

Cohen, Dippell and Everist, P.C.

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

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| In the Matter of: |) | |
| |) | |
| Revision of Procedures Governing Amendments |) | MM Docket No. 05-210 |
| To FM Table of Allotments and Changes |) | RM-10960 |
| of Community of License in the Radio Broadcast |) | |
| Services |) | |

Comments of
Cohen, Dippell and Everist, P.C.

The following comments on the Notice of Proposed Rule Making by Cohen, Dippell and Everist, P.,C. are respectfully submitted to the Federal Communications Commission. The Notice of Proposed Rule Making (“NPRM”) in MB Docket No. 05-210, RM-10960, is at the heart of the procedures in which new or upgraded FM assignments are made. It also proposes a change to AM facilities with regard to the community of license.

With the exception of the addition of Class A allotments in Docket 80-90; modification of adjacent channel protection; modification of certain spacing criteria entitled in the *1998 Biennial Regulatory Review—Streamlining of Radio Technical Rules in Part 73 and 74 of the Commission Rules in MM Docket No. 98-93 adopted October 12, 2000,*” the current FM Rules by in large have been fundamentally intact for over the past 40 years. The Federal Communications Commission is to be commended on issuing this NPRM.

Cohen, Dippell and Everist, P.C. (“CDE”) is an established engineering firm located in Washington, D.C. and its predecessors have offered professional engineering services to the

broadcast and communications industry for over sixty (60) years. It is familiar with the FM rulemaking procedures and the undersigned joined the firm in 1961. CDE is familiar with AM procedures in order to find or improve existing facilities as demonstrated in its Reply Comments¹ in MM Docket No. 99-325 which reflected that the undersigned was Chairman of AM Service Working Group in the preparatory effort at the 1979 World Administration Conference and participated as an industrial delegate to the First and Second Sessions of the Region 2 Conference².

FM

In 1961, the Commission administered the FM band under the so-called protected contour concept and permitted 30 foot field strength measurements in lieu of the then propagation curves to demonstrate the presence or absence of interference.

Docket No. 14185, *In the Matter of Revision of FM Broadcast Rules Particularly as to the Allocation and Technical Standards* adopted in July 1962 was an acknowledgment by the Federal Communications Commission ("FCC") that a compelling number of applications were being filed with the express intent to serve large cities at the expense of rural areas and small

¹In the Matter of National Radio Systems Committee "In-Band/On-Channel Digital Radio Broadcasting Standard NRSC-5" Digital Audio Broadcasting Systems and Their Impact in the Terrestrial Radio Broadcast Service, MM Docket No. 99-325

²Ibid

towns³. This concern resulted in the promulgation of Rules which are now the basis in which FM Table of Allotments are modified or assigned currently. This fundamental change in philosophy was so evident that the imposition of spacing rules required the creation of Section 73.213 in order to grandfather the facilities that were now suddenly “short-spaced.” For example, many of the Class B stations in the corridor from Boston, Providence, Hartford, New York City, Philadelphia, Baltimore, Washington, D.C. to Richmond were at substandard spacing at the adoption of Docket 14185. Similarly, there were other corridors in the midwest—Cleveland, Detroit, Indianapolis and Chicago. In the west, a corridor from San Francisco, Los Angeles to San Diego had stations at substandard spacing. All these substandard spacings for these stations are evident today. Many other artifacts still are evident by virtue of the process and rules in place prior to 1962 and other changes to the rules such as the change in the FM propagation curves subsequently adopted.

The new rules adopted by virtue of Docket 14185 in 1962 came at a period when FM was still in its infancy. For example, the Commission staff for a considerable time informally discouraged the consideration of AM stereo until it believed that FM had become a viable broadcast medium. In fact, as noted in this firm’s comments in its Reply Comments⁴ the review by the FM Service Working group preparatory to the 1979 WARC found no evidence that there

³See First Report and Order, Docket No. 14185, RM-94, Section II entitled, “Overall Objections”

⁴Ibid

was a need or expectation that FM technical procedures needed to be fundamentally changed. This was unlike the AM Service Working Group, which found still a pent up demand for AM Service and, among other items, recommended to the Federal Communications Commission the expansion of the AM band.

The new Rules should not be hindrance to the many stations that have been authorized and established under the various rule changes in the past 40 years. Similarly, the revisiting of the procedures for new and upgraded stations warrants a long and overdue need. For example, the obvious abuse by “speculators” as it is evident⁵ resulted once the old administrative hearing procedure now abandoned in favor of auction procedure became in effect. This is noted by the Commission in Paragraphs 31-34 of the NPRM. Under the old procedures, an FM applicant for a contested facility was subject to intense scrutiny and sworn testimony was possible. The Commission has no such mechanism in place whereby by sham rulemakings can be easily identified. For many such filings, there is no intent to serve the public good, and their only purpose is to serve the proponent so that he can be reimbursed for his “so-called expenses”. This abuse of process not only requires the Commission to devote time to administer and process these sham applications, but it continues to frustrate by cluttering the process and thereby denying the public of a legitimate new or improved aural service. The current procedure--that all

⁵This also applies to FM translators as well.

can file (not withstanding their intention)--should not and cannot continue if an efficient administrative process is to be maintained.

Just as solid administrative technical procedures are necessary to maintain the integrity of the FM spectrum, there must be an administrative non-technical procedure in which the Commission has some reasonable assurance that the rulemaking submissions filed are intended to serve the public interest and not immediate self-interest.

As shown by the Commission's own research, the current process has become administratively cumbersome without corresponding public benefit.

Therefore to retain the current rulemaking process, which permits the introduction of a hypothetical channel or an improvement for an existing channel, can only be achieved by shuffling the change of an existing FM station's channel, needs to be abandoned once and for all. This procedure of the channel modification of existing stations is not found in AM assignment procedures, TV (NTSC) nor DTV assignment procedures. This current FM rulemaking procedure has attained a mature, diverse and vibrant FM service that only could be imagined in the 1960's. Therefore, this procedure is no longer needed to encourage and foster FM development. Therefore, the current FM assignment procedure should only be retained where a single new facility can be assigned on its own, without modification of a current FM station's channel.

FAA Consideration

Many procedures have been adopted since 1962. For example, the FAA has introduced an airspace analysis model (“AAM”). The current software is Version 5. Any new rulemaking which proposes a new channel should be required to demonstrate little or no impact on existing FM stations which would subject them to FAA scrutiny. In other words, EMI effects to FAA facilities must be a part of the rulemaking process for a new channel proposal.

Point-to-Point Prediction Methodology

In MM Docket No. 98-93, Second Report and Order,⁶ released November 1, 2000, the FCC addressed the compelling need to provide a supplemental point to point (“PTP”) prediction model to yield a more accurate prediction method. While this method was to help define interference contours, there is a real and definite need to provide a more realistic alternative that the current FCC general approach in a rulemaking process to determine if the 70 dBu service is realized. CDE has found that the current procedure often does not yield an accurate portrayal of the predicted service to a community.

It is anticipated that many of the current rulemaking filings are in areas that are rural in nature and possibly in rugged terrain. The Commission adopted in WT Docket No. 03-128 the *Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process*, released October 5, 2004, Effective Date: March 7, 2005 requiring other

⁶In the Matter of 1998 Biennial Regulation Review – Streamlining of Radio Technical Rules in Part 73 and Part 74 of the Commission’s Rules

siting criteria. In order to enhance the ability of site selection in a rulemaking proceeding, the PTP methodology should be reviewed and adopted to permit greater certainty in providing 70 dBu service to the community. In fact, the FCC stated in MM Docket No. 98-93, "We plan in the near future to make available these program model revisions on the website and to issue simultaneously a public notice inviting further comment." Over four years have elapsed and CDE urges the FCC to proceed with a realistic alternative for 70 dBu service at the rulemaking stage of the process than that currently FCC general broad brush approach.

Further, with the termination of the 1962 wide-open assignment process, CDE finds no compelling need to revise the procedures to permit the change of station's licensed community through a one-step application process.

AM

CDE encourages the Commission to revisit its current AM filing process. While it is theoretically a method by which a fair and equitable process to improve and introduce new AM service, it is administratively inefficient and procedurally defective. The reason is clear-- the AM band is required to consider the groundwave propagation characteristics both daytime and nighttime and skywave propagation during the so-called "critical hours" and nighttime hours.

These multiple faceted engineering requirements do not lend themselves to simply filing an expression of interest and then let the process sort itself out under the concept of due

diligence. It is a flawed process, if retained, doomed to failure and will continue to hamper real and achievable service for the benefit to the public.

Therefore, to permit a one-step procedure to change the licensed community for AM is only a band-aid and is not supported by this firm until an overhaul of the current AM filing procedure is performed which allows for a meaningful and realistic processing procedure.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Donald G. Everist", written in a cursive style.

Donald G. Everist
President

Date: October 3, 2005