart represents the 1 mV/m (60 dBμ) coverage of a Class A station and the 0.5 mV/m (54 dBμ) coverage of a first adjacent channel Class B station at minimum spacing (105 km), where the Class A station increases power from 3000 watts

[redacted]

CHART G

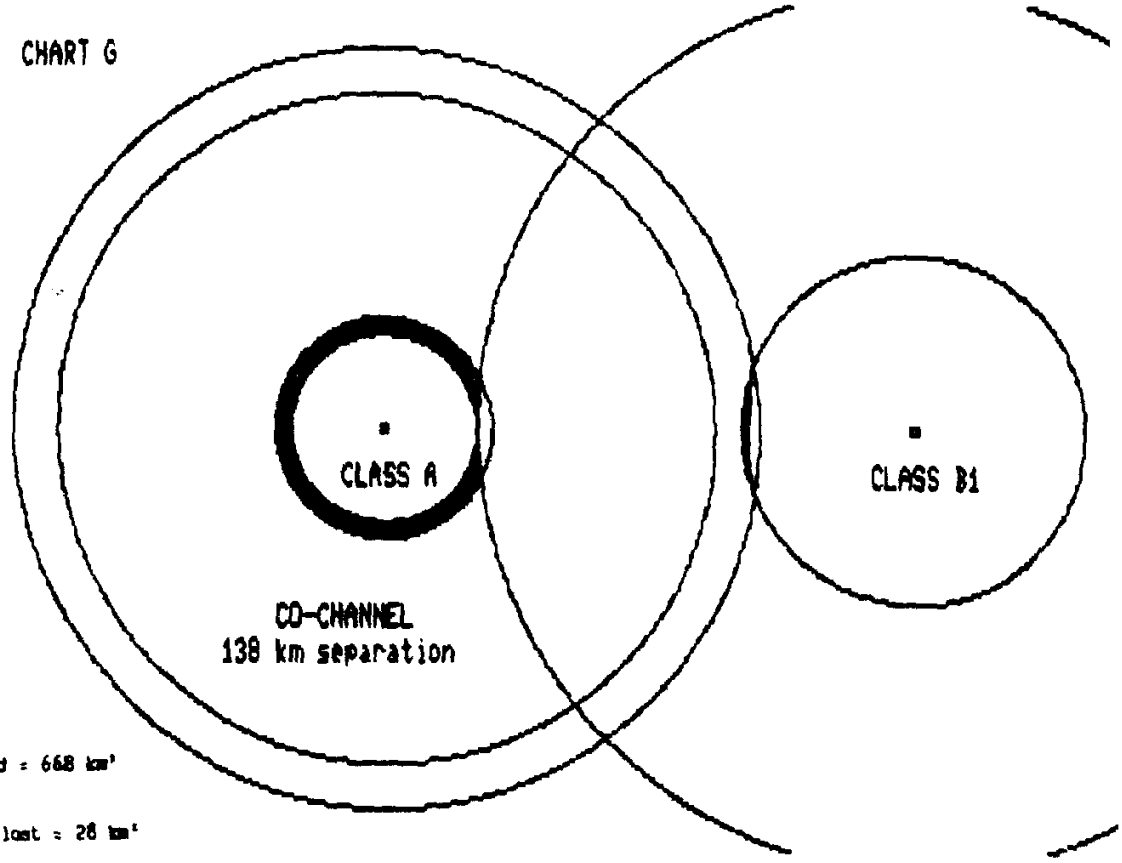


CHART G

This chart represents the 1 mV/m (60 dBμ) coverage of a Class A station and the 0.7 mV/m (57 dBμ) coverage of a co-channel Class B1 station at minimum spacing (138 km), where the Class A station increases power from 3000 watts to 6000 watts.

There are only 29 Class B1 stations at this time.

Total new area gained = 668 km²

Total existing area lost = 28 km²

Net area gained = 640 km²

CHART H

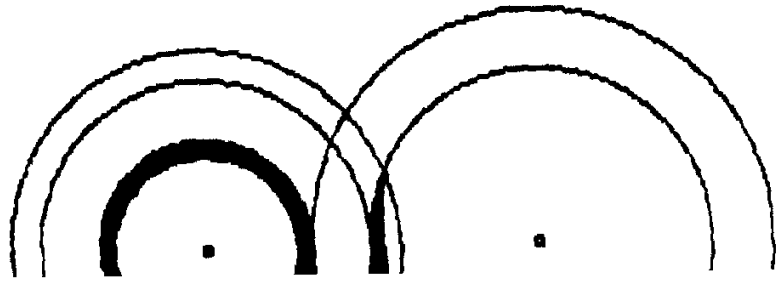


CHART H

This chart represents the 1 mV/m (60 dBμ) coverage of a Class A station and the 0.7 mV/m (57 dBμ) coverage of a first adjacent

ADDENDUM 18

MOST RECENT FM CHANNEL RULEMAKINGS AND SITE RESTRICTION CONSIDERATIONS

Location	Docket number	channel	site restriction	considerations
Wellington, TX	MM 97-104	278C3	4.5 km s.w.	266C
Plattsmouth and Papillion,NE		295A	11.5 km n.e.	297C1,294C,241C
Osceola,IA	MM 96-95			
Fredonia, KY	MM 97-66	221A	6.2 km n.e.	222C,223C,274A
Patterson,IA	MM 97-187	290A	none	none
Colchester,IL	MM 97-218	244A	13.2 km s.w.	242C2,244A
Ashdown and DeQueen,AK	MM 97-223	227C3 221C2		channel 6-TV

This is presented to show that the Commission has not done away with taboos in allocations. Many more cases can be presented to show further compliance with the interference prevention.

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

MM Docket No. 90-486

In the Matter of

Amendment of Section 73.202(b), RM-7379
Table of Allotments,
FM Broadcast Stations
(Asbury, Missouri)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 14, 1991; **Released: January 24, 1991**

By the Acting Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 5 FCC Rcd 6447 (1990), issued in response to a petition filed by William Bruce Wachter ("petitioner"). The *Notice* proposed the allotment of Channel 278A to Asbury, Missouri, as that community's first FM broadcast service. Petitioner filed comments in support of the *Notice* and stated his intention to apply for the channel. No other comments were received.

2. We believe the public interest would be served by the allotment of Channel 278A to Asbury, Missouri, since it would provide the community with its first FM broadcast service. Channel 278A can be allotted to Asbury in compliance with the minimum distance separation requirements of the Commission's Rules without a site restriction.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 11, 1991**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Asbury, Missouri	278A

4. The window period for filing applications will open on **March 12, 1991**, and close on **April 11, 1991**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FOOTNOTE

[1] The coordiantes for Channel 278A are 37-16-24 and 94-[illegible]

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

MM Docket No. 87-110

In re Applications of

EMPIRE STATE BROADCASTING CORPORATION (WWKB) — File No. BR-840201WO
Buffalo, New York

For Renewal of License

BURSAM COMMUNICATIONS CORPORATION (WTHE) — File No. BP-840430AC
Mineola, New York

For a Construction Permit

MEMORANDUM OPINION AND ORDER

Adopted: January 11, 1991; Released: January 25, 1991

By the Commission:

1. Before the Commission for consideration is a Review Board Decision, *Empire State Broadcasting Corporation*, 5 FCC Rcd 2999 (Rev. Bd. 1990), affirming a summary decision granting Empire State Broadcasting Corporation's application for renewal of the license of WWKB(AM), and denying the mutually exclusive application of Bursam Communications Corporation to increase the operating power of WTHE(AM). *See Empire State Broadcasting Corporation*, 4 FCC Rcd 7008 (S.D. 1989). After careful consideration of the Review Board decision and the parties' pleadings,[1] we affirm the Board's decision in this matter. We wish, however, to comment on certain matters.

I. BACKGROUND

2. Bursam's proposal to increase the operating power of WTHE(AM) would cause objectionable interference to WWKB(AM) in violation of 47 C.F.R. § 73.187, which limits the signal that WTHE(AM), a Class II AM station, may radiate during critical hours toward a co-channel Class I station.[2] The staff of the Mass Media Bureau denied Bursam's request for a waiver of 47 C.F.R. § 73.187. Bursam's application was tendered during the renewal period filing window for WWKB(AM). Therefore, it was designated for hearing with Empire State's application for renewal of WWKB(AM)'s license since, in the absence of a waiver, the proposals were made mutually exclusive by the interference Bursam's proposal would cause. *See Empire State Broadcasting Corporation*, 2 FCC Rcd 2439 (M.M. Bur. 1987), *vacated and reissued*, 2 FCC Rcd 2793 (M.M. Bur. 1987). The hearing designation

application to improve its facilities that is mutually exclusive with a Class I station's renewal application. We believe that the unnecessary use of hearing procedures does not serve the public interest, and indeed, undermines the Commission's emphasis on efficient use of its limited staff and other resources. *See, e.g., Star Signal Corporation*, 1 FCC Rcd 805, 805-6 ¶ 7 (1986). Accordingly, we direct the Mass Media Bureau to consider appropriate rule changes to permit the summary rejection of renewal challenges such as Bursam's, where allocations rules mandate the outcome of any hearing in favor of the incumbent.

6. However, given Bursam's present right to a comparative hearing, we reaffirm *KPLT* insofar as it mandates a comparison under Section 307(b) between the gains in service area and population that would result from increasing the power of WTHE(AM) and the loss of *all* service by WWKB(AM). We reject Bursam's suggestion that *KPLT* should be modified to permit a comparison of the gains in service resulting from its proposal with *only* the losses in coverage by WWKB(AM) that would result from Bursam's proposal.

Although *KPLT* is not cited frequently because few licensees seek coverage changes by challenging the renewal application of a broadcast facility, it remains good law and has been followed consistently when this kind of renewal challenge is designated for hearing. *See Interstate Broadcasting Company, Inc.*, 2 FCC Rcd 4051 ¶ 7 (M.M. Bur. 1987). Our rules governing AM interference do not allow the comparison of gains and losses to resolve AM interference conflicts. Rather, the Commission follows a "go-no-go" approach that categorically prohibits the types of interference set forth in the rules. *See The Audio House, Inc.*, 2 FCC Rcd 3171 ¶ 4 (1987); *Amendment of Part 73 of the Commission's Rules, Regarding AM Station Assignment Standards and the Relationship Between AM & FM Broadcast Services*, 45 FCC 1515, 1522 ¶¶ 13-15 (1964), *recon. denied*, 4 RR 2d 1567 (1965). *KPLT*'s prohibition against weighing the potential gains in service area and population against the loss of listeners by the clear channel station simply reflects the "go/no-go" approach of the overall AM allocation scheme.

8. Grant of both Bursam's proposed power increase and Empire State's renewal would amount to a *de facto* grant of a waiver of 47 C.F.R. § 73.187 to Bursam, when no waiver issue was designated for hearing and when Bursam was not entitled to a hearing on its waiver request.[5] The remedy Bursam seeks, grant of both applications, conflicts with both the Commission's scheme for the allocation of AM service and the premise that the Commission cannot grant an application which fails to comply with the fundamental protection standards set forth in the rules to the detriment of a station entitled to rely on that protection. *See Audio House*, 2 FCC Rcd at 3172 ¶ 11. There is no reason to disregard valid rules of general applicability, such as the interference rules, merely because the context is a comparative hearing. *See U.S. v. Storer Broadcasting Co.*, 351 U.S. 192, 202-205 (1956); *Simmons v. FCC*, 145 F.2d 578, 579 (D.C. Cir. 1944); *Rio Grande Family Radio Fellowship*, 28 FCC 2d 326, 328 ¶¶ 8-9 (1971). Consistent with Section 307(b) inquiry mandated by *KPLT*, we correctly followed in this case.

III. ORDERS

9. ACCORDINGLY, IT IS ORDERED, That the Application for Review filed June 22, 1990 by Bursam Communications Corporation IS DENIED; and that the Chief of the Mass Media Bureau IS DIRECTED to take action in accordance with paragraph 5, above.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] The following pleadings are before the Commission: (1) an Application for Review filed June 22, 1990 by Bursam; (2) an Opposition to the Application for Review filed July 6, 1990 by the Mass Media Bureau; and (3) an Opposition to the Application for Review filed July 9, 1990 by Empire State. Bursam was granted an extension of time, to June 22, 1990, in which to file its application for review. *Empire State Broadcasting Corp.* 111 901-60 (Jun. 12, 1990).

[2] The period of critical hours is defined as the two hours after local sunrise and the two hours preceding local sunset. *See* 47 C.F.R. §§ 73.14, 73.182.

[3] Pursuant to *Pillar of Fire*, 2 FCC Rcd 519 (1987), the Section 307(b) issue could be dispositive only if Empire State were not entitled to a renewal expectancy. A contingent comparative issue was also designated.

[4] 47 C.F.R. § 73.3516(e) provides:

> An application for a construction permit for a new broadcast station or for modification of construction permit or license of a previously authorized broadcast station will not be accepted for filing if it is mutually exclusive with an application for renewal of license of an existing broadcast station unless it is tendered for filing by the end of the first day of the last full calendar month of the expiring license term.

[5] We disagree with the Board's suggestion in dicta that the Bureau's failure to return Bursam's application as unacceptable for filing implied that the Bureau believed that the Commission's interference rules do not apply to applications filed against a license renewal. *See* 5 FCC Rcd 3002-3 ¶¶ 10-11. The cases cited by the Board do not support its observation that all applications which violate interference rules are subject to summary rejection, since those cases do not involve mutually exclusive applications filed during the renewal filing window for an existing licensee. Compare *KPLT, Inc.*, 1 FCC 2d 961 (1965) (a KPLT, a daytime only AM station filed an application to increase its power during the renewal window for a co-channel Class I station. The daytime only applicant requested a waiver of the interference rules because its proposal would cause objectionable interference to the Class I station. *See* 1 FCC 2d 961 ¶ 2. The Commission denied the waiver request but ordered a hearing because the proposals were mutually exclusive.

[6] Even if a waiver issue had been warranted, we see no error in the ALJ's rejection of Bursam's evidence concerning its waiver request and the ALJ's subsequent denial of a waiver. Bursam contends that 47 C.F.R. § 73.187 is no longer necessary because the importance of interference protection for Class I stations has declined. However, by attacking the waiver standard, Bursam does not advance an appropriate basis for a waiver since a waiver inquiry assumes the rule's validity. *See WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969). The ALJ properly rejected evidence of Bursam's past programming and community service. Non-technical service related arguments do not justify a waiver of technical "go/no-go" AM allocations standards. *See ICBC Corp. v. FCC*, 716 F.2d 926, 930 (D.C. Cir. 1983). The ALJ was also justified in rejecting evidence Bursam presented to demonstrate that WWKB(AM)'s skywave signal causes interference to its own groundwave signal, since the Commission was aware of the effects of such a distortion zone when it adopted the protection standards for clear channel stations, one of which is 47 C.F.R. § 73.187. *See* 4 FCC Rcd at 7018 ¶ 65. Additionally, the ALJ properly excluded this evidence as untimely, since it was not offered as part of Bursam's direct case. *See General Electric Cablevision Corp.*, 11 FCC 2d 667, 668-69 ¶¶ 3,5 (Rev. Bd. 1968).

[7] In this connection, we note that the area Bursam proposes to serve by increasing its power during critical hours contains no area or population served by fewer than five other aural services and partially served by at least four additional aural services during critical hours. 4 FCC Rcd at 7019. Thus, the public interest benefits of Bursam's proposal are marginal at best.

[8] Bursam also argues that a waiver is appropriate pending the outcome of a Commission Rule Making which concerns the validity of the protection standards of 47 C.F.R. § 73.187. *See Notice of Proposed Rule Making, Review of the Technical Assignment Criteria for the AM Broadcast Service*, 5 FCC Rcd 4381 (1990). We disagree. Bursam cites *News America Publishing, Inc. v. FCC*, 844 F.2d 800 (D.C. Cir. 1988) as support for its argument. In that case, the Court noted that the Commission had extended *temporary* waivers of the cross-ownership rules while those rules were the subject of a Rule Making. 844 F.2d at 815. The waivers deferred requirements to divest broadcast properties pending a proposal to relax certain provisions of the cross-ownership rules. Here, however, Bursam did not merely seek the temporary deferral of a divestiture, but proposed that a new service be authorized contrary to a still valid rule. In any event, the pending Rule Making on AM allocation standards does not contemplate altering the interference protection which Bursam must afford to WWKB(AM). *See Notice of Proposed Rule Making*, 5 FCC Rcd at 4364 ¶ 31 (1990).