

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

In the Matter of	)	
	)	
Revision of Procedures Governing	)	
Amendments to FM Table of Allotments	)	MB Docket No. 05-210
And Changes of Community of License	)	RM No. 10960
In the Radio Broadcast Services	)	

To: The Commission

**COMMENTS ON AND OPPOSITION TO  
PETITIONS FOR RECONSIDERATION  
OF COX RADIO, INC.**

Cox Radio, Inc. (“Cox”), by its attorneys, hereby submits these comments on and opposition to the Petitions for Reconsideration filed in response to the *Report and Order* in the above-captioned proceeding.<sup>1</sup> Cox filed comments below and is pleased the *Report and Order* adopted many of the proposals supported by Cox.<sup>2</sup> However, while the *Report and Order* significantly improves the process by which existing AM and FM stations can change their community of license and modify their facilities, particular aspects of the *Report and Order* should be reconsidered.

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<sup>1</sup> See Revision of Procedures Governing Amendments to FM Table of Allotments & Changes of Community of License in the Radio Broad. Services, *Report and Order*, 21 FCC Rcd 14212 (2006) (“*Report and Order*”). Notice of the Petitions for Reconsideration was published in the Federal Register on August 15, 2007. Oppositions therefore are due August 30. See Report No. 2825.

<sup>2</sup> See Revision of Procedures Governing Amendments to the FM Table of Allotments & Changes of Community of License in the Radio Broad. Servs., *Notice of Proposed Rulemaking*, 20, FCC Rcd 11169 (2005) (“*Notice*”); Cox Radio, Inc., *Comments*, MB Docket No. 05-210 (filed Oct. 3, 2005) (“*Cox Comments*”).

**I. MULTI-STATION PROPOSALS RESULT IN THE GREATEST PUBLIC INTEREST GAINS AND SHOULD NOT BE RESTRICTED.**

Cox agrees with those petitioners who urge the Commission to reconsider its decision to limit the number of contingent applications that can be filed together as part of a set of related station changes.<sup>3</sup> As Cox noted in its comments filed on the *Notice*, multi-party, multi-allotment proposals can yield substantial public interest benefits. An artificial cap on the number of reassignment proposals that can be submitted together will deny the listening public the benefits of increased service and choices in exchange for illusory gains in processing efficiency for Commission staff.<sup>4</sup>

Both the MMTC Petition and the Small Group Broadcasters Petition explain how multi-station reallocation proposals benefit the public interest by allowing for the efficient use of FM spectrum in an increasingly congested spectrum band.<sup>5</sup> MMTC shows how reallocation proposals advanced by the private sector have enhanced service nationwide, including service to minority populations.<sup>6</sup> Similarly, the Small Group Broadcasters show how reallocation benefits small stations, rural stations, and rural area listeners.<sup>7</sup>

Despite the demonstrable public interest benefits multi-station reallocation proposals provide, and despite overwhelming industry support for making contingent application limits

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<sup>3</sup> See American Media Services, LLC, Mattox Broadcasting, Inc., and the Minority Media and Telecommunications Council, *Partial Petition for Reconsideration*, MB Docket No. 05-210 (filed Jan. 19, 2007) (“*MMTC Petition*”); Mullaney Engineering, *Petition for Reconsideration*, MB Docket No. 05-210 (filed Jan. 19, 2007) (“*Mullaney Petition*”); Twenty-Three Small Group Broadcasters, *Petition for Reconsideration and Request for Clarification*, MB Docket No. 05-210 (filed Jan. 19, 2007) (“*Small Group Broadcasters Petition*”).

<sup>4</sup> *Cox Comments* at 3-7.

<sup>5</sup> See, e.g., *MMTC Petition* at 10-13; *Small Group Broadcasters Petition* at 7-10.

<sup>6</sup> *MMTC Petition* at 10-13.

<sup>7</sup> *Small Group Broadcasters Petition* at 8-9.

inapplicable in the reassignment context, the Commission nevertheless applied the four-application limit so as to avoid complex proposals that may tax staff resources.<sup>8</sup> As, however, the MMTC Petition points out, applying the four-application limit of Section 73.3517(e) to contingent multi-station minor change applications cannot be justified by concerns about scarce Commission staff resources, as Commission staff has successfully been processing essentially limitless multi-station proposals on the rulemaking side for many years.<sup>9</sup> Indeed, as the Small Group Broadcasters Petition notes, Commission staff is routinely faced with far more complex and burdensome proceedings in other contexts.<sup>10</sup> Finally, as the Mullaney Petition states, any “problems in the past dealt not with the initial rule making proposal but in the numerous counter proposals that inevitably were filed.”<sup>11</sup>

MMTC also points out that the imposition of the four-application limit of Section 73.3517(e) is completely arbitrary and no valid justification was given for imposing what is essentially a new limit on the number of related assignment changes that can be submitted together as part of one proposal.<sup>12</sup> The Small Group Broadcasters echo this concern, noting there is “no discussion in the *R&O* of the reason for this newly imposed limit.”<sup>13</sup> Given the lack of support in the record for imposing a limit at all, combined with the complete lack of discussion in the *Report and Order* for specifically limiting related applications to four, the Commission

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<sup>8</sup> See, e.g., *MMTC Petition* at 4; *Small Group Broadcasters Petition* at 2-6.

<sup>9</sup> *MMTC Petition* at 4-7.

<sup>10</sup> *Small Group Broadcasters Petition* at 9.

<sup>11</sup> *Mullaney Petition* at 2.

<sup>12</sup> *MMTC Petition* at 4-5.

<sup>13</sup> *Small Group Broadcasters Petition* at 9.

should be mindful of its obligation to justify numerical limits in media proceedings and eliminate the four-application contingent application limit in connection with station assignment changes.<sup>14</sup>

The petitions demonstrate no valid reason exists for applying the four-contingent application limit to the reallocation process and, in fact, the public interest is harmed by doing so. Cox therefore urges the Commission to reconsider this aspect of the *Report and Order* and find the four-application limit of Section 73.3517(e) does not apply to contingent applications filed as part of the reassignment process.

## **II. GRANDFATHERED SHORT-SPACED STATIONS SHOULD NOT BE DISADVANTAGED BY REQUIRING FULLY-SPACED ALLOTMENT COORDINATES.**

Cox also agrees with the petitioners who ask the Commission to confirm that grandfathered short-spaced stations can use the new minor change application process even though they are unable to specify hypothetical fully-spaced allotment coordinates.<sup>15</sup> As the engineering statement submitted with the Keymarket Petition points out, the requirement to specify hypothetical fully-spaced allotment or assignment coordinates when submitting a minor modification application “is unduly restrictive to existing FM stations, particularly those that are presently authorized at short-spaced transmitter sites.”<sup>16</sup>

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<sup>14</sup> See generally *Prometheus Radio Project v. FCC*, 373 F.3d 372, 398 (3d Cir. 2004), *stay modified on rehearing*, No. 03-3388 (3d Cir. Sept. 3, 2004). See also *Time Warner Entertainment Co. v. FCC*, 240 F.3d 1126, 1137 (D.C. Cir. 2001) (“We recognize that in drawing a numerical line an agency will ultimately indulge in some inescapable residue of arbitrariness . . . But to pass even the arbitrary and capricious standard, the agency must at least reveal “a rational connection between the facts found and the choice made.” (citations omitted)).

<sup>15</sup> See *Keymarket Licenses, LLC, Forever Broadcasting, LLC, Forever Communications, Inc., Megahertz Licenses, LLC and Forever of PA, LLC, Petition for Reconsideration*, MB Docket No. 05-120 (filed Jan. 19, 2007) (“*Keymarket Petition*”).

<sup>16</sup> *Keymarket Petition*, Statement of William J. Getz at 2 (“*Getz Statement*”).

The Commission has somewhat clarified the issue of how a grandfathered short-spaced station can use the new minor modification application procedures. In a series of examples released on April 10, the Media Bureau recognized that a grandfathered short-spaced station proposing a community of license change with no other technical facility modifications must file an FCC Form 301 even though the proposal will violate the assignment reference site requirement of Section 73.3573(g)(4).<sup>17</sup> Rather than eliminating the fully-spaced requirement in this context, however, the Media Bureau states the staff “will consider” a waiver request.<sup>18</sup>

While allowing for a waiver of the fully-spaced allotment requirements is helpful to grandfathered short-spaced stations, it does not go far enough. Cox respectfully asserts that the Commission should not foist the uncertainty of the waiver process on grandfathered and other short-spaced stations wanting to make changes using the new minor modification application procedures. Instead, the Commission should recognize that the public interest in encouraging short-spaced stations to make beneficial minor modifications is just as great as it is in non-short-spaced stations. The Commission therefore should eliminate the full-spacing requirement for short-spaced stations that do not propose any technical changes, as it did in the prior allotment rulemaking context.<sup>19</sup>

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<sup>17</sup> See Media Bureau Offers Examples to Clarify the Treatment of Applications and Rulemaking Petitions Proposing Community of License Changes, Channel Substitutions, and New FM Allotments, *Public Notice*, DA 07-1671 (rel. April 10, 2007) at 4, Example 15.

<sup>18</sup> *Id.*

<sup>19</sup> See Killeen and Cedar Park, Texas, *Report & Order*, 15 FCC Rcd 1945, ¶ 11 (MMB 2000); Oceanside and Encinitas, California, *Report & Order*, 14 FCC Rcd 15,302, ¶ 6 (MMB 1999); Newnan and Peachtree City, Georgia, *Report & Order*, 7 FCC Rcd 6307, ¶ 5 (MMB 1992).

### III. SECTION 307(B) POLICIES AND THE LOW POWER RADIO INTERFERENCE RULES ARE NOT AT ISSUE IN THIS PROCEEDING.

From the initial *Notice*, this proceeding has focused on rule and procedural changes intended to reduce the Commission's processing backlog and streamline the FM allotment process.<sup>20</sup> Cox objects, therefore, to the petitioners who have attempted throughout this proceeding to steer the Commission away from its laudable, and purposefully narrow, focus on how to change the AM and FM procedural rules to speed improved service to the public.<sup>21</sup> Rather than contributing to the discussion of how the procedural rules should best be amended to streamline the AM and FM allotment procedures, these parties instead ask the Commission to overturn years of precedent relied upon by the broadcast industry regarding Section 307(b) showings.<sup>22</sup> The Commission properly declined earlier invitations to upset its substantive allocation rules and should do so again here.

Contrary to assertions made in the Clay and Crawford Petitions, the substantive aspects of the Commission's community of license allotment policies were never at issue in this proceeding.<sup>23</sup> In contrast to many other rulemaking proceedings asking broad questions on wide-ranging topics, the *Notice* here plainly stated that the Commission sought comment "on a number of specific rule and procedural changes in the handling of FM and AM applications and rulemaking petitions to amend the Table [of Allotments]."<sup>24</sup> If parties such as Clay and

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<sup>20</sup> See, e.g., *Notice* at ¶¶ 1 – 3.

<sup>21</sup> See, e.g., William B. Clay, *Petition for Reconsideration*, MB Docket No. 05-210 (filed Jan. 18, 2007) ("*Clay Petition*"); Charles Crawford, *Petition for Reconsideration*, MB Docket No. 05-210 (filed Jan. 18, 2007) ("*Crawford Petition*"). Prometheus Radio Project also filed a brief Statement in support of the Clay Petition. See Prometheus Radio Project *Statement in Support of Petition of Reconsideration*, MB Docket 05-210 (filed Jan. 15, 2007) ("*Prometheus Statement*").

<sup>22</sup> See Note 21.

<sup>23</sup> See, e.g., *Clay Petition* at 2.

<sup>24</sup> *Notice* at ¶ 2.

Crawford wish the Commission to conduct a wholesale reexamination of what “constitutes a preferential arrangement of allotments under Section 307(b) of the Act as compared to the existing allotment,”<sup>25</sup> they are welcome to do so through a Petition for Rulemaking, as First Broadcasting Investment Partners, LLC initially did here.<sup>26</sup> The Commission should not, and cannot, do so at this point in the proceeding.

The Commission must also not allow this proceeding, and the minor change applications filed since the new minor change application procedures were adopted, to be hijacked by purported Section 307(b) concerns that mask nothing more than untimely petitions for reconsideration of the Low Power FM (“LPFM”) service rules. Indeed, the Prometheus Statement and subsequent *ex parte* filings arguing that minor change applications filed pursuant to the new radio allotment procedures may displace LPFM stations have no place in this proceeding. As Prometheus well knows, when the LPFM service was adopted in 2000, the Commission explicitly stated “we do not believe that an LPFM station should be given an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class.”<sup>27</sup> More recently, the Commission has acknowledged that “full-service FM stations, including subsequently authorized new stations, facility modifications, and upgrades, are not required to protect facilities specified in LPFM applications or authorizations.”<sup>28</sup> Yet, Prometheus and its companion the Media Access

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<sup>25</sup> Notice at ¶ 27.

<sup>26</sup> Notice at ¶ 8.

<sup>27</sup> Creation of Low Power Radio Service, *Report and Order*, 15 FCC Rcd 2205 (2000) at ¶ 65; *affirmed on reconsideration*, 15 FCC Rcd 19208.

<sup>28</sup> Creation of Low Power Radio Service, *Second Order on Reconsideration and Further Notice of Proposed Rulemaking*, 20 FCC Rcd 6763 (2005) at ¶ 37. See also Port Norris, N.J., et al, *Report and Order*, 21 FCC Rcd 11449, ¶ 6 (MB 2006) (granting an allotment proposal even though it would displace two LPFM stations).

Project have urged the Commission and the Media Bureau to hold the processing of minor modification applications that permissibly impact LPFM stations.<sup>29</sup> Cox appreciates the benefits LPFM can provide to local communities, but as this request amounts to nothing more than an untimely request for reconsideration of the same LPFM rules that have been in place for over six years, these attempts to abuse the Commission's procedural processes must be denied.

### **CONCLUSION**

For the reasons described above, Cox supports the petitioners who urge the Commission to reconsider its decision to limit the number of contingent applications that can be filed together as part of a set of related station changes. Cox also supports the petitioners who ask the Commission to confirm that the fully-spaced allotment coordinate requirement should not apply to minor modification applications filed by grandfathered short-spaced stations. Cox objects,

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<sup>29</sup> See, e.g., Media Access Project, *Notice of Oral Ex Parte Presentation*, MB Docket No. 05-210 (filed Feb. 22, 2007).

however, to the petitioners who impermissibly ask the Commission to revisit its substantive FM allotment policies and, concurrently, hold the processing of beneficial minor modification applications that may affect LPFM stations.

Respectfully submitted,

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Dated: August 30, 2007

## CERTIFICATE OF SERVICE

I, Constance A. Randolph, in the law firm of Dow Lohnes PLLC, do hereby certify that I have on this 30th day of August, 2007, unless otherwise noted, caused to be mailed by first class mail, postage prepaid, copies of the foregoing “**Comments on and Opposition to Petitions for Reconsideration**” to the following:

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