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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Commission's Rules)
Regarding Modification)
of FM and AM Authorizations)
)

MB Docket No.
RM No. 10960

To: Office of the Secretary
Attn: Audio Division
Media Bureau

COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"), by its attorneys, hereby submits these comments in response to the *Notice* in the above-captioned proceeding.¹ The *Notice* requests comment on a Petition for Rulemaking filed by First Broadcasting Investment Partners, LLC ("First Broadcasting") that proposes to streamline the procedures governing modification of FM and AM authorizations.²

Cox, either directly or through subsidiaries, owns and operates seventy-six AM and FM radio stations throughout the United States. In recent years Cox has participated in many rulemaking proceedings to amend the FM Table of Allotments to provide new local radio service to the public. While participating in this process, Cox has found that the voluminous number of FM allotment rulemakings are straining the FCC's already scarce resources. As discussed below, First Broadcasting offers a solution to both free FCC staff resources to focus on other

¹ Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking Filed, *Public Notice*, Report No. 2657 (rel. April 22, 2004) ("*Notice*").

² Petition for Rulemaking in the Matter of Amendment of the Commission's Rules Regarding Modification of FM and AM Authorizations, filed by First Broadcasting Investment Partners, LLC on March 5, 2004 (the "*Petition*").

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issues and accelerate the provision of new, improved broadcast service to the public. Cox therefore supports First Broadcasting's proposals to streamline the current procedures for changing an FM or AM station's community of license.

Cox does not, however, support First Broadcasting's proposals to revise the FCC's Class C0 reclassification procedures. Established procedures are in place that address First Broadcasting's concerns about abuse of process, and adoption of First Broadcasting's proposals would effectively truncate the three-year construction period afforded all permittees.

AM/FM Changes in Community of License By Minor Change Application. Cox supports First Broadcasting's proposal to permit both AM and FM stations to change their community of license by a minor change construction permit application on a first-come, first-served basis.³ Currently, FM stations must request a change in their community of license through a rulemaking proceeding, and AM stations must propose a change in their community of license by a major change application that can only be filed during a major change filing window. As described in First Broadcasting's Petition, these procedures excessively burden the FCC staff and result in lengthy processing delays.⁴ Allowing FM and AM stations to propose community of license changes using minor change applications would significantly reduce the processing time and the amount of Commission resources expended in processing the requests. In particular, eliminating FM counterproposals, as First Broadcasting suggests, would greatly reduce FCC staff processing time as staff no longer would have to analyze and choose between often complex competing proposals.

³ See Petition at pp. 8 and 27.

⁴ See *id.*

When it adopts rules allowing applicants to file minor change applications to change a station's community of license, as proposed by First Broadcasting, the FCC also should adjust its current contingent application rules to ensure that no public interest benefits of the rulemaking system are lost. Specifically, current FCC rules allow a maximum of four contingent applications to be filed,⁵ but more than four stations may be required to effectuate a proposal to achieve a preferential arrangement of allotments.⁶ Large proposals involving more than four stations often result in a concomitant greater number of new local services, thereby achieving a more efficient use of spectrum than could be achieved by a proposal involving a fewer number of changes.

The FCC established the limit of four stations for its contingent application rules due to a concern regarding the technical complexity of multiple station proposals. In the FM allotment context, however, the FCC staff is experienced in processing complex daisy chain proposals. It would be an untoward result if, as a result of converting to an application procedure, the FCC constrained applicants in their flexibility to formulate a preferential arrangement of allotments. Accordingly, when allowing FM community of license changes to be implemented by application, the FCC should retain the current flexibility of applicants to create coordinated, multiple station proposals so as not to lose the significant public interest benefits these proposals offer.

⁵ See 47 C.F.R. § 73.3517(e) (2003).

⁶ See, e.g., *Crowell, Bonham, et. al., Report and Order*, 19 FCC Rcd 5347, ¶ 7 (2004) (granting proposal requiring changes to eight allotments and providing “first local service to four communities with a combined population of 6,680 and result[ing] in a net gain of service to over 1,600,000 people within 12,003 square kilometers.”); *Ash Fork, Chino Valley, et. al., Report and Order*, 18 FCC Rcd 24706 (2003); mod. by *Memorandum Opinion and Order*, 19 FCC Rcd 6104 (2004) (granting proposal requiring changes to six allotments pursuant to global resolution).

Permitting applicants to change the community of FM and AM stations by minor change applications would facilitate and expedite the community change process, alleviate burdens on Commission staff, accelerate the provision of new local services to the public, and minimize delay and uncertainty for radio station licensees and permittees, while being consistent with the FCC's statutory obligations. Cox therefore supports this proposal and also First Broadcasting's proposal to start this process with a "clean slate" by opening a one-time 60 to 120 day settlement window to help clear the current backlog and further ease the burden on the FCC staff.⁷

Providing First Local Service to a Larger Community. First Broadcasting observes that the FCC's current system, under which the retention of a first local service trumps the provision of a new first local service to a greater number of persons, may be inadvertently thwarting the FCC's mandate to distribute local radio service among the several states and communities "to provide a fair, efficient, and equitable distribution of radio service to each of the same."⁸ Cox agrees and supports First Broadcasting's proposal to allow an FM station providing a community's sole local service to relocate to a new community if (i) at least two other stations provide a 70 dBu signal to the current community, (ii) the new service will be first local service, (iii) the station's 70 dBu contour will serve a larger population in the proposed community of license than it does in its current community of license and (iv) the proposal does not cause any short spacing and/or resolves any existing short spacing.⁹ As discussed in the Petition, this proposal would prioritize first local service while ensuring that the current community continues to receive a certain minimum level of service. Moreover, the FCC has determined that the size of the population to be served is the decisive factor when selecting between two competing

⁷ See Petition at p. 24.

⁸ 47 U.S.C. § 307(b) (2003); See Petition at pp. 14-16.

⁹ Petition at p. 17.

proposals to provide first local service.¹⁰ As such, allowing a station to relocate to a new community if the station's 70 dBu contour would serve a larger population is consistent with the determination that maximizing the number of persons served is in accordance with the FCC's statutory mandate and serves the public interest.

Recovering Wasted Spectrum for New Improved Services. Cox also supports First Broadcasting's proposal that the FCC implement a simple, efficient procedure for deleting vacant allotments from the FM Table of Allotments, similar to the current scheme for deleting AM authorizations from the FCC's database.¹¹ The current system under which the FCC relies on a petitioner to request the deletion of an allotment in a rulemaking is ineffective in "cleaning up" the FM Table of Allotments, particularly given that the burden is on petitioners to identify vacant allotments and request their deletion. Because perpetually vacant or non-viable allotments waste valuable FM spectrum and harm the public interest, the FCC should proactively identify these non-viable allotments and delete them in an efficient manner to facilitate and create opportunities for the provision of new or improved FM service.

Maintain Current Class C0 Procedures. Less than four years ago, the FCC adopted procedures for proposing the reclassification of a station from Class C to C0.¹² As part of these procedures the FCC considered whether to provide stations subject to C0 reclassification with the standard three-year construction period, and determined that a balancing of interests

¹⁰ See, e.g., *Bunnell and Palm Coast, Florida*, 18 FCC Rcd 9506, ¶ 2 (2003) ("Given the difference in population of the two communities, we conclude that the public interest is served by providing first local aural transmission service to the larger community"); *Blanchard, Louisiana and Stephens, Arkansas*, 10 FCC Rcd 9828, 9829 (1995).

¹¹ Petition at p. 21.

¹² *1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Second Report and Order*, 15 FCC Rcd 21649, ¶ 32 (Nov. 1, 2000) (the "C0 Order").

warranted provision of the three-year period.¹³ At the same time, the FCC recognized the possibility that Class C stations could abuse the FCC's procedures to oppose other stations' upgrades and addressed that issue by stating "[w]e believe that the current staff practice of regularly monitoring the status of pending construction permit applications will be sufficient to guard against dilatory prosecution of applications" and that the FCC had available remedies including the dismissal of applications to address this issue.¹⁴

Despite the FCC's having recently addressed the potential for abuse and its remedy in the *C0 Order*, First Broadcasting states that the FCC's procedures are inadequate and that draconian measures must be imposed. One of its proposals is to establish intermediate deadlines, such as for obtaining FAA or zoning approval, that must be met or the station suffers revocation of the construction permit. Such a "solution" would be inequitable and unreasonable because it is impossible to control the numerous variables that can affect the timing of any particular step in construction, and certain milestones such as FAA or zoning approval involve factors far beyond a licensee's control. Moreover, the time by which a station reaches any of the intermediate steps would vary widely from station to station depending on its particular location and circumstances, and the varying timetables provide no indication as to whether a station will complete construction by the end of the mandated three-year period. As a result, the imposition of arbitrary deadlines for meeting intermediate benchmarks would be unreasonable and would

¹³ *Id.* at ¶ 31 ("Application of these policies will provide affected Class C station licensees an additional, unencumbered three years to complete construction of upgraded facilities once their permit application is granted. Based on our review of the record in this proceeding, we find no reason for departure from these policies in the context of these reclassification procedures. They will provide affected Class C stations with a reasonable opportunity to preserve their Class C status, while ensuring that new and improved FM service may be brought to the public as expeditiously as possible.").

¹⁴ *Id.* at ¶ 32.

effectively reduce the FCC's three-year construction period for stations subject to a C0 triggering application or petition to the short time period between grant of the construction permit and any of the intermediate deadlines.¹⁵ In addition, First Broadcasting's proposal of affording processing priority to all applications proposing to downgrade a station from Class C to C0 to the exclusion of all other facilities modification applications is inequitable because it affords preference to a special class of applicants without a justified basis for the preferential treatment. While Cox understands the concerns of First Broadcasting, the better solution would be reliance on and utilization of the FCC's current procedures rather than the imposition of unreasonable deadlines and the provision of inequitable treatment to address these issues.

Conclusion. For the reasons described above, Cox supports First Broadcasting's proposals to streamline the modification process for FM and AM stations, but believes that the current Class C0 reclassification procedures sufficiently address First Broadcasting's concerns.

¹⁵ In fact, such a scheme would subject Class C0 stations to the unreasonable choice of awaiting a triggering application or petition, thereby risking a draconian construction schedule and revocation of the permit, or voluntarily upgrading to Class C status in the absence of any triggering application or petition in order to have the benefit of the full 3-year construction period that is afforded to all other permittees. Such circumstances would thwart the FCC's policy decision in the *C0 Order* that it would not force licenses to engage in expensive tower relocation or station modifications absent a *bona fide* interest in the spectrum. See *C0 Order* at ¶ 30.

Cox therefore urges the FCC to swiftly issue a Notice of Proposed Rulemaking to adopt the FM and AM modification procedures and hasten the provision of new service to the public.

Respectfully submitted,

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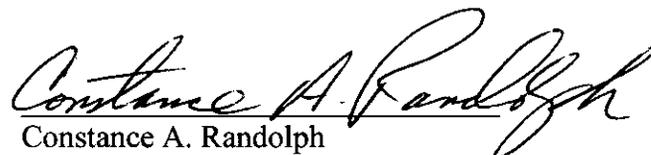
Dated: May 24, 2004

CERTIFICATE OF SERVICE

I, Constance Randolph, a secretary at Dow, Lohnes & Albertson, do hereby certify that a copy of the foregoing "Comments of Cox Radio, Inc." has been sent this 24th day of May, 2004, via first-class U.S. mail, postage prepaid, to the following:

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