

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

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| In the Matter of |) | |
| |) | |
| Petition for Rulemaking of Highway Information Systems |) | RM-11514 |
| |) | |
| Petition for Ruling of the American Association Of Information Radio Operators (AAIRO) |) | PS Docket 09-19 |

COMMENTS OF CITIES OF WILMINGTON, DELAWARE
AND
FAIRFAX, VIRGINIA
AND
COUNTY OF HANOVER, VIRGINIA

The City of Wilmington, Delaware and the City of Fairfax, Virginia and the County of Hanover, Virginia (“Local Government Licensees”) hereby respond to the FCC’s invitation to comment on the captioned petitions.¹ The Local Government Licensees believe that the AAIRO request is a useful and reasonable clarification of the existing rule at Section 90.242(a)(7). In support of the Highway Information Systems (“HIS”) petition, the Local Government Licensees encourage the Commission to open a formal rulemaking to consider broadening the content rule to permit general governmental communications of a noncommercial nature. We also believe that the FCC should consider proposing a uniform definition of “noncommercial” rather than leaving this to the subjective interpretations of TIS operators across the country.

The current regulations at Section 90.242 are more than 30 years old. At the time of their adoption in 1977, the number of licensed commercial and educational radio

¹ Public Notice, DA 09-249, released February 13, 2009. All commenters are TIS licensees.

stations was 8505.² As of 2008, the total had increased to 14,253.³ The growth of commercial radio suggests that the industry is healthy and has adjusted to competition – both internally and from other sources of information such as the internet. The competitive concerns that fueled broadcaster opposition to TIS stations in 1975-78 surely cannot loom as large now as then.⁴

These fears of commercial broadcasters had led the Commission to delete from the scope of permissible travel and tourist information, as originally proposed, “official notices and related communications.”⁵ In the present decade, however, these kinds of messages have become the lifeblood of low-power FM (“LPFM”) stations, many of which are assigned to local governments. Like TIS facilities, LPFM stations operate at reduced wattage and are not permitted to cause interference to other radio licensees.⁶ It is time for a duly constituted rulemaking to explore the liberalization of the TIS content rule to match the utility of government-operated LPFMs.

The HIS petition (at 10) also asks that “the Commission eliminate the limitation on the sites for local government radio stations that confines such stations to areas near roads, highways and public transportation terminals.” Since this siting restriction is closely related to the original travel and tourism focus of the content rule, if the regulation were to be liberalized the TIS antenna placement options could also be broadened. Of course, the obligation would remain that these stations not cause interference to other licensees.

² Broadcasting Yearbook, 1978

³ News release, FCC, February 27, 2009.

⁴ See, generally, Report & Order, 67 FCC 2d 917 (1977); on reconsideration, 68 FCC 2d 644 (1978).

⁵ 67 FCC 2d at 923,

⁶ <http://www.fcc.gov/mb/audio/lpfm/index.html>

Again, enough time has passed since the adoption of Section 90.242 to warrant a new look in the context of the current radio environment. In largely upholding that original regulation against the reconsideration petitions of commercial broadcasters, the FCC nevertheless refused the request of the State of Iowa for more siting flexibility. The Commission expressed concern for “ribbons” or “networks” of TIS stations that might mimic the coverage of commercial stations by exceeding local boundaries.⁷ Today, however, many TIS stations have linked multiple antenna sites into networks that operate more efficiently than would one or a few sites incapable of central coordination. And the feared “ribbon” effect is kept in check by power and other technical limitations.

The mobility of U.S. populations in both private vehicles and mass transit systems has meant that emergencies often give rise to traffic congestion. And the effects can work the other way as well. Traffic congestion can create its own emergencies and can impede the delivery of response to unrelated problems or disasters. The Commission has recognized this over the past five years in granting waivers to three TIS licensees seeking more flexibility in coverage and siting.⁸

Thus the timing of the HIS petition is propitious, as a means for further exploring how TIS stations might be used if the present regulations could be changed without harm to other occupants of the spectrum. In light of recent experience with LPFM stations, it would be worth considering a uniform standard for noncommercial operation of TIS stations that would allow both these licensees and their commercial counterparts to avoid disputes over content fueled by subjective reactions to broadcast speech.

⁷ 68 FCC Rcd at 647.

⁸ *Los Angeles World Airports*, DA 03-3843, March 4, 2004, ¶6; *County of Arlington, VA*, DA 07-952, released March 1, 2007; *Howard County, MD*, DA 09-250, released February 13, 2009.

Respectfully submitted,

LOCAL GOVERNMENT LICENSEES

By _____

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THEIR ATTORNEY

Certificate of Service

The foregoing Comments have been served today by e-mail attachment upon:

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March 16, 2009

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