

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

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In the Matter of )  
)  
1998 Biennial Regulatory Review -- )  
Streamlining of Radio Technical Rules in )  
Parts 73 and 74 of the Commission's Rules )

MM Docket No. 98-93 /

Petition For Reconsideration

January 17, 2001  
By: Edward Czelada

1. *Background.* Unlike their commercial counterparts, NCE FM stations are not required under the rules to provide a minimum field strength signal over their principal community.<sup>1</sup> In the original *Notice*, the FCC proposed to revise the rules to delete the Note in Section 73.315(a) and require each NCE FM station to provide 60 dBu (1 mV/m) service to at least a portion of its community of license.<sup>2</sup> The FCC requested comment on minimum population and coverage area requirements. This proposal reflects our determination that a radio station cannot adequately serve its community of license unless it places a listenable and protected signal over at least a portion of such community. With one exception, commentators supported the proposal to require NCE FM stations to cover a portion of its community of license. However, none of the comments suggested any specific population or coverage minimum. The Commission also revised the proposed rules to require NCE FM stations operating on reserved channels to provide a predicted 60 dBu signal to at least 50 percent of its community of license or reach 50 percent of the population within the community. The Commission proposed in the original *Notice* to apply the new rule only to applications filed after the effective date of the new rule. However, in the final order Commission applied the coverage requirements to all applications pending as of the release date of this *Order* or filed thereafter.

2. *Discussion.* We oppose the new 50% coverage criteria and the retroactivity to pending applications that was added in 11<sup>th</sup> hour by the Commission. The Commission changed the proposed rule in MM Docket 98-93 from "...provide 60 dBu (1 mV/m) service to at least a portion of the community of license." to "...provide a predicted 60 dBu signal to at least 50 percent of its community of license or reach 50 percent of the population within the community." We believe this places an unnecessary financial burden on many educational applicants. In many cases the applicant may have to purchase an expensive directional antenna, construct a new tower, or pay for increased consulting costs to verify compliance with the new rule on new applications. For some time the Commission has had a policy that has required 60 dBu (1 mV/m) over some portion the community, and educational applicants have been accustomed to that policy when preparing their applications. We contend that changing the rule in mid-stream is not only burdensome to both the FCC and educational applicants, it is also "ex-post-facto" in nature. For currently on-file applicants the financial burden is greatest since applicants are will be required to review their pending applications and modify their pending proposals to bring the application into

<sup>1</sup> 47 C.F.R. § 73.315(a), Note a.

<sup>2</sup> See *Notice*, 13 FCC Rcd at 14876.

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compliance with the new rules within 30 days. The costs for such required changes are likely to run into thousands of dollars, and in a few cases millions of dollars are foreseeable. This is fundamentally unfair to the pending applicants since they have prepared their applications in good faith and all with rules in effect at the time of filing. If the pending applicants known that they would be required to comply with a tougher new rule in the future they may have selected a different or smaller community of license. The potential chilling effect of this new rule is that many otherwise technical sound NCE applications could be dismissed. We believe that the coverage rules adopted in this *Second Report and Order* will have a significant economic impact on a substantial number of small entities. The commission predicted that only five (5) entities per year would be affected by the new coverage rules<sup>3</sup>, however we contended that the actual number to be five-hundred (500) range for year 2001, and fifty (50) in subsequent years, based the number of non-commercial applications filed each year.

The rules are flawed, in part, because they do not address the issue of a low power class "A" station with it's transmitter located inside the community of license that does not cover 50% of the community area or persons. These types of stations are usually 100-watt class "A" stations located in a metropolitan area. Under the rules, as currently written, these stations would be denied even though they may serve several hundred thousand people. This is not public interest to deny these stations just because they do not serve 50% of their communities. The primary purpose of the community of license is to determine where a station is located, not to determine if a station is feasible or necessary. The entire 60 dBu (1 mV/m) service area is really what NCE station serves, not the community it's licensed to.

We also contend that the comment period was inadequate considering that the substantial and burdensome changes that the Commission has made to the original proposed rules that most commentators could not foresee. By the FCC's own admission the proposed rules were changed even though there was no comments supporting the changes. Had the commission adopted the rules as originally proposed, this instant petition would not have been necessary.

3. *Conclusion:* We respectfully request that the commission reconsider the new rules effect on pending and future applicants. We do not believe a new more restrictive rule is necessary especially in light that the FCC's intent in this order was to streamline the rules for NCE applications.

Respectfully submitted,

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CC: OMB  
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<sup>3</sup> See appendix A of FCC 00-368