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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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In the Matter of )	
_____ )	
Amendment of Section 22.731, 27.63 and Part 24 )	MM Docket No.
of the Rules of the Federal Communications )	
Commission )	
_____ )	

TO: The Commission

**PETITION FOR RULE MAKING**

WRNJ Radio, Inc., licensee of WRNJ(AM), Hackettstown, New Jersey (FIN: 76913) ("WRNJ"), by its attorneys, pursuant to 5 U.S.C. § 553(e) and 47 C.F. R. § 1.401, hereby requests that the Commission initiate a rule making proceeding to ensure that AM broadcast stations operate free of interference from later-built Public Mobile and Wireless facilities under FCC Rules 22.371 and 27.63 (the "Current Rules"), and to add equivalent protection for AM broadcast stations to Part 24 of the Commission Rules to afford AM stations the same level of interference protection from later-built PCS facilities. Such a rule making should also emphasize the responsibilities of Public Mobile, Wireless or PCS licensees ("Mobile Phone Providers") both to provide advance notice to AM broadcast licensees of upcoming construction of transmission facilities that could adversely affect broadcast operations and to ameliorate any interference actually or potentially caused by such later-built Public Mobile, Wireless or PCS facilities. The proposed rule making should also specify that the Enforcement Bureau must rely on enforcement recommendations from both the Media Bureau and the Common Carrier Bureau when later-built Public Mobile, Wireless or PCS facilities interfere with existing AM broadcast

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stations. Finally, the Commission should impose monitoring and record-keeping requirements to ensure that Mobile Phone Providers meet their obligations.

### **PETITIONER'S INTERESTS**

As an AM radio licensee, the interests of WRNJ and its listeners among the public have been adversely affected by the lack of enforcement of the Current Rules. Even though Mobile Phone Providers are required to furnish technical means to protect existing AM stations from interference as well as maintain any protective devices after installation, they often ignore their responsibilities. Complaints to the Commission usually go months – or longer – without resolution. Although the Enforcement Bureau has ultimate responsibility to enforce these rules, it relies only on the Wireless Bureau to provide expertise to dispose of such interference complaints. Even though broadcasting is adversely affected, the Media Bureau's expertise plays no part in enforcing these requirements designed to protect the public interest in AM radio broadcasts. This pattern has led WRNJ to seek redress in such other fora as local zoning boards to ensure that it can continue to serve the public without interference. If FCC processes offered adequate interference protection for AM stations from Mobile Phone Providers, WRNJ and its listeners among the public would not have to suffer interference and/or the added expense of utilizing non-Commission means of redress to ensure that listeners are able to hear the station.

### **DISCUSSION**

#### **A. Current Rules Inadequately Establish Rights and Responsibilities**

The Current Rules require Mobile Phone Providers that construct or modify towers in the immediate vicinity of AM broadcast stations to “notify the licensee of the AM

broadcast station in advance of the planned construction or modification.”<sup>1</sup> The Commission’s goal is “simply to insure that AM stations continue to be afforded the protection from other broadcast installations which they have received in the past . . .”<sup>2</sup> However, the Commission policy favoring protection is regularly compromised by loopholes in the Current Rules that allow Mobile Phone Providers to construct new facilities and deftly create an appearance that they are complying with the letter of the Current Rules while their overt acts actually undermine compliance with the spirit of the rule – which is to afford AM stations protection from interference caused by later-built facilities installed by Mobile Phone Providers.

Although the Current Rules require notification, they *do not* establish a minimum amount of time, in advance, within which such notification must be delivered. Without such a benchmark, the Current Rules permit any advance notice – even if such notice is given on the cusp of construction before the AM station can evaluate the technical challenges the new facility would pose. Such notice amounts to no notice given the speed with which such mobile phone facility construction can take place. Quite often, it is only after an AM station and its listeners suffer interference that an AM licensee becomes aware that a new mobile phone facility has been constructed – and, by then, harm is already occurring to the public interest in receiving the station’s broadcasts. In many circumstances, this situation occurs because the tower is constructed by a site management company that has no responsibility under FCC rules because it is not a licensee. In other cases, the Mobile Phone Provider does not bother to notify the AM

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<sup>1</sup> 47 C.F.R. § 22.371 (a) and § 27.63(a) require such notice to non-directional AM stations if the antenna is planned within one kilometer of the AM station’s tower. 47 C.F.R. § 22.371 (b) and § 27.63(b) require notice to directional AM stations if the antenna is planned within three kilometers of the AM station’s tower.

<sup>2</sup> *Amendments of Parts 73 and 74 of the Commission's Rules*, 62 Fed. Reg. 51052, at 49.

station before construction begins. This is clearly not the outcome that the Commission intended by promulgating the Current Rules. Providing equivalent protection demands a rule requiring sufficient advance notice so affected stations can take reasonable actions to protect the interests of AM radio listeners in the community *before interference becomes acute* and hinders reception or, in some cases, makes it impossible to receive the AM station's programming.

Therefore, WRNJ respectfully requests that the Commission establish a firm requirement that: (1) whenever local zoning approval is required before construction of a later-built transmission facility within the zone of protection afforded AM stations, the Mobile Phone Provider shall post, by certified mail, return receipt requested, a copy of the zoning application to the affected AM license on the same day that the application is filed with the relevant entity authorized to grant such zoning approval or, (2) if zoning approval is not required, the Mobile Phone Provider shall notify, by certified mail, return receipt requested, any existing AM station within the zone of protection at least 60 days prior to the start date for construction of such transmission facility.

**B. Gaps in the Rules Make Timely Adjudication Impossible, to the Detriment of AM Stations and the Public They Serve**

The Current Rules require Mobile Phone Providers to take measurements “to determine whether the construction or modification affected the AM station antenna pattern” and “[t]he ...[mobile phone] licensee is responsible for the installation and continued maintenance of any detuning apparatus necessary to restore proper non-directional performance of the AM station tower.”<sup>3</sup> But, in reality, a lack of enforcement activity allows irresponsible Mobile Phone Providers, as well as tower owners and managers, to ignore or delay compliance for months,

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<sup>3</sup> *E.g.* 47 C.F.R § 22.371(a) and (b).

harming AM radio service to the public. Indeed, WRNJ's experiences, and those of many other similarly situated broadcasters, are that Mobile Phone Providers, as well as tower owners or managers, regularly treat the Current Rules as if compliance did not matter at all, and they had no responsibility to protect AM radio stations. Even if Mobile Phone Providers comply at the initial construction stage, they more often than not ignore their continuing obligations to monitor and maintain detuning facilities. Such inattention means an affected station and the public it serves are not protected, despite the existence of rules designed to ensure AM radio service. In the final analysis, the Current Rules are more honored in the breach than in practice.

AM station engineers regularly find that detuning becomes ineffective when an additional, new wireless facility is later mounted on a tower creating new interference. Despite the plain language of the Current Rules, such additional facilities are regularly mounted without further notice to existing AM stations. In most cases, adding a new facility, often from a different Mobile Phone Provider, causes a detuning system to go out of adjustment. Lightning strikes also regularly render detuning units inoperative and, despite requirements that the Mobile Phone Providers maintain such facilities, the damage is either ignored or unnoticed through lack of effective monitoring programs. Because Mobile Phone Providers fail to meet their monitoring and maintenance duties, it is only when the AM station receives listener complaints or suffers a diminution in its ratings that it become aware that the detuning system has become ineffective. The ultimate outcome of such neglect by Mobile Phone Providers is that harmful interference goes unmitigated for months. By then, tremendous harm has been done to the public interest in reliable AM broadcasting.

Part of the problem is that Public Mobile, Wireless or PCS carriers rely on internal monitoring equipment that is *not* designed to report on the condition of the AM detuning system and, therefore, does not actually report the device's effects on the radio station it is supposed to protect. As a result, harmful interference can continue for months. While it is true that an AM licensee has an obligation to monitor its own signal, if an AM licensee's equipment is inherently stable and its internal operation is monitored on a daily basis to ensure that its operations are within allowable parameters, it does not have the technical means to monitor the performance of a remote detuning facility that it does not own. Moreover, as the detuning facility is the property of the Mobile Phone Provider, AM stations cannot monitor such equipment without trespassing unless granted site access.

An additional problem often arises when the simple installation of a detuning device at the Mobile Phone Provider's facilities is unable to eliminate the objectionable interference. AM stations, operating wholly in compliance with their licenses, are then forced to make expensive changes to their transmission operations.<sup>4</sup> Although FCC rules normally require the later-built facility licensee to pay any costs associated with eliminating the interference, Mobile Phone Providers often refuse to reimburse the cost of adjusting an AM station's facilities. As noted, the lack of effective FCC enforcement encourages Mobile Phone Providers to act in this way, in blatant disregard of the Current Rules. To counteract this growing culture of lawlessness, the Commission should revise current rules to explicitly state that Mobile Phone Providers bear the financial burden of any measure required to protect existing AM stations from interference

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<sup>4</sup> The Commission's lack of enforcement of the protections for AM stations also puts AM licensee at risk of forfeitures for nonconforming operation – even though the responsibility lies with a Mobile Phone Provider.

caused by their later-built facilities.

To improve the Commission's ability to enforce the rules contemplated by this Petition for Rule Making, the Commission should also create a record-keeping requirement, so that Mobile Phone Providers will have additional encouragement to maintain any equipment designed to protect AM broadcasting stations. Such a rule should require Mobile Phone Providers to maintain a log of measurements demonstrating the operation of the detuned structure. The maintenance of such information would enable the Commission to adequately assess the level of non-compliance for enforcement purposes.

Poor compliance by Mobile Phone Providers is further encouraged by the ministerial structure for handling complaints. Because the Current Rules appear only in parts 22 and 27 of the Commission's Rules, the Enforcement Bureau relies on the Wireless Bureau to help it make determinations as a result of its investigations into interference caused by Mobile Phone Providers to AM stations. The Media Bureau plays little or no role, even though it is the broadcast licensee and the listening public that will be adversely affected by non-compliance. Given each bureau's mandate, both *to promote* and to regulate service within their respective domain, this structure tends to favor Mobile Phone Providers. This structure also fosters delays, as broadcasters do not have the benefit of a regulatory voice with influence inside the Commission with a discrete understanding of the effects such interference poses to the public interest in local AM broadcasting, and the need for rapid intervention to ensure reliable AM service to the public. Simply put, the Wireless Bureau has a responsibility to keep the public's cell phones connected, not to maintain interference-free broadcasting; that job belongs to the Media Bureau. To level the playing field, WRNJ believes the Commission should direct the Enforcement Bureau to give the Media Bureau equal input into all enforcement decisions

involving interference caused by Mobile Phone Providers to AM stations. In the absence of such a procedural mandate, the interests of radio listeners, which are currently getting short shrift,<sup>5</sup> will continue to be overlooked in the future – an outcome that is not in the public interest.

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<sup>5</sup> It is telling that since 1993, only one enforcement case appears in Pike and Fischer's Communication Regulation database in which the Commission took action against a Mobile Phone Provider for violating the Current Rules, despite the increasing proliferation of mobile telephone facilities nationwide.

## CONCLUSION

For all the reasons stated, WRNJ respectfully requests that the Commission issue a Notice of Proposed Rule Making ("NPRM") (1) to amend 47 C.F.R. Sections 22.371 and 27.63, and add an equivalent section to Part 24 of the Commission's Rules to take the above-mentioned steps, including: (a) imposition of a requirement that Public Mobile, Wireless or PCS licensees provide a copy of any zoning application to the affected AM licensee on the same day that the application is filed with the relevant entity authorized to grant such zoning approval or if no zoning approval is required, to deliver notice of construction to potentially affected AM licensees at least 60 days before commencing construction and (b) imposition of monitoring and record-keeping requirements that ensure that Mobile Phone Providers meet their obligations; and (2) grant the Media and Wireless Bureaus joint jurisdiction, with the Enforcement Bureau, to process and evaluate complaints arising from violations of these provisions.

Respectfully submitted,



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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION FOR RULE MAKING** was sent by first-class mail, postage prepaid, this 17<sup>th</sup> day of June, 2002, to the following:

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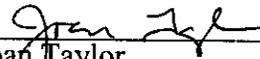
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