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

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

To: Office of the Secretary – The Commission

REPLY COMMENTS

AMERICAN MEDIA SERVICES, LLC
SIMMONS MEDIA GROUP
CITADEL BROADCASTING CORPORATION
HUNT BROADCASTING, INC.
ON-AIR FAMILY, LLC
HOLLADAY BROADCASTING OF LOUISIANA, LLC
SCOTT COMMUNICATIONS, INC.
CHARLES M. ANDERSON & ASSOCIATES
SPANISH PEAKS BROADCASTING, INC.
LAKESHORE MEDIA, LLC
CHATTERBOX, INC.
CONTOURS, INC.
MATTOX BROADCASTING, INC.
COLORADIO, INC.
MINORITY MEDIA AND TELECOMMUNICATIONS COUNCIL
POWELL MEREDITH COMMUNICATIONS CO.
AUBURN NETWORK, INC.
BRANTLEY BROADCAST ASSOCIATES, LLC
GREAT SOUTH WIRELESS, LLC
GRAHAM BROCK, INC.
RADIO ONE, INC.
BLUE CHIP BROADCASTING LICENSES, LTD.
MULLANEY ENGINEERING, INC.
REYNOLDS TECHNICAL ASSOCIATES, LLC
PALMETTO RADIO GROUP

The above referenced parties ("Reply Parties"), which include small, medium and large market broadcasters, hereby respond to the "Opposition to Petitions for Reconsideration of Simmons Media Group, et al. and American Media Services, LLC, et al." submitted by William B. Clay. Clay supports the limit of four (4) contingent applications and expresses the fear that

lifting or eliminating the limit would be anathema to the concept of localism and local self-expression. However, Clay's arguments continue to raise issues that are outside the limited scope of this proceeding. Further, even if the Commission were to consider Clay's arguments, as demonstrated herein, his fears are misplaced and ill founded. Thus, as requested by the Reply Parties in pleadings throughout this proceeding, the Commission should lift the limit of four (4) contingent applications. This will restore the opportunity for broadcasters to file proposals that provide substantial public interest benefits by improving service in rural areas and smaller markets, increasing competition and diversity in larger markets,[1] and by providing new first local service in both urban and rural communities and new reception services in underserved areas.

1. The Reply Parties agree with Clay that localism and the opportunity for local self-expression are extremely important and each of these parties have a commitment to address local needs. The Reply Parties strongly believe that the strength of over the air radio is the ability to provide programs that address local needs. Clay is wrong if he assumes that the Reply Parties have any interest in diminishing or undermining the value of local programming. But this proceeding is not about localism. It is about streamlining the process that is designed to provide the public interest benefits of local service to communities without their own local radio station as well as improving coverage to more listeners.

2. The process is long overdue for improvements and if Clay had an idea or proposal to improve the system, this would have been the forum to offer such solutions. Instead, Clay would rather have the Commission continue to be burdened with an outdated process that has

[1] Minority owned broadcasters often find it necessary to propose a community change because they provide ethnic or multilingual programming, and a station serving this important need cannot do so effectively or competitively unless the station can be heard in areas with substantial minority populations. Improving signal coverage is often the key to enhancing these broadcasters' competitiveness, asset value and creditworthiness — and thus these broadcasters' access to capital. Thus, the rule of four (4) station changes acts as a market entry barrier (and contradicts Congress' direction in 47 U.S.C. §257) by preventing otherwise routine station relocations that would advance ownership diversity.

broken down. Under the guise of "localism," he would deny broadcasters the opportunity to react to the ever-changing population shifts over the past 40 years and the dynamic characteristics of the FM spectrum. The fact that a broadcaster may leave one community in favor of another does not give anyone the right to assume that the broadcaster has no commitment to localism. The broadcaster that desires to change its community of license either because the Commission authorized several additional stations to the community after the broadcaster was first licensed there or the population has moved to newly formed or growing communities, should not be required to show that the public interest would be served "without recourse to the first local service allotment preference."[2] City of license change proposals have existed since 1989.[3] Seldom is the choice of a community dictated by anything but technical concerns. If a station can improve its coverage without changing its city of license, then it would have no incentive to make a community change. But that is not always possible and a broadcaster should not be asked to sacrifice an opportunity to improve its coverage just because it has served a particular community in the past.

3. This is not the forum to question a licensee's commitment to serve a community. This is not the forum to question whether the Commission's 1989 decision to allow city of license changes has been detrimental to localism. Rather this proceeding involves procedural changes with no substantive policy modifications (except, of course, the imposition of the limit of four). If Clay had a better way to streamline the process so that it does not take on average one year for the easier cases and 2-3 years for the more difficult or contested cases, then this would have been the forum for Clay to express his views. Clay offers no solutions, however. Instead, he continues to collaterally attack the community of license change process by arguing

[2] Clay at p. 7.
[3] *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community Of License*, Report and Order, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990).

that it is detrimental to localism. In most cases Clay's arguments are based on speculation and are self-serving. For example, Clay opposes the new process because community of license change proposals "would enjoy cut-off protection against any other arrangement that might be shown to be of greater public interest benefit."[4] While this argument at first glance seems to have merit, in reality it does not. If Clay or any other party had a proposal that was of "greater public interest benefit," such a proposal could be filed at any time. Proponents should not be waiting to file proposals and if they do, they risk dismissal due to prior filed proposals. This argument about the impact of the Commission's new procedures on localism is speculative.

4. The Reply Parties' Petitions for Reconsideration focus primarily on one aspect of the new procedural rules and that is the unanticipated consequence of the limit of four (4) station changes where no such limit existed in the previous rule making procedures. Clay did not offer any reasons in support of a limit and certainly did not request that a limit should have been imposed during all of the years when there was no limit in the rule making context. In addition, the Commission has not offered any reasons for imposing a limit on the number of station changes in a streamlined process. The only Commission reference to a reason for the limit is found in the Notice of Proposed Rule Making[5] in this docket where the Commission stated that large numbers of changes are burdensome to the Commission staff. But, as the Reply Parties have previously stated, there are no other instances where the Commission has justified the imposition of a limit based on the complexity or burdens on the staff. Transactions can be complex or burdensome, but the Commission does not place any limit on transactions. For example, when the Commission recently proposed a limit on noncommercial educational

[4] Clay at p. 3.
[5] *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, 20 FCC Rcd 11169 (2005).

applications,[6] the reasons given were--no filing fee, no ownership limits, a freeze for seven years, and the likelihood of speculative applications.

5. Unlike in the noncommercial educational context, the Commission has no justification for an application limit in the commercial FM context. Stations filing proposals to improve their coverage or propose new allotments are not speculative. These applications require a filing fee. There is now a seven-month period for determining the impact of the new rules on the staff's resources. The staff has been able to process most of the city of license change proposals as quickly as any other type of minor modification application despite the built in two (2) month delay following the Federal Register publication. Furthermore, there have been very few groups of contingent applications with as many as four (4) stations involved. The great majority of these types of applications are one-station applications.

6. Clay also attacks the Commission's allotment priorities and the use of first local service preferences to justify proposals on public interest grounds. Clay believes that the Commission should impose some additional hurdles and ask the proponents to quantify the degree of 'local service' rendered by past examples of "move ins." This cynical comment is similar to the Comments of Charles Crawford who also attacks "move ins" under the "flawed" *Tuck* criteria.[7] However, these issues are completely outside the scope of this proceeding. The Reply Parties have explained that the use of the first local service preference or the *Tuck* criteria is not at all unexpected. Past Commission case law is clear that a first local service or a showing that a particular community is independent of the central city in an urbanized area are the criteria for a grant. Thus, proponents do their research and file proposals that are in compliance with these criteria. Therefore, Clay and Crawford should not be surprised that the great majority of

[6] *See* Public Notice released August 9, 2007, FCC 07-145.
[7] *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

proposals are granted. What they don't see are the large number of proposals that are not filed because the announced public interest standards cannot be met.

7. The Commission has a fundamental responsibility to distribute frequencies to the various communities throughout the United States in response to the expressed demand for serving particular communities. Contrary to Clay's beliefs, the standards to be used for this distribution are not in question in this proceeding. The Commission has recognized a need to remove certain procedural barriers that inhibit or delay consideration of many public interest proposals. Clay may be frustrated with what he considers the lack of local programming offered by many stations. However, his comments are misplaced in this proceeding.

8. Accordingly, the Reply Parties again urge the Commission to provide flexibility in the new streamlined process by lifting the limit of four (4) contingent applications. The Commission's experience during the last 7-8 months with the filing of applications under the new procedural rules supports the Reply Parties' position that the process is working well and will not overburden the Commission's staff's ability to process these proposals. The Commission should also recognize the benefits to stations in more rural areas as a result of the spectrum that is opened up by allowing multi-station moves. The Commission has not justified the limit it has imposed on beneficial proposals involving more than four (4) stations. The Commission must reconsider the arbitrary limit and carry out its most important mission of providing broadcast service to as many communities and listeners as possible.

Respectfully submitted,

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Sept 10, 2007

CERTIFICATE OF SERVICE

I, Elbert Ortiz, hereby certify that I caused a copy of the foregoing "Reply Comments" to be served by U.S. Mail, as of this 10th day of September, 2007, on the following persons at the addresses shown below:

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