

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

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

TO: Marlene H. Dortch, Secretary
For transmission to: The Commission

**OPPOSITION TO PETITIONS FOR RECONSIDERATION OF
WILLIAM B. CLAY AND CHARLES CRAWFORD**

1. American Media Services, LLC, Mattox Broadcasting, Inc., and the Minority Media and Telecommunications Council (collectively, the “Opponents”), which have joined together in support of expanded broadcasting opportunities previously in this docket, hereby oppose the Petitions for Reconsideration filed, on January 18, 2007, respectively by William B. Clay and Charles Crawford in the above-referenced proceeding.

2. Messrs. Crawford and Clay both seek to maintain the status quo. It is a status quo that makes it difficult for new entrants, especially small and minority-run businesses, to become broadcast licensees. Should Messrs. Crawford and Clay prevail, new voices will continue to be shut out of broadcast ownership by the lack of affordable opportunities to serve the communities in which their voices would find resonance.

3. Minorities, especially, are disproportionately clustered in or immediately adjacent to central cities. These well-served areas typically lack available broadcast spectrum for new licenses. Given the artificial shortages such realities create, the price of existing stations is driven up making them prohibitively costly for new entrants.

4. In their Petitions, both Messrs. Clay and Crawford ignore such community realities and, instead, fixate on the concept of geographic community. Once an allotment is placed within the arbitrary confines of a political jurisdiction, their analysis stops. This nostalgic approach, however, ignores the reality that communities of interest, whether linguistic, cultural or ethnic, function dynamically and provide a measure of community to their audiences irrespective of arbitrary political boundaries.

5. Messrs. Clay and Crawford seek a station allocation system that, by its adherence to geographic and jurisdictional lines, would make it impossible to conduct the kind of re-engineering required to unlock spectrum. As noted in the comments of American Media Services, Radio One, Inc. *et al*, filed in this proceeding on Oct. 3, 2005 (“October 3 Comments”): “The only way to create more stations to meet current and future demographic needs, without increasing harmful interference, is to re-engineer existing allotments to more efficiently apportion the available spectrum.” *October 3 Comments* at 9. Careful re-engineering can increase both opportunity and diversity in more populated areas and allow for new stations to utilize vacated spectrum. But should the Commission establish the kind of regime sought by Messrs. Clay and Crawford, existing stations would be stuck in place – making impossible both better service to the communities of today and the creation of new stations in less populated areas by utilizing spectrum that has been vacated.¹ The net result will be underserved

¹ The parties comprising the Opponents have illuminated one aspect of the Report and Order under reconsideration here that creates a structural impediment to greater opportunity – which is the continued imposition of an arbitrary limit of four coordinated contingent applications in minor change community of license proceedings. *See* Petition for Partial Reconsideration of American Media Services, LLC, Mattox Broadcasting, Inc. and the Minority Media and Telecommunications Council, filed on Jan. 19, 2007 (the “Jan. 19 Petition”). Clearly, the relief sought by Messrs. Crawford and Clay would make it impossible to implement the improvement to opportunity proposed in the Jan. 19 Petition. Rather than extensively recap the Jan. 19 Petition, the Opponents incorporate by reference, the arguments made therein.

populations in geographic communities both large and small, fewer new stations and voices on the air, and diminished ability of broadcasting to compete with industries unencumbered with such inhibitions on business development. This result can hardly be described as commensurate with the public interest.

6. At the core of Messrs. Clay and Crawford's Petitions lie concerns about "localism." Localism is a time tested virtue that has well served both the listening public and the broadcast industry. The FCC is in the midst of a proceeding that attempts to define localism in the current media context.² However pure their interest in localism, the methods Messrs. Clay and Crawford advocate will only serve to institutionalize analytic concepts of the past, so that radio stations, like deeply rooted Charter Oaks, stand now and in the future, right where they have always stood. Given the widespread strengthening of communities of interest in this age of digital micro media of global reach, adopting their nostalgic approaches to localism would be akin to providing coal-powered steam trains when what's really needed are vast networks of eco-friendly bullet trains.³ In any event, concerns are better addressed through the Localism proceeding than here.

7. Messrs. Clay and Crawford also raise claims that the Commission's holding violated the Administrative Procedure Act for want of a factual basis. This is, frankly, a

² MB Docket No. 04-233.

³ Mr. Clay seems to undermine his professed concern for localism when he advocates for policies that make it harder to establish stations in many places where people choose to live and work. His proposal to eliminate the first local service allocation priority would block suburban communities from gaining local transmission service – no matter where a community lies in the nation's increasingly sprawling metropolitan areas. Local school sports enthusiasts, community political activists and local religious congregations would find it harder to have their voices heard when the only outlets are elsewhere in a region. Such silencing of local voices is not in the public interest. To be sure, the first local service allocation priority can be misapplied to prevent stations from moving to communities with much greater need for additional services. That issue is presently under consideration by the Commission's Advisory Committee on Diversity for Communications in the Digital Age.

puzzling argument. The key issue underlying this rulemaking is that FM, now the dominant radio service, continued to operate under allocation procedures dating to its days as the edgy alternative to “Standard Band” AM. This rulemaking has made AM and FM allocation procedures the same when no discrete engineering differences require different treatment. Messrs. Clay and Crawford submit no factual or rational basis for their claim that the old system, relying as it did on outdated distinctions, should remain in place. Nor do they provide evidence to support their even more radical call to roll back such interim reforms as “Tuck” showings.⁴

8. Messrs. Crawford and Clay provide no refutation of the evidence on the record indicating that the public interest in new entrants and voices cannot be accommodated together with the public interest in localism based on the concept of re-engineering the use of spectrum⁵ Ultimately, they provide no reason to treat similarly situated licensees differently, in violation of the bedrock principles of administrative law. *See Melody Music v. FCC*, 345 F.2d 730 (D.C. Cir. 1965). They also provide no evidence to refute the notion that re-engineering can provide both more opportunity for new entrants and voices in well-populated places, and, at the same time, create more service in less populated places. All told, Messrs. Clay and Crawford raise nothing, other than personal disappointment, to support their Administrative Procedure Act claims.

⁴ Mr. Crawford makes a claim that the Tuck policy “[cannot] be lawfully understood or applied.” *Crawford Petition for Reconsideration at para. 10*. Despite this assertion, he then provides examples of how “powerhouse” dominant stations comply with the rule in order to relocate to other communities. *Id. at paras. 11-12*. However, he fails to explain how a policy that cannot be lawfully understood or applied in paragraph 10 enjoys such a successful record of compliance among the broadcast applicants cited in paragraph 11 and 12. If the Tuck policy is to be reconsidered, the proper place to do it would be in a comprehensive reinterpretation of Section 307(b) that takes into account modern-day demographic and service needs.

⁵ Moreover, such re-engineering efforts will proceed more surely if the Commission does reconsider and change the arbitrary limit of 4 related contingent applications that was maintained by the Report and Order at issue here. *See Jan. 19 Petition, supra*.

9. For radio to remain relevant and viable, it must expand. The only way it can expand is to allow for the re-engineering of its mid-twentieth century spectrum allocation schema. The calls by Messrs. Clay and Crawford to roll back *Tuck* and the recent efforts to streamline community of license matters will not lead to expansion. To the contrary, adoption of their proposals will reinforce the *status quo*, eliminate the possibility that a streamlined re-engineering will unlock opportunities for market entry by new broadcast voices – whether by geography or by community of interest, and, ultimately, lead to decline as broadcasting’s new media competitors grab bigger and bigger audience shares.

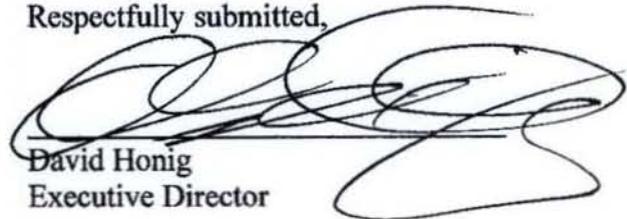
10. Instead, the Opponents ask the Commission to maintain “minor change” processing of FM community change requests, with an additional proviso, as described in the *January 19 Petition*, that it reconsider and eliminate the arbitrary limit of four coordinated contingent application changes. This artificial cap hinders the true goal of this proceeding, which is to unlock spectrum so that more communities, whether geographic, cultural, linguistic, or ethnic, will be served – a development that clearly supports the strong public interests in both the entry of new voices into the broadcast field and in localism – writ both large and small.



Frank R. Jazzo
Howard M. Weiss
Michael W. Richards

Fletcher, Heald & Hildreth, P.L.C.
1300 N. 17th Street – 11th Floor
Arlington, Virginia 22209
(703) 812-0400
jazzo@fhhlaw.com
*Counsel for American Media Services, LLC
and Mattox Broadcasting, Inc.*

Respectfully submitted,



David Honig
Executive Director

Minority Media and
Telecommunications Council
3636 16th Street, N.W.
Suite B-366
Washington, D.C. 20010
(202) 332-7005
dhonig@crosslink.net

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CERTIFICATE OF SERVICE

I, Carla M. Whitlock, a secretary in the law firm of Fletcher, Heald & Hildreth, P.L.C., do hereby certify that a true copy of the Opposition to Petition for Reconsideration of William B. Clay and Charles Crawford, on this 30th day of August 2007, was sent via first class United States mail, postage prepaid to the following individuals:

Gene A. Bechtel, Esq.
Law Office of Gene Bechtel, P.C.
1050 17th Street, NW, Suite 600
Washington, D.C. 20036

William B. Clay
5629 Charing Place
Charlotte, NC 28211



Carla M. Whitlock

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