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

In the Matter of	**)**	
	)	
Policies to Promote Rural Radio Service and to	**)**	**MB Docket 09-52**
Streamline Allotment and	**)**	
Assignment Procedures	**)**	

To: The Commission

COMMENTS OF CARL T. JONES CORPORATION

The engineering consulting firm of Carl T. Jones Corporation (CTJC) for itself pursuant to the Notice of Proposed Rulemaking FCC 09-30 released April 20, 2009 (NPRM), hereby respectfully submits the following comments with regard to proposals contained in the NPRM affecting the radio broadcast service. The comments submitted herein pertain to Sections A and B of the NPRM.

Section A – Modify Priority (3) and (4) Section 307(b) Radio Licensing Standards

In Section A of the NPRM, the Commission advances proposals to modify allotment Priority (3), the first local transmission service priority, and allotment Priority (4) which involves "other public interest factors".

With respect to the Priority (3) proposal, the Commission advances a proposal where in most instances the Commission will not award a first local service preference to a station that would or could provide city-grade service to more than 50% of an Urbanized Area.

While it is undeniable that some communities within an Urbanized Area ("UA") are dependent upon the major cities within the UA, some communities are also viable independent communities wholly separate from the "big city". The "one size fits all" proposal advanced in the NPRM does a disservice to these viable communities which just so happen to be enveloped by a nearby UA. CTJC submits that the *Tuck* analysis[1] remains viable and the other attributes of a specific community should continue to receive careful consideration and examination before the first local preference is allowed or disallowed by the Commission. CTJC submits that this community evaluation should be conducted regardless of the percentage of the urbanized area a station would or could serve with a city-grade service signal in order to determine if a community is suitable for allotment purposes. Simply put, if the community is deemed suitable for allotment purposes, then that community is deserving of a first local service preference.

In Paragraph 9 of the NPRM, the Commission tentatively concludes that any new station proposal *within* an UA be deemed a proposal to serve the UA rather than the proposed community. As such, these proposed stations would automatically be denied the first local service preference. While such a rule change would ease the regulatory burden on the Commission, such an approach grossly over simplifies a radio station's intended service based only on its location.

For example, under the proposed rule, a Class A FM station located anywhere within the 5,545 square kilometer Chicago Urbanized area would be denied a first local service preference. Considering a maximum Class A technical facility (6 kW ERP @ 100 m HAAT), the maximum city-grade contour area is 825 square kilometers. Therefore, under the Commission's proposed rule, a Class A FM station, only capable of

[1] See *Faye and Richard Tuck*, Memorandum Opinion and Order, 3 FCC Rcd 5374 ("Tuck").

serving 14.8% of the Chicago Urbanized Area with city-grade service, would be *deemed* a proposal to serve the Urbanized Area rather than the proposed community.[2] This Class A station could be located as much as 65 km from the Sears Tower and the proposed rule would classify the station as a "Chicago Urbanized Area Station" rather than, for example, a Waukegan station (1 AM service and 1 FM service; 2000 Population 87,901 persons). A rule proposal to deny the local service preference based only on the station being located within an Urbanized Area does a disservice to lesser Class radio stations which attempt to serve viable communities in or near Urbanized Areas.

With respect to Commission's other proposals in Section A of the NPRM regarding allotment Priority (4) ("other public interest factors"), when comparing new AM proposals, the Commission seeks to eliminate the Section 307(b) preference given to the proposal which offers a new reception service to a greater population. Alternatively, the Commission proposes to replace the "population comparison" with a criteria where the Section 307(b) preference would be awarded only when 75% of the new AM station's 5 mV/m daytime groundwave population contains less than five aural services. CTJC suggests a compromise between the two proposals. The dispositive Section 307(b) preference for AM stations should be awarded to the new AM station which covers more population and provides[3] a new third, fourth or fifth aural service to any area and population.

In Paragraph 13, of Section A, the Commission seeks comment on establishing an "underserved listener" priority. CTJC submits that such a proposal is appropriate and

[2] Similarly, a maximum Class B1 FM facility (25 kW ERP at 100 m HAAT) is only capable of a city-grade service area of 1,691 sq. km. This represents only 30% of the Chicago Urbanized Area.

[3] Daytime 5 mV/m daytime groundwave contour coverage.

should be considered co-equal to Priorities (2) and (3). However, CTJC sees no need for the percentage threshold requirements contemplated in Paragraph 13. Any underserved population predicted to receive a new aural service is important and should not be summarily discounted because of an arbitrary regulatory threshold.

Section B – Limit Moves of Existing Stations from Smaller Communities

The Commission's mandate under 47 U.S.C. § 307(b) ("Section 307(b)") is to promote the "fair, efficient and equitable distribution of radio service". As stated in the first sentence of the NPRM, the Commission initiated this proceeding to "consider a number of specific changes to our rules and procedures to carry out the statutory goal of distributing radio service fairly and equitably and to increase the transparency and efficiency of radio broadcast license processes". Critically absent from this statement is the impact the proposed rules would have on the *efficient* distribution of radio services. While any changes that promote the efficiency of processing of radio applications (i.e. increasing the transparency and efficiency of the radio broadcast license process) are welcome, changes that degrade the efficient distribution of the radio service run contrary to the Commission's statutory responsibility.

There is a finite amount of the frequency spectrum available for radio stations to provide a broadcast service to a dynamic and mobile population. Limiting the ability of existing stations to relocate or otherwise improve their existing technical facility is not efficient management of the limited frequency spectrum.

Both the AM radio service and the FM radio service are well-established. The first AM radio station was licensed in 1920. The first FM radio station was licensed in

1941. During their many years of operation, AM and FM stations have maneuvered and improved facilities to serve the public best. This is a mature radio service and in the proximity of major markets, there is little or no flexibility to dramatically change an existing station's coverage. This is evidenced by the Commission's recent rule changes to add increased flexibility for existing stations (i.e. the adoption of short-spacing provisions of Section 73.215 of the FCC Rules, AM improvements via interference reduction agreements, and so on).

Now, the Commission contemplates Rules to limit moves of existing stations from smaller communities because it feels the need to "address the concern about the loss of radio service to smaller and more rural communities." As stated above, these are mature radio services with years of FCC Rules and policy in place to ensure the fair and equitable distribution of radio services. Further, through the introduction and maturation of the Low Power FM radio service (specifically intended to provide community based service to small and rural communities) and with the myriad of alternative media choices available to even the most remote portions of the planet, there are more services instantly available to every community than ever before.

Paragraph 16 of the NPRM contemplates an absolute bar on applications that propose a community of license change that creates a white or gray area. CTJC submits that an absolute bar is not a meaningful way to achieve the Commission's goal to "keep with Section 307(b) priorities". The creation of a white or gray area may be one small aspect of a much greater improvement plan for the public. CTJC submits that there should be no "absolute bars" under any circumstances. In all cases, the totality of a given

proposal and its Section 307(b) impact must be examined before it is discarded or accepted.

Paragraph 17 of the NPRM discusses the presumption of Urbanized Area service. CTJC's comments regarding this topic are discussed above. Also, in Paragraph 17 of the NPRM, the Commission seeks comment on whether the presumption of Urbanized Area service will "help restrict the migration of stations to metropolitan areas with larger audiences and more effectively fulfill the Commission's Section 307(b) mandate". CTJC submits that ***if*** stations are indeed migrating to areas with larger audiences, it is a more efficient use of the radio spectrum and it is completely in-step with the Commission's Section 307(b) mandate. Further, if an existing station undertakes the effort and the expenditure to migrate to areas with larger audiences it is because the licensee believes that station will provide better more efficient service to the public by moving. Such decisions are not made lightly and such technical facility improvements should be well within the rights of a Commission licensee.

The idea that stations are migrating away from smaller communities has gained such momentum recently, it is now accepted as fact. CTJC has seen neither studies nor documentation of a mass exodus of radio stations from rural to urban areas. As stated above, radio is a mature service and Rules and policy has been in place for many years to 'help restrict the migration of stations'. The only type of rule change that would allow stations to make dramatic moves from rural areas to city-centers with large populations would be a wholesale change in the Commission's interference criteria and new FM spacing and AM interference standards. No such Rule changes have occurred for full-service stations in many years and none are proposed. Therefore, there really has been

no mass migration of stations from small towns to big cities and there probably won't be for the foreseeable future. As shown below, this built-in inertia has actually lead to the larger radio markets being '*underserved*' in comparison to the smaller radio markets.

Table 1 is a list of the top 300 radio markets (every fifth market is listed) sorted by Market Rank. The market population, the number of radio stations in the market and the number of people per station in the market are also shown on the Table. Table 2 is the same as Table 1 except Table 2 is sorted by the number of people per radio station. As the data illustrates, existing radio stations better serve Cheyenne, Wyoming (Market #295 – 5,600 people per radio station) than New York City (Market #1 – 191,813 people per radio station). A quick glance at Table 2 is enough to indicate that the list is almost a complete inverse of Table 1. Unfortunately, the NPRM contemplates Rules based on Table 1 and the perception that metropolitan areas atop Table 1 need no more radio stations and the perception that smaller communities near the bottom of the list need more radio stations. The reality of Table 2 indicates otherwise. The exact opposite is true.

CTJC submits that there is no need for the Commission to further regulate an existing radio station's potential migration toward a potentially greater audience. Because, more often than not, this move would represent the most efficient use of the broadcast spectrum and the move would result in the preferred arrangements of allotments.

If the Commission feels a compelling need to effectuate the rules and policies outlined in Paragraph 18 of the NPRM, it should impose the proposed criteria on new radio stations only.

In conclusion, Carl T. Jones Corporation respectfully requests that the Commission give due consideration to the comments contained herein.

Respectfully submitted,

Carl T. Jones Corporation

By: /s/ Carl T. Jones, Jr., P.E.

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Table 1

U.S. Radio Markets and Existing Services

Sorted by Market Rank

Rank	Market	Population	Number of Stations	People Per Station
1	NewYork, NY	15,345,000	80	191,813
5	Dallas-Ft. Worth, TX	4,973,000	60	82,883
10	Boston, MA	3,874,600	37	104,719
15	Phoenix,AZ	3,173,200	39	81,364
20	St. Louis, MO	2,308,400	32	72,138
25	Charlotte-Gastonia-Rock Hill, NC-SC	1,886,100	34	55,474
30	San Antonio, TX	1,626,500	35	46,471
35	San Jose, CA* (San Francisco, CA)	5,969,400	59	101,176
40	Indianapolis, IN	1,350,900	27	50,033
45	Greensboro-Winston-Salem-High Point, NC	1,154,400	28	41,229
50	Hartford-New Britain-Middletown, CT	1,048,200	16	65,513
55	New Orleans, LA	929,300	24	38,721
60	Dayton, OH	829,000	23	36,043
65	Tulsa, OK	744,600	29	25,676
70	Wilkes-Barre-Scranton, PA	687,100	33	20,821
75	Wilmington, DE	592,900	9	65,878
80	Baton Rouge, LA	557,300	19	29,332
85	Daytona Beach, FL	529,300	10	52,930
90	Columbia, SC	507,500	24	21,146
95	Colorado Springs, CO	480,500	18	26,694
100	Visalia-Tulare-Hanford, CA	463,900	7	66,271
105	Lexington-Fayette, KY	445,700	22	20,259
110	Augusta, GA	423,600	23	18,417
115	Roanoke-Lynchburg, VA	415,200	23	18,052
120	Victor Valley, CA	394,600	8	49,325
125	Lansing-East Lansing, MI	386,500	15	25,767
130	Fayetteville, NC	344,900	13	26,531
135	Appleton-OshKosh, WI	326,400	18	18,133
140	Springfield, MO	315,900	17	18,582
145	Tyler-Longview, TX	301,400	19	15,863
150	Peoria, IL	297,200	16	18,575
155	Macon, GA	280,700	19	14,774
160	Asheville, NC	262,100	8	32,763
165	Wilmington, NC	249,900	18	13,883
170	Wausau-Stevens Point, WI	237,600	17	13,976
175	Wenatchee, WA	226,300	8	28,288
180	Merced, CA	217,900	10	21,790
185	Columbus, GA	210,300	18	11,683
190	Manchester, NH	199,800	6	33,300
195	Amarillo, TX	193,900	20	9,695
200	Waco, TX	189,200	11	17,200
205	Bend, OR	176,000	5	35,200
210	Terre Haute, IN	174,100	13	13,392
215	Florence, SC	167,600	18	9,311
220	Bangor, ME	163,300	12	13,608
225	Champaign, IL	161,300	9	17,922
230	La Crosse, WI	156,600	12	13,050
235	Muskegon, MI	147,200	5	29,440
240	Panama City, FL	141,500	17	8,324
245	Pittsburg, KS* (Joplin, MO)	143,000	13	11,000
250	Waterloo-Cedar Falls, IA	129,900	11	11,809
255	Columbia, MO	127,500	6	21,250
260	Billings, MT	119,900	20	5,995
265	Texarkana, TX-AR	115,200	16	7,200
270	Augusta-Waterville, ME	106,800	12	8,900
275	Williamsport, PA	101,600	8	12,700
280	Sheboygan, WI	99,200	5	19,840
285	Ithaca, NY	90,400	7	12,914
290	San Angelo, TX	85,800	14	6,129
295	Cheyenne, WY	72,800	13	5,600
300	Meridian, MS	62,800	7	8,971

* embedded market; main market name and totals shown in Table.

Source: Broadcasting and Cable Yearbook 2009

Table 2

U.S. Radio Markets and Existing Services

Sorted by Number of People Per Radio Station

Rank	Market	Population	Number of Stations	People Per Station
295	Cheyenne, WY	72,800	13	5,600
260	Billings, MT	119,900	20	5,995
290	San Angelo, TX	85,800	14	6,129
265	Texarkana, TX-AR	115,200	16	7,200
240	Panama City, FL	141,500	17	8,324
270	Augusta-Waterville, ME	106,800	12	8,900
300	Meridian, MS	62,800	7	8,971
215	Florence, SC	167,600	18	9,311
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