Before the
FEDERAL COMMUNICATONS 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: The Commission
Attn: Office of the Secretary

REPLY TO COMMENTS AND OPPOSITION OF
COX RADIO, INC. AND SIMMONS MEDIA GROUP, ET AL.

1. William B. Clay hereby replies to the *Comments on and Opposition to Petitions for Reconsideration of Cox Radio, Inc.* ("Cox *Opposition*") and the *Comments on Petitions for Reconsideration* of Simmons Media Group, et al. ("group *Comments*"). This *Reply* is timely filed in accordance with 47 CFR 1.429(g) and 1.4(h). The term "*NPRM*" below refers to the *Notice of Proposed Rule Making* in the captioned rule making adopted on June 9, 2005; "*Oppositions*" refers collectively to the Cox *Opposition* and the group *Comments*.

2. The *Oppositions* contend the arguments of our *Petition for Reconsideration*[1] stray from the scope of the captioned rule making and should be ignored unless presented in a different proceeding (Cox *Opposition* Section III, p. 6; group *Comments* ¶4). Our pleadings in this rule making[2] anticipate this objection and include ample showings that

1 Filed on January 18, 2007 in the captioned rule making ("*Petition*").
2 Including earlier *Comments* and *Reply Comments* filed by William B. Clay on September

they respond directly to questions raised by the *NPRM* (Clay *Comments* ¶1; *Reply Comments* ¶¶5-7; *Petition* ¶¶4-6). The group *Comments* provide no specific factual rebuttal to these showings; the Cox *Opposition*, while not addressing them directly, attempts to rebut them by misleadingly selective quotation of the *NPRM*.

3. Cox succinctly condenses this argument for both *Oppositions*:

> 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.

4. While its proponents may have hoped for such a narrowly-drawn rule making, the Commission wisely included the following questions in its *NPRM* (¶28).

- We seek comment on [the postulated one-step process to change community of license] with regard to the effect on the fair, efficient, and equitable distribution of radio service under Section 307(b).
- We seek comment on whether [preexisting channel allotment policies] are sufficient to limit the relocation of radio stations from rural areas to communities in or adjacent to Urbanized Areas.
- Are there other procedures that should be implemented to ensure that Section 307(b) or any other concerns pertaining to applications to change a station's community of license will receive full consideration?

What are more "substantive aspects" of channel allotment policies than these?

5. Most of the arguments of our *Comments*, *Reply Comments*, and *Petition* respond directly and factually to these questions. And, in contrast to every other commentator except Crawford, we have provided statistical and public file evidence to support those arguments (Clay *Comments* ¶19, incorporating data by reference to pleadings filed in other proceedings; *Reply Comments*, ¶¶8-11, 14, and Attachment A;

30, 2005 and October 31, 2005, respectively.

Petition, ¶¶13-16 and Exhibit C). Neither the Commission nor any commentator has contested either the accuracy or our interpretation of these data[3].

6. Even if the Commission had attempted to draw the scope of the rule making as narrowly as Cox and the group commentators falsely claim, the attempt would have failed. Converting the two-step process of Table of Allotments rule-making, then application, into a one-step process unavoidably impacts the *substance* of the allotment criteria. Certain of those criteria were directly shaped by judicial criticisms of the two-step processes that do not apply to the new one-step process (Clay *Comments* ¶28; *Reply Comments* ¶7; *Petition* ¶6b). By nullifying the premises upon which criteria for the application of the first local service preference were conceived and justified, the Commission obligated itself to provide other rational support for them or to alter the no-longer-supportable criteria.

7. We have shown that the Cox *Opposition* and the group *Comments* are incorrect when they claim that our *Petition for Reconsideration* exceeds the scope of the captioned rule making. Their contention that the Commission should disregard the Clay *Petition's* arguments within the context this rule making is thus without merit.

8. In parallel with the present discussion of our *Petition for Reconsideration* and the *Oppositions* to it, we note that these and other parties have come forward advocating repeal of the limit of four contingent minor modification applications, 47 CFR 73.3517(e), a position to which we have submitted *Opposition*. The present *Oppositions* endorse those earlier calls (Cox *Opposition* Section I, pp. 2-4; group *Comments* ¶¶1-3 and 5-9). Proponents of this change contend that the contingent application limit precludes FM

3 Challenges of these data should have been raised in *Reply Comments*, *Petitions for Reconsideration*, or *Oppositions*. None have been presented.

changes in community of license that would yield substantial public interest benefits. Our *Opposition to Petitions for Reconsideration of Simmons Media Group, et al. and American Media Services, LLC, et al.*[4] rebuts those contentions in detail. We show that those advocating this change utterly fail to factually support their claims of public interest benefits. That rebuttal is equally applicable to this aspect of the present *Oppositions*.

9. In all these exchanges we have presented factual support for a more restrictive approach than the one adopted. The incumbent broadcasters have not adduced any matters of fact, either to controvert our approach, or to support a drastic new liberalization. If their argument that our *Petition for Reconsideration* is beyond the scope of the rule making were to be credited, certainly their proposal to sunset the limit of four and to essentially repeal the Table of Allotments must be even further beyond its scope.

10. If the Commission has been disappointed at the response of the industry to the one-step community of license change, it may wish to consider repealing the limit of four to attract more activity and interest. If, on the other hand, the Commission has been surprised at the zeal with which the industry has filed its "minor" moves by the hundreds, including dozens of blatant rural-to-urban migrations about which the Commission has professed concern, it might be time to re-think whether the public is well served by this free-for-all, and whether some of the additional checks and balances we have advocated might be advisable. The choice is a fateful one because once any change of this nature is approved, even where the public interest has been abrogated, the Commission will find impossible to undo the deed afterwards.

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4 Filed in the captioned rule making by William B. Clay on August 30, 2007, with *Erratum* filed September 4, 2007.

11. In consideration of the foregoing, we ask that the Commission act expeditiously and favorably upon our *Petition for Reconsideration*.

Respectfully submitted,

William B. Clay
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September 12, 2007

Certificate of Service

I hereby certify that on this day of September 12, 2007, I caused to be served by first-class mail, postage prepaid, a copy of the foregoing *Reply* upon the subject Opponents' Counsel:

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