

MULLANEY ENGINEERING, INC.

9049 SHADY GROVE COURT
GAITHERSBURG, MD 20877



**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)
) MB Docket No. **05-210**
Revision of Procedures Governing Amendments) RM No. 10960
to FM Table of Allotments and Changes of)
Communities of License in the Radio Broadcast Services)

To the Commission:

COMMENTS

Mullaney Engineering, Inc. (“MEI”), hereby submits its comments in response to the Public Notice released by the Commission on June 14, 2005 in MB Docket 05-210, which solicits comments concerning the NPRM which proposes changes in the way the FCC currently considers requests to modify the FM Table of Allotments and requests to change the community of license for an AM or FM facility. Unfortunately, the FCC staff elected to substantially narrow what was submitted in the rule making as originally filed and commented on. MEI’s comments relating to pertinent technical issues raised within the notice’s paragraphs are provided herein.

Certainly the current procedure of filing rule making proposals needs to be changed. It is not uncommon over the past 20 years for some proposals (mainly counter proposals) to fail to even make it into the engineering data base for many months and even over a year. This makes it nearly impossible for the FCC to guarantee the proposed RM is properly protected and impossible for applicants to insure that subsequently filed proposals & counter proposals do not cause a problem to the yet unpublished proposals. Electronic

filing has worked well (**after much debugging of the e-file system**) for the posting of technical data contained in normal 301 applications. The filing of RM data via a 301 should work well and will help to restore integrity and reliability back into this troubled system.

All filings submitted to the FCC should require **some sort of fee payment** whether the filing is for a commercial or a non-commercial facility. It is evident from the last FM translator window which attracted over 12,000 applications that abuse of the FCC system is running rampant. Many translator applications were filed as speculation and many have since been sold for a profit to other non-commercial entities. We have no problem with non-commercial entities getting a cost break from the Government but as all socialistic forms of Government have shown, **a totally free ride encourages abuse.**

When you go into a fast food restaurant and grabs some napkins or salt, **do you take just one/two or do you take several extra just in case you need some tomorrow.** After all, the items are totally for free and thus, does not cost you anything. However, if you **had to pay 3 cents** when more then two of any item is take - - How many of each item would you? We don't know how many that is but we are sure it would be less than what would have been taken **when the items are absolutely free.**

The FCC should seek the **authorization of Congress** to charge non-commercial entities 25% to 50% of the normal filing fees charged commercial entities.

We support the proposal to make changes in cities of license a **minor change** for both AM & FM facilities. Currently such changes for AM stations require “major change filing windows” and they are just to infrequent (major change windows were opened in 2000 & 2004). FM stations are required to file a rule making which leaves their request vulnerable for 3 to 6 months for their competitors to devise proposals which will insure denial of such requests. It is quite common for even uncontested RM dockets to wait 6 to 12 months **after all dead lines have past** before a final decision is issued by the staff. The current FM rule making procedure is nothing more than waiving a **red flag** in front of other competitive broadcasters, just asking them to figure out a way to prevent the change in city/channel from happening. One good thing about the current AM window method is that it is essentially a “**first come / first serve**” type of filing. That is no other AM applicant theoretically knows about any other filing until the window is closed and at that point, it is **too late to file** a blocking technical proposal. Oops, did we say a blocking proposal, we really meant *a bonafide expression of interest for a more deserving community*. The current “first come / first serve” system for AM & FM applications was adopted over 10 years ago and it has reduced the delay in providing service to the public. It has also benefitted the FCC as well, by minimizing **unnecessary** comparisons of an FM application versus rule making petitions.

Prior to 1982, the FM rule making process required every petitioner to conduct a “**preclusion study**”. This study was intended to determine if the requested allotment at a particular city would preclude or prevent another yet **unidentified community** from having its own FM station, even though that community has never expressed any interest in having such an FM facility.

The rule changes in 1982, **eliminated the requirement** to conduct preclusion studies. It was concluded, that if a community truly wanted a facility it must speak up for itself.

Permitting the **submission of counter proposals only encourages abuse** of the FCC limited resources. The current system encourages the petitioners to include proposals for first service allotments just to receive a comparative advantage. Many such proposals make little economic sense but do provide a comparative advantage. The Commission should **eliminate counter proposals** and limit the public to comments in support or opposition of the proposed rule making. Seldom if ever is an existing broadcaster truly interested in **creating a new vacant allotment** which also just happens to provide that broadcaster an upgrade for its own facility. However, because no one knows what type of counter proposal will be submitted, the initial proposal by the existing broadcaster must include such new items so as to be comparatively competitive.

In both FM and TV translators a minor change application is one which still has **some portion of the old service area being served by the new service area**. If one is going to give the processing advantage to existing broadcasters there should be some sort of sanity test. To simply say that the new location must remain MX with the old location would appear to be too loose of a standard if the 301-RM proposal is adopted. In the last AM window, applications were filed by existing broadcasters which essentially move the station hundreds of miles away. To avoid abuse, **any subsequent applications** to “again” change cities of license should require that the facility which was just moved to a new city

must first be built & licensed and operating for a minimum of three years. Don't let someone make multiple moves before building and operating the facility.

Removing a community's sole local service should be allowed in certain circumstances. When the facility is still a mere CP (has not yet been physically built) the threshold showing should be **much lower** than once the station has operated for one or more years. Even when a station has been operating for several years, if it has not received respectable economic support from the business community in its city of license (advertisement revenues), a request to change the community of license should be seriously considered.

The current method has encouraged applicants to **make a mockery of the 307(b)** analysis. Applicants propose communities of license which are much too small to support a radio station simply to receive the "coveted" preference in a 307(b) analysis. Communities with well less than 500 people have had proposals to allot not only a Class A FM but even higher power stations. The staff should adopt separate minimum population criteria for proposed cities of license. Certainly, a Class C 100 kW FM allotment requires a city of license which is larger than what a Class A FM would require. To determine if the proposed allotment is in the public interest a **sanity test** should be adopted whereby the city of license **must be a certain percentage of the total population served** within the primary or city grade service areas. No one really believes that where the community of license is **less than 25% of this service area** that issues of importance in that community will be driving the programming of that station. The FCC staff needs to establish a separate "quiet village" criteria for each class of FM facility. This policy

should apply to both modifications by existing AM/FM facilities and to new petitions for FM facilities.

The current process of selecting a city strictly for a first service preference does not always serve the public interest. Each Class of station should have its own minimum population that must be met before a city can qualify as a community of license. If the proposed city of license has a population smaller than 25% (or some other percentage) of the total population within a service contour or if there exists a community which has a population which is more than 50% larger within that contour an evaluation should be conducted to determine if that other city should be the community of license. Simply pretending that a new FM facility will serve its community of license which has a population of 200 persons when there exists a nearby city of 5,000 persons is not realistic and does not serve anyone's interests. Similarly, **new proposals for Class C0 or C allotments** should be required to serve a minimum number of persons. In cases where the petition fails the population test it can still qualify for the higher Class allotment if it can demonstrate that terrain permits implementation of maximum facilities with a tower height of less than 200 meters. It is **unrealistic to assume** that someone will build a 450 to 600 meter tower if the total population to be served is obviously not large enough. This population & terrain test will help eliminate unrealistic Class C0 & C vacant allotments from preventing the creation of other new or upgraded allotments. If initially dropped in as

a Class C1 the petitioner has the option of filing a one-step to the higher class at time of application.

The limit of **five changes in any single 301-RM application** appears to be much more restrictive than need be. If counter proposals are eliminated only the most complicated rule making proposals would not involve more than eight locations. However, changes involving vacant allotments should not be included in whatever limit is adopted. Given the current back log and the level of abuse that has existed for many years, a cap on vacant allotments should not be imposed. However, as we have expressed many times in the past, no changes in vacant allotments which have tentatively been announced for an upcoming auction should be permitted. Similarly, if the vacant allotment is already the subject of an open proposal to change its channel, that allotment should not be included in any auction until a final decision is reach on just what channel will be used in that allotment community. **Give the bidder a chance to conduct credible “due diligence”.**

The NPRM at page 4, paragraph 11, states *“We do not believe it is in the public interest at this time to seek comment on all of First Broadcasting’s proposals”*. If the staff does not believe it is time then why did it publish the entire proposal by First Broadcasting and when is the proper time. Given that the last major rewrite was 1982 must we assume that such additional changes **will wait until the year 2028**. The staff has shown its propensity to wait for a crisis in the existing method before it seeks to act. **Now is the time** for the staff to resolve many of the known absurdities in the rules and it should not wait for yet another crisis.

With regard to the request for some sort of **automatic deletion** of unused allotments, we are sure that the staff is well aware that several of the allotments in auction 37 and in auction 62 were originally created in Docket 84-231, which resulted from changes implemented in Docket 80-90. Certainly, **no one really believes** that having an allotment hang around, unused for **21 years** is deemed acceptable. Such unused allotments prevent more deserving communities from obtaining an allotment which is contrary to Section 307(b). It should also be noted that **33 of the allotments** proposed in auction 62 were originally proposed in auction 37. How many times will an allotment be offered at auction before the staff proposes deletion of those allotments.

The current method for **downgrading Class C facilities** to Class C0 facilities because those facilities fail to achieve the minimum HAAT of 451 meters **is a joke**. There is no method in place to track which CPs are the result of a C0 challenge and thus, at the expiration of the new Class C CP the station **is not automatically downgraded**. At least one station so challenged was permitted to dismiss their Class C CP before the 3 year period was up thereby getting the jump on its competition and simply **file yet another** “first come / first serve” application for Class C HAAT it will never build. Most challenged stations obtain a CP to increase its HAAT at or very near its existing licensed site. We know of at least one such Class C CP which proposed a substantial change of site. However, the **unwritten policy** is to **continue to protect both** the old substandard HAAT licensed site as well as

the new CP site **as if both were full Class C facilities**. This policy is **absurd** and needs substantial rework.

A better approach would be to **immediately downgrade** the licensed facility and let the pending application and subsequent CP provide the full Class C protection. Subsequent applications for a new but replacement Class C CP (intended to extend the original 3 year period) should not be accepted for **at least one year after expiration of the initial CP for Class C facilities**. The staff has the ability to add a comment to any license record in its engineering data base to indicate that the license is restricted to a Class C0 for 4 years after the initial grant of the last CP.

The current process is abused on a regular basis by both sides. All RM petitions whether filed by an individual/business or by an attorney **should include the names and addresses of the real parties in interest** which seek the change (P.O. Boxes are unacceptable).

Conclusion: MEI had hoped that this NPRM was going to be a vehicle through which the current process of granting AM & FM applications could be substantially improved. The Commission consistently refers to its ever dwindling and limited resources. However, when given the chance to truly make meaningful improvement to its own situation, it consistently chooses not to do so. It only has itself to blame.

Respectfully submitted,

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