

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

In the matter of:)
)
Policies To Promote Rural Radio) MB Docket No. 09-52
Service and To Streamline Allotment) RM-11528
and Assignment Procedures)

To: Office of the Secretary

COMMENTS OF WILLIAM B. CLAY

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Summary

The Commission observed in Section II.A. of its *Notice* of the captioned rule making that many broadcast station changes in community of license are awarded pursuant to its third allotment preference under 47 USC Sec. 307(b): first local service to a named community. It then expressed concern that such changes can produce results that are “antithetical to the public interest, especially when the proposed [station] would provide signal coverage over a significant portion of [an] Urbanized Area.”

The entering Chairman recently stated that Commission policy decisions “will be fact-based and data-driven.” In that spirit, this *Comment* responds to questions raised in the first “Specific Proposal” of the *Notice*, Section II.A, with a quantitative analysis of the 203 FM changes in community of license (“COL”) that were granted in the 18 months following January 19, 2007, when the “streamlined” process adopted in the preceding broadcast allotment rule making became effective. This analysis shows that the concern expressed in the Commission's *Notice* is well-founded.

81% (164) of the 203 grants were justified upon a claim to provide first local service to a named community. After two decades of radio deregulation, there is no regulatory compulsion for a radio station to provide any particular transmission service to its community *of license*. But if a community comprises a large fraction of the population covered by a facility, then the facility will have a clear commercial incentive to provide some significant service to that community.

However, very few of the studied changes in COL yielded facilities licensed to communities that are a major fraction of the population they serve:

- In 93% (152) of the 164 first local service grants, the new COL comprises less than 10% of the covered population; in 34% (56), the new COL comprises less than 1%.
- 59% (119) of all 203 granted changes in COL were for commercial stations with population coverage that exceeds 50,000 but that claim to provide a first local service. In no case is their COL their largest (#1) covered community.

Most such COL are unlikely to receive any distinctive service from “their” new radio stations. Unfortunately, the remedy proposed in the *Notice* is inadequate; it would allow at least 62% (102) of the first local service grants analyzed. Few of these grants create incentives for facilities to provide meaningful local service to their communities of *license*; they are as antithetical to the public interest as those that would be blocked.

Even without doing the analysis submitted in these *Comments*, the Commission appears to recognize from the experience on the processing line and from anecdotal evidence that the streamlined COL changes of January 2007 have led to widespread abuse, and have raised the question of whether the goals of § 307(b) are being served. Yet the remedies proposed would be ineffective to curb the abuses; even if the reforms are adopted, some of the worst cases would continue to skate right through.

This rule making is a rare opportunity to align licensees’ economic interests with the Commission’s 307(b) mandate. The Commission should seize the opportunity to adopt strong and durable criteria governing the grant of local service allotment preferences to broadcast facilities. Those criteria should *directly* reflect the incentives that shape the broadcast property market and licensees’ programming choices. These *Comments* describe adjustments to the proposed policy that would do just that.

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Comments of William B. Clay

William B. Clay submits the data and arguments herein for the Commission's consideration in the captioned rule making. Since 2002, Clay has vigorously advocated more rigorous implementation of the Commission's 307(b)¹ allotment priorities in the FM broadcast service so as to preserve the rural radio service upon which he depends.²

1. These *Comments* respond to questions posed in *NPRM*³ Section II.A., ¶¶ 9 and 13. The arguments and statistical showings below refer to the FM broadcast service. It is believed, but not demonstrated, that the policy changes advocated by these *Comments* would also be useful in the AM service.

2. We present quantitative analysis which strongly confirms the Commission's concern that many allotment proposals upon which a 307(b) preference is conferred are in fact “antithetical to the public interest” (*NPRM*, ¶ 8). We then apply the same analytical approach to the policy changes proposed in the *NPRM*. This analysis shows that, although the Commission's proposals improve on current policy, they would still

1 *Communications Act of 1934, as Amended*, Section 307(b), codified as 47 USC § 307(b).

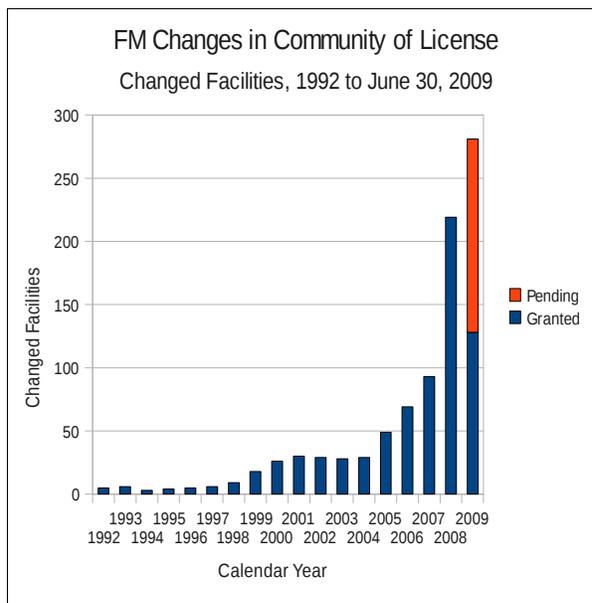
2 Clay has no professional or financial interest in the broadcast industry. He acts upon his own behalf as a radio listener with a particularized need for reliable, around-the-clock, locally-focused radio service in the rural areas in which he pursues his preferred recreations of tourism, cycling, hiking, and camping.

3 Notice of Proposed Rule Making (“*NPRM*”) in the captioned proceeding, FCC 09-30.

permit many facility changes that are clearly contrary to the public interest. Certain adjustments to the proposed policy are shown to better assure the public benefits for which the Commission wisely created its present 307(b) FM allotment priorities.⁴

I. CHANGES IN COMMUNITY OF LICENSE ARE WIDESPREAD AND CONTINUING.

3. The chart to the right⁵ shows the accelerating pace of FM changes in community of license that resulted from the 2007 repeal of virtually all constraints on such changes other than frequency spacing rules.⁶ Exhibit A illustrates the nationwide extent of these changes, which are the sole focus of these *Comments*.



4. Since 1982, approximately 756 full-power FM facilities have been granted changes in community of license. As of June 30, 2009, changes were pending for approximately 153 such facilities. These granted and pending changes have removed or will remove approximately 909 full-power FM facilities (including unbuilt auction awards) from their former communities of license. *This is nearly 10% of the number of full-power FM facilities licensed at year-end 2008.* The policy adjustments proposed in these *Comments* would substantially improve the ability of the reforms proposed in the *NPRM* to ensure that *all* such changes are genuinely in the public interest.

⁴ *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982) (“*FM Assignment Policies*”).

⁵ Exhibit E, items 1, 2 and 3 apply to the data cited in this section.

⁶ *Revision of Procedures Governing Amendments To FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, adopted Nov. 3, 2006, effective Jan. 19, 2007 (“*FM Allotments rule making*”).

II. LOCAL SERVICE PREFERENCES DO NOT ACHIEVE THEIR OBJECTIVE.

5. As Exhibit C shows, a large majority of recent FM changes in community of license were enabled by grant of an allotment preference based upon a claim the changed facility will provide “first local service” to a named community. The Commission defines four priorities for 307(b) allotment preferences, *NPRM* ¶ 3. While it “presumes” that a proposed facility appurtenant to a large city would serve that city, and not the named small community in or near the urban area, it mechanically applies a precedent, *Tuck*,⁷ *NPRM* fn. 11, that in nearly all cases ignores the obvious and pretends that only the named community matters for such analysis.

A. The Local Service Preference is Intended to Create “An Outlet for Local Self-Expression” for the Community of License.

6. The Commission’s FM allotment preferences are based upon two dimensions of radio service: “aural” (reception) service and “local” (transmission) service. The first two allotment preferences, first and second aural service to unserved and very lightly-served areas, are conferred pursuant to a wholly technical definition of a station's coverage area, based on the predicted strength of its received signal. This distribution of all but universal service throughout the United States is a notable achievement of Commission policy, pursued over many years.

7. The third allotment preference, “service of local origin” is intended to provide “an outlet for local self-expression” (*Tuck*, ¶¶ 20, 22, and 32) to a station’s community of license (“COL”). Although this idea has been expressed in varying language, it remains the Commission's sole stated objective for its “local service” allotment preference. For

⁷ *Faye & Richard Tuck* (“*Tuck*”), 3 FCC Rcd 5374 (1988).

example, its 2004 *Localism NOI* cited the Supreme Court's memorable formulation in its second paragraph, “Fairness to communities [in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.”⁸

8. Unlike the first two preferences, grant of the “first local service” preference is *not* based upon wholly technical criteria. While any prospective facility must indeed cover most of its proposed COL with a certain minimum signal strength, grant of the third preference hinges upon the purported independence of a proposed COL from any Urbanized Area in which it may be embedded (the *Tuck* eight-point test at 5378, ¶ 36).

9. Despite its centrality in determining whether a particular proposal is granted a coveted first local service allotment preference, the putative independence of a proposed facility's COL has no direct bearing upon the definition of the market that a proposed facility will serve. This irrational gap is due to licensees’ willingness to prepare, and of the Commission to credit, collections of checklists, anecdotes and self-serving quotations that can be blended into a *Tuck* showing. In virtually every case, this enables the Commission to adopt the unexamined pretense that it is the tiny suburb, and not the giant metro market, that is the applicant’s paramount service objective.

B. No Regulatory Incentive Exists for Stations to Provide Local Self-Expression to their Community of License.

10. As recently as May 26, 2009, an Order stated, “We reject [the] argument that the Commission has ‘abandoned’ the requirement that a licensee provide local service to its community of license.”⁹ The Agency clearly hopes its licensees believe that such an

⁸ *In the Matter of Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, ¶ 2, citing *FCC v. Allentown Broadcasting*, 349 US 356, 362 (1955).

⁹ *Chillicothe and Ashville, Ohio (“Chillicothe”)*, Memorandum Opinion and Order, MM Docket No. 99-322, FCC 08-215 (2009), ¶ 5.

obligation exists, but it has not demonstrated that this supposed obligation is enforceable or effective. *Chillicothe* cites no rule, policy, or case precedent that defines with precision any particular transmission service obligation to a station's community of license.

Chillicothe hints at ¶ 5 that stations' lists of "programs that have addressed the most significant community issues" might influence Agency decisions to renew stations' licenses, yet it cites not a single instance in which a station's lack of service to its community of license has been grounds for denial of its license – or even analyzed or discussed in that context.

11. After the radio deregulation of 1981-1998, "local service" devolved into only three rules that specify a licensee's distinctive obligations to its community of license:¹⁰

- cover the COL with a "city grade" signal, 47 C.F.R. § 73.315(a) (except for non-commercial stations in the reserved band);
- maintain a "main studio," from which *none* of its programming need originate, located within 25 miles of the COL or, in some cases, up to 80 miles from the COL, § 73.1125(a); and
- name, or "I.D.," the COL during hourly station identification, together with the mention of any other communities it wishes to name, § 73.1201(b).

12. All three of these requirements are non-exclusive; that is, many other distinct local communities may receive the same public interest benefit as will the COL. So compliance is attained with no required or measurable service "plus" for the COL at all, compared with other communities in the service area. This alone renders arbitrary

¹⁰ Many rules and policies govern a licensee's service to its "community." It is clear from long practice that licensees and Commission Staff understand those rules and policies apply to a station's entire coverage area, not to mandate any special treatment specific to the community of license.

the attachment of any legal significance to the choice of COL. None of these rules provides anything that could be rationally dignified as an “outlet for local self-expression.” Today “local service” means only that the named community of license will be among the communities, often numerous, with better reception than other communities outside a commercial station’s “city grade” coverage area.

13. Policies like the Commission’s 307(b) allotment preferences must ultimately observe the constraints of the *Administrative Procedure Act*¹¹ and, in particular, its prohibition of Agency action that is “arbitrary, capricious, [or] an abuse of discretion.”¹² To avoid running afoul of this prohibition, agencies must articulate a “rational connection between the facts found and the choice made.”¹³ The analysis that follows shows that the third FM channel allotment preference, provision of the “first local transmission service” to a named community, is often conferred upon facilities for which no rational connection has been shown between the sole and clearly-stated purpose of that preference and the service that the facility will be motivated render.

C. Most Facilities that Claim a Local Service Preference Have No Commercial Incentive to Provide Self-Expression to Their Community of License.

14. Financial incentives flow from audience, and more specifically from audience as determined by syndicated measurement. If a new COL represented a high percentage of a facility's covered population, service to it well might be assumed. But instead, there appears to be no floor below which the Commission’s case-by-case adjudications of community changes have not automatically credited “first local service” claims for a community that represents but the tiniest sliver of local coverage. When a facility's COL

11 1946, “APA”, now codified as 5 USC §§ 551-559, 701-706, 1305, 3105, 3344, 5372, and 7521.

12 5 USC § 707(2)(A).

13 *Burlington Truck Lines v. US*, 371 US 156 (1962).

is but a tiny fraction of the facility's covered population, the licensee has no commercial incentive to provide the named community *of license* with service that is in any way distinctive from the service it renders to any other covered community.

15. Exhibit C details 203 FM changes in COL that were granted between January 19, 2007 and July 8, 2008, the first 8 months of operation of the “streamlined” rules adopted in the preceding *FM Allotments* rule making.¹⁴ The Commission’s staff granted a first local service allotment preference in 81% (164) of those adjudications. In 34% (56) of these first local service CCOL, the new COL comprises less than 1% of the population covered by the newly-authorized facility.

16. 59% (119) of all FM CCOL grants confer a “first local service” preference on a commercial station with population coverage exceeding 50,000. For 71% (85) of these stations, their COL is not among their top five covered communities (by number of residents covered). Among these larger commercial stations benefiting from the first local service preference, the median rank of their COLs among covered communities is 9. Not a single one of these stations can claim that their COL is their top covered community.

17. In the absence of regulatory incentives for a station to provide “local self-expression,” commercial incentives provide the only remaining rationale for a “local service” preference. Yet a 54% majority (110) of the 203 FM changes in COL studied claim a “local service” allotment preference for a COL that comprises less than 5% of their covered population and that ranks below 5th place among covered communities. It

¹⁴ Statistics in this section and Exhibit C are based on coverage data supplied in applications and sworn by licensees under penalty of perjury. Where applications did not contain the desired data, Commission-published data were used, or in their absence, computed as described in Exhibit E, items 4-11.

is irrational and arbitrary to assume that these communities are likely to receive "an outlet for local self-expression" from such facilities. As a hypothetical, can one imagine a morning host saying, "Good morning, Smalltown! Here's today's lunchroom menu at Smalltown Elementary School" when Smalltown is home to only 2,000 of the 1,000,000 metro-area residents her station covers?

D. The 2007 "Streamlined" Rules Nullified Long-Standing Judicial Mandates to Presume That Proposed Facilities Will Render Local Service.

18. The *NPRM* is welcome not least because it appears to reflect the first formal recognition by the Agency that adjudicating changes in COL under a presumption of local service that is decisively refuted by quantitative evidence in the application itself can only be arbitrary. Reduced to its essence, the remedy proposed at *NPRM* ¶ 9 amounts to revival of the old *Huntington* exception,¹⁵ rescuing its general approach from years of incremental demolition by the courts, then attempting to buttress it with well-defined quantitative criteria. However, careful review of *Huntington's* sad history shows the way to policy that can more effectively fulfill the Commission's high-priority objective to provide community "self-expression," yet still prevent that priority from being hijacked to serve licensees' abiding incentive to seek ever larger audiences.

19. The Commission enunciated *Huntington* in a 1951 competitive licensing case in which an applicant unsuccessfully sought a AM licensing preference for serving the Los Angeles suburb of Huntington Park, pop. ca. 30,000, even though the facility it proposed would cover 83% of the Los Angeles metropolitan area. The Commission took the common-sense position that "where integrally related communities constitute a

¹⁵ *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951).

single metropolitan transmission service area, individual communities' needs should be presumed satisfied by the aggregate of stations in that area.”¹⁶ The Commission intended *Huntington* as an unusual exception to its ordinary assumption that every community needs its own broadcast facility.

20. Despite its straightforward recognition of the economic incentives to which broadcasters respond, the courts chipped away at *Huntington* over the years, concerned that the policy did not have clear metes and bounds (*Tuck* at 5376, ¶¶ 16-18) and that it would deny independent communities the radio voice to which they are statutorily entitled (*Tuck* at 5377, ¶24). *Tuck*, adopted only two years after *Beaufort Co.*, incorporated the *Beaufort Co.* court’s affirmation that the *Huntington* exception should be invoked only when opponents present the strongest of justifications.

21. Unfortunately, the ensuing accumulation of adjudications hinging on *Tuck*’s community independence test reflects the imbalance of contending forces in the FM community change process. An incumbent FM licensee ardently desires the enhanced profitability of big city service and provides an elaborate *Tuck* justification. Often, no one else participates. The Commission Staff, uncritically accepting the evidence on the record of the rule making or adjudication, grants the licensee’s request to reallocate the FM channel. Thus grows a long line of cases supporting virtually all *Tuck*-justified changes in COL, even in cases where the resulting facility has a vanishingly tiny incentive to provide any meaningful local service to its new community *of license*.

¹⁶ *Beaufort County Broadcasting v. FCC*, 787 f.2d 645 (DC Cir., 1986, “*Beaufort Co.*”) at 649, cited in *Tuck* at 5376, ¶23.

22. The Agency has a long institutional memory and, seeking to remedy the now near-limitless power of *Tuck* to enable obviously specious changes in COL, remembers that the first chink in *Huntington's* armor was its lack of clear metes and bounds. Thus, the *NPRM* proposes a *Huntington*-style presumption that facilities falling within certain well-defined quantitative criteria serve not their named COL, but the larger Urbanized Area. This proposal recognizes and takes advantage of an important and fundamental change in the adjudicatory setting: the new one-step process to change COL requires licensees to provide a complete engineering specification of their desired facility.

23. However, the new remedy need not hew so closely to the approach of 58 years ago. Two decades of radio deregulation together with the one-step process to change COL nullify the predicate upon which *Huntington* and *Tuck* are based: the express *presumption* that a station will provide meaningful local service to its COL.

24. In the prior two-step process to change FM COL, the licensee was not required at the rule making stage to submit a firm technical proposal for coverage of its new COL, so the Commission could only postulate a station's likely population coverage by speculating on the licensee's intentions, an option from which it was repeatedly discouraged by the courts (*Tuck* at 5377-5378, ¶¶ 32-33). By the time a firm technical proposal was submitted as an application – whatever its coverage might be – the station's channel was already allotted to the new community. In the new one-step process, adjudicating such a change under a presumption of local service that is strongly contradicted by actual signal coverage quantities *on the record of the same proceeding* is arbitrary and irrational.

25. Nonetheless, Commission policy still explicitly presumes that a “licensee will serve its community,” regardless of how insignificant a fraction of the covered population its claimed COL may be.¹⁷ The sections above show that there remains no regulatory incentive upon which such a presumption may be rationally based and that, in the majority of first local service claims, there is no commercial incentive that could justify such a presumption either.

26. In the face of these changes, the court’s holding in *Bechtel I* is apposite:

In the rulemaking context, for example, it is settled law that an agency may be forced to reexamine its approach “if a significant factual predicate of a prior decision ... has been removed.”¹⁸

The *NPRM*’s reexamination does not address the full scope of changes in broadcast regulation since *Huntington*, and the remedies it proposes are too limited.

E. Licensees' Studio Locations and Public Files Show No Regard for Communities of License that Are a Small Fraction of their Covered Population.

27. A telephone survey was conducted the week of July 6-10, 2009 to obtain the main studio address of 140 facilities that were granted changes in COL based upon a first local service allotment preference during the first 18 months after the streamlined rules for changes in COL became effective. The survey was conducted during normal business hours at the facility locations, but reached a person who could respond to questions at only 121 of the 140 facilities. Of those 121 stations claiming to provide first local service to their community of license, not a single one whose change in COL has now been implemented gave a main studio address located in its new community *of license*.

¹⁷ *FM Assignment Policies* at 102, ¶ 37; *Chillicothe and Ashville Ohio*, Memorandum Opinion and Order, 18 FCC Rcd 22410 (2003) at 22411, ¶ 4.

¹⁸ *Bechtel v. FCC (Bechtel I)*, 957 F.2d 873, 881 (DC Cir, 1992), citing *WWHT. v. FCC*, 656 F.2d 807, 819 (DC Cir, 1981).

28. A 2005 inspection of the public file of one facility that changed community of license under the old two-step process to obtain coverage of the Charlotte NC UA showed not a single reference to its community of license, even though the inspection occurred eleven months after the facility began operating at its Charlotte-area transmitter site.¹⁹

29. Records provided in 2004 by Susquehanna Radio Corp to demonstrate that its stations that had changed COL do indeed “serve their communities” showed that, among the five such stations that provided usable quantitative data, the *best*-served COL received an average of 7 minutes of transmission service per week. Three stations had no COL-oriented programming at all. The staffer who provided the information for one three-station cluster mistakenly wrote that the COL of the two “move-in” stations of the cluster was the same UA central city as the cluster’s flagship station, Cincinnati.²⁰

III. THE PROPOSED PRESUMPTION OF URBANIZED AREA COVERAGE IS AN INEFFECTIVE REMEDY.

30. The *NPRM* proposes at ¶ 9 that if a prospective facility (a) is located within an Urbanized Area or (b) its principal community contour would or could cover at least 50% of the population of an Urbanized Area, the Commission will presume the facility serves the Urbanized Area instead of its named COL. This policy, while helpful, still allows a significant number of changes in COL in which the resulting facility has no more probability of providing its COL “an outlet for local self-expression” than the facilities for which it would have blocked changes in COL.

31. The *NPRM* defines neither “Urbanized Area” nor “located within.” The analysis that follows presumes that “Urbanized Areas” are defined by the Urbanized Area

¹⁹ *Reply Comments* of William B. Clay, *FM Allotments* rule making, filed Oct. 31, 2005, ¶ 14.

²⁰ *Reply to Opposition* of William B. Clay, File No. BPH-20020116AAG, Fac. ID 52553, filed March 3, 2004, Table A and Line Item Note to Table A, item E.

boundaries published by the US Census Bureau as a product of each decennial census. Since the *NPRM* proposes no change to Rule § 73.1120, the location of a facility's COL is the relevant location, not a facility's transmitter site. We interpret the first proposed criterion as, "Facilities licensed to any community having a population wholly or partly resident within an Urbanized Area will be presumed to serve the Urbanized Area."

32. The sections that follow describe weaknesses of the proposed policy that lead to its ineffectiveness in ensuring a meaningful "outlet for local self-expression" for communities *of license*, the Commission's sole stated intention for its "local service" allotment preference. Each weakness is demonstrated by previously-granted changes in COL listed in Exhibit D.

A. The Proposed Policy Allows Many Specious Local Service Claims.

33. The proposed presumption of local service to an Urbanized Area ("UA") instead of the claimed COL would bar 38% (62) of the 164 first local service changes in COL granted in the first 18 months of the "streamlined" FM allotment process.²¹

Permitted facilities would include:

- 48% (78) whose COL is less than 5% of the protected contour population.
- 17% (28) whose COL is less than 1% of the protected contour population.
- 45% (73) that have protected coverage of more residents in at least three communities other than the granted COL.
- 33% (54) whose COL is less than 5% of the *principal community contour* population.

²¹ The calculated 38% is an upper limit. In practice, fewer would face a bar; the proposals analyzed here were prepared with no such restriction in mind. As shall be shown below, incumbents, having the same economic migration incentives, can often re-engineer to evade the prohibitory thresholds.

- 18% (30) that have *principal* coverage (city-grade, except non-commercial in reserved band) of more residents in at least three communities other than the COL.

34. Even though the 102 allowed facilities do not cover the majority of a UA's population within their principal community contour and their COL is located outside any UA, there is little basis to claim that many of them are likely to provide "an outlet for local self-expression" for communities *of license* that are such a minor fraction of their covered populations. In most cases, the population center that is the real target market of the granted facility is easily recognized – and it already enjoys local service.

B. The Proposed Policy Treats Similar Facilities Differently.

35. A facility serving a large, sprawling UA may cover less than half of the UA population, but the UA can still comprise nearly all of its market. The following are examples of first local service grants that would be *allowed* under the proposed policy:

- KCSI, fac. 26456, provides 42% of the Omaha UA population with a city-grade signal; its COL, Treynor IA, pop. 950, is 0.33% of its city-grade coverage, ranking as its 7th largest city-grade community.
- KVGS, fac. 25752, reaches 13% of the Las Vegas UA population with a city-grade signal; its COL, Meadview AZ, pop. 867, is 0.45% of its city-grade coverage, ranking 7th. 86% of the population resident within its city-grade contour is located in a UA.
- WFAS-FM, fac. 14380, covers just 3.6% of the New York-Newark UA population with a city-grade signal, but 96% of its city-grade population resides in a UA. Its COL, Bronxville NY, pop. 6543, home to 1.0% of its city-grade population, ranks 22nd.

36. These facilities have less commercial incentive to provide “an outlet for local self-expression” to their COL than the following facilities to which a first local service preference would be *denied*:

- KZXX, fac. 166050, has a city-grade reach to 84% of the Flagstaff AZ UA population; COL Doney Park AZ, pop. 5794, 10% of its city-grade coverage, ranks as its 2nd largest covered community
- WTLX, fac. 4477, includes 64% of the Madison WI UA within its city-grade contour; COL Monona WI, pop. 8018, comprising 3.6% of its city-grade population, ranks 4th.
- WAFC-FM, fac. 24230, covers just 7.8% of the Miami UA with its city-grade contour; COL Palm Beach Gardens, pop. 35,058, is 9% of its city-grade population and ranks 2nd, but as part of the Miami UA it would trigger the proposed UA coverage presumption.

37. As noted in Section II.A. above, the first local service preference exists solely to provide a “radio mouthpiece” to specific communities *of license*. However, as these real-world examples show, the fact that a facility covers most of a given UA is not the only disincentive against it serving its claimed COL. Even though stations covering most of a UA clearly have little commercial incentive to provide transmission service to a much smaller COL, the converse is not necessarily true. Many stations covering less than half of a UA still have little commercial incentive to provide a meaningful “outlet for local self-expression” to a COL that is a small fraction of their coverage.

38. The *NPRM* proposes a new local service policy based upon the extent of a facility’s urban coverage, to replace the *Tuck* policy (which ended up being widely

gamed) with a test that pursues only a negative aim, deterring full-metro service. But the new test fails to do anything to effect the positive aim, establishing a nexus – any nexus – between a proposed change in community of license and the changed facility’s service in providing an outlet for self-expression to that specific community.

C. The Proposed Policy Creates New Gaming Opportunities.

39. The proposed policy contains two criteria: the 50% threshold of a facility’s Urbanized Area coverage and whether its COL is part of a UA. Both are open to gaming.

40. A UA COL would be the dispositive criterion for twelve (7%) of the 164 analyzed first local service grants that the proposed policy would prohibit. Even though these twelve facilities cover less than 50% of the UA population, they are clearly targeted to the urban market:

- 4 (33%) cover 40% - 48% of their largest UA with their principal community contour.
- 6 (50%) have a principal community contour population that is at least 90% UA.
- 11 (92%) have a principal community contour population that is at least 70% UA.

Of the twelve, nine (75%) could be made grantable under the proposed policy by simply naming a different COL for the *same* technical facility; that is, only three of the twelve facilities may not have any non-UA licensable community within their principal community contour. It is child’s play to game the proposed UA COL criterion in cases of “rim-shot FM move-ins” that target a large but minority fraction of a UA.

41. The 50% UA coverage threshold can likewise be gamed using a COL selection technique. The crucial clause in the proposed policy is, “from a site covering the same *proposed* community of license.” This allows the applicant to freely choose the anchor point from which a facility’s UA coverage will be evaluated, based upon maximum power

for its class and existing frequency adjacencies. Once an attractive FM spectrum “hole” is identified in a target UA, the recipe is straightforward: (a) select a specific 49% fraction of the UA as a target market, (b) compute a maximum-power-for-class principal community contour that covers the target market, and (c) find a non-UA community that is (i) within the principal community contour, (ii) far enough from the UA center to prevent moving the coverage pattern towards the UA population center, and (iii) to which no broadcast facility is licensed. Trial-and-error over several iterations may be needed to find an attractive solution, but that’s an everyday engineering task.

D. City-Grade Coverage Does Not Reliably Reflect a Facility’s Intended Market

42. The recipe for gaming the proposed 50% coverage threshold is even more attractive than it first appears. While the proposed policy focuses on a facility’s *principal community* contour, it is clear that many changes in COL are made to gain only *protected* coverage of a target market, which is quite satisfactory with most of today’s FM receivers, based on digital tuners and highly selective filters. Of the 164 first local service changes in COL analyzed in Exhibit D:

- 17 (10%) include 5 times or greater population within their *protected* contour than within their city-grade contour. The champion is WZMQ’s Leisure City FL facility (no. 61646), penetrating the southern Miami UA with its protected signal, which covers 20.8 times the population of its city-grade signal. Of the 17 such facilities, six reach Arbitron top-50 markets; only three do not reach any Arbitron-ranked market.
- 75 (46%) cover at least twice the population in their *protected* contour as in their city-grade contour. In only one case is the claimed COL the facility’s #1 community, by population resident within the facility’s *protected* contour. In only 15 is the

claimed COL within the top 3 covered communities, by protected contour population. The Commission understandably focuses on the city-grade signal because that is a “reception” priority. But market reach, not city-grade signal, dominates incumbents’ motivations when choosing to change COL. This analysis suggests that city-grade coverage does *not* reflect a facility’s real target market when its protected population coverage is at least twice its city-grade coverage.

43. The engineering recipes described above cannot work for every facility for which frequency-spacing rules might permit an urban move. They would often fail for lower-power (*e.g.*, Class A) facilities that owners wish to move into sprawling UAs, because a non-UA COL “anchor” prevents smaller coverage patterns from penetrating enough of the UA population to achieve a satisfactory market share. But resourceful and determined owners can still find ways to “improve their facility,” as they call plucking stations from their long-standing communities of license to be transplanted to an urban center.

E. Changes in Adjacent Facilities Can Allow Stations to “Jump the Fence.”

44. The proposed 50% UA coverage threshold is evaluated once, when an application is adjudicated, based upon the frequency spacing adjacencies then in force. Thus, changes in adjacent facilities can determine whether a proposed facility change is granted or denied at any particular moment.

45. The proposed 50% UA coverage threshold seems robust thanks to the provision that it applies to the *potential* coverage of any facility that could:

... be modified to provide [at least 50% UA] coverage based based on existing spectrum availability or rule-compliant power or pattern modifications from a site covering the same proposed community of license. (*NPRM*, ¶19)

The impression of robustness fades when one considers a few recent mutually-contingent changes of facilities under common ownership or made with collaboration among owners in which urban moves were enabled or enhanced by non-urban stations moving out of the way,²² by COL swaps,²³ and by the move-and-backfill technique.²⁴

46. An adjacent facility change can create a UA population coverage limit of slightly less than 50%, which is then exploited by another facility's move penetrating the UA. In the third move of this chess game, the outlying facility moves its coverage away from the UA population center, opening the way for the fourth and final change, increased coverage of the now-urban facility *after* its change in COL is a *fait accompli*. *Voilà!* Back to the old days of multi-step changes in COL that achieve high fractions of UA coverage. One might scoff at such a convoluted scheme, except for the legal engineering already exhibited in even more complex channel-rearrangement schemes.²⁵ Economic incentives really do work, and incumbents with a possible path to urban riches have been agile and quick in dreaming up ever more arcane station combinations that comply with the current policy.

47. Although the proposed policy presumption of Urbanized Area coverage would forbid some inappropriate claims of a first local service allotment preference, it still exhibits some of the same defects as the policy that the Commission seeks to remedy.

22 *e.g.*, facility 49384, BMPH-20070119AGW and facility 32210, BPH-20070119AGZ.

23 *e.g.*, facility 41082, BPH-20070119AAU and facility 52015, BPH-20070119AAW.

24 *e.g.*, facility 72389, BPH-20070119AEO and facility 64648, BPH-20070119AEU, one of many cases.

25 *e.g.*, the infamous *Quannah, Texas* rule making, MM Docket 00-148; the apparent stalking-horse petition to create a single FM channel set up a counterproposal to rearrange no less than 18 channels at once.

IV. COMMUNITY RANK IS AN EFFECTIVE PREDICTOR OF LOCAL SERVICE.

48. If one lesson can be drawn from 20 years of non-competitive FM changes in COL made possible by the *New Community Orders*,²⁶ it is this: the inexorable economic pressure for facilities to seek the largest possible market has not been a fair match for exemplary licensees' civic-minded resolve to serve their community nor for Commission policies to discourage migration of rural facilities to urban areas. Both were defeated over time. Licensees' civic commitment has given way to retirement, death, or sale of their stations; and the Commission's efforts to fine-tune its policy have fallen in the courts to the tireless assault of station owners seeking larger markets.

49. This history suggests that the Commission's attempt to remedy the problem it has correctly identified must be:

- **Strong:** so directly linked to licensees' economic incentives that the adopted policy *exploits* those strong incentives rather than resisting them.
- **Durable:** independent of temporally transient conditions such as facility ownership or channel adjacencies.

The local service presumption described in the *NPRM* has been shown above to lack these properties, but the adjustment described below exhibits both.

50. We suggest that any request to change an FM facility's community of license that makes recourse to a local service preference of any degree (first, second, fifth, etc.) be presumed to provide local service to the community or UA having the greatest number of residents covered by the proposed facility. The Commission could allow such

²⁶ *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) and Memorandum Opinion and Order (5 FCC Rcd 7094, 1990).

a presumption to be rebutted under specified conditions, but these *Comments* do not include such a proposal. Absent an allowed and valid rebuttal, a proposed change in COL would be granted a local service preference only if the requested COL is the community or UA presumed to receive local service. Any facility granted a change in COL pursuant to a local service preference would be permanently restricted from making technical changes that alter the COL's rank as the facility's largest covered community.

51. The sections that follow define this policy in more detail, then examine its effects using the the same analytical approach applied to the policies examined above.

A. The #1 Community or Urbanized Area Receives Local Transmission Service.

52. As noted in Section II.C., above, commercial radio station revenue is largely determined by measurement of a station's audience size. Non-commercial radio stations, depending largely upon listener contributions, have an equally direct economic stake in maximizing their audience size. It follows that, if a radio station provides "local transmission service" to any community, it has a greater economic incentive is to serve the community having the largest number of covered listeners.

53. It reasonable to presume that, when a radio station can attract a larger number of listeners by serving neighboring communities having some common interest as a single audience, it will do so.²⁷ The US Census defines Urbanized Area boundaries to reflect contiguous areas of high population density that have an aggregate population of 50,000 or more, independent of community boundaries.²⁸ It follows that, if a radio station covers more population of an Urbanized Area than of any individual community,

²⁷ The same presumption is the basis of Arbitron "Metros," upon which the Commission relies by policy to define the markets within which radio stations compete.

²⁸ http://www.census.gov/geo/www/cob/ua_metadata.html.

and if it provides “local transmission service,” its strongest economic incentive is to serve the Urbanized Area as a whole.

B. Community Rank: the Fine Print.

54. Commissioners have noted that *Tuck’s* criteria have lost precision over time,²⁹ and it is essential that any policy intended to remedy *Tuck’s* failings avoid meeting the same fate. *Example* definitions for key terms in which the proposed policy is expressed follow below. The Commission may wish to adopt alternative definitions on the advice of its Staff, the providers of the mapping and coverage analysis software commonly used by consulting engineers, and of consulting engineers themselves.

55. **Coverage area** is the territory enclosed by either a facility’s principal community contour (“city-grade” contour except for non-commercial facilities in the reserved band) or its protected contour, determined as follows:

- a. The coverage contour used to determine community rank shall be computed by the same method used to demonstrate acceptable COL signal strength (*e.g.*, the Commission’s standard method, Longley-Rice, etc.)
- b. A facility’s principal community contour shall be used to determine community rank, *except* when the population covered by its protected contour is at least twice the population covered by its principal community contour. In the latter case, the protected contour shall be used to determine community rank.

56. **Covered population** is the resident population of a facility’s coverage area. Covered population shall be computed at a granularity of “urban/rural block group

²⁹ *Chillicothe* (fn. 9 above), Dissenting Statement; *Evergreen, Alabama and Shalimar, Florida*, Joint Dissenting Statement, 23 FCC Rcd 15846, 15852.

fractions” as defined in the most recently published US Census product, Summary File 1 Supplement, table P2, summary level 090, or the nearest equivalent product of later decennial censuses. (Census-block population granularity is more precise, but greatly increases storage and computation costs.)

57. ***Largest covered community*** is the community or Urbanized Area having a covered population that exceeds the covered population of any other community by at least 10% (or by another fixed margin the Commission deems appropriate to provide durability over time and to avoid *de minimus* distinctions of little economic significance).

- a. Community and Urbanized Area boundaries shall be as published for the latest decennial US Census for which both “Incorporated Places/Census Designated Places” and “Urban Areas” cartographic boundary files (or the nearest equivalent products of later decennial censuses) are available. Should community boundaries have subsequently changed, updated boundaries may be used, provided their source is disclosed to and accepted by the Commission staff. (Finer-grained Census boundary data exist, but increase storage and computation costs.)
- b. If no covered community or UA has a population exceeding that of any other covered community or UA by the required margin, the licensee may specify a composite COL.

58. ***Composite COL*** is intended to permit facilities having no single dominant covered community (e.g., high-powered facilities in sparsely-populated rural areas) to qualify for a local service allotment preference. Counties, county equivalents, Indian reservations, or combinations of not more than three neighboring licensable communities may be proposed as composite COLs. In determining a composite COL’s

degree of local service preference (first, second, fifth, etc.), the sum of all local services licensed to any of its subdivisions shall be attributed to the composite COL.

- a. “Neighboring licensable communities” shall not be geographically separated by any licensable community that has a population larger than any of the communities to be considered neighbors, nor by any community to which a broadcast channel is licensed or allotted.
- b. No portion of an Urbanized Area may be a component of a composite COL.
- c. Composite COLs could be gamed in competitive settings. Therefore, competing proposals in which COLs overlap (*e.g.*, one proposal for a county, another for the county seat) shall be adjudicated as though each had specified the largest composite COL among all those proposed that would be permitted by the facility’s proposed coverage.

C. Community Rank Can Be Made a Durable Criterion.

59. We propose that every permit and license issued to any facility upon which a local service allotment preference of any degree has been conferred shall bear an explicit restriction prohibiting the station from making any technical change that alters its COL’s rank as its largest covered community. This restriction shall be carried forward through all renewals, technical facility changes, and changes in ownership or control unless the facility again changes COL.

60. This restriction, together with the required top rank margin, make a facility’s largest covered community likely to remain in that position, aligning a station’s local service commitment with its financial incentives over a long period. That durability can be enhanced by public recognition of a station’s public service obligation.

61. We advocate two additional explicit and permanent license restrictions, intended to clearly express the commitment of a facility that claims to provide “local service” in tangible measures that provide some value to its community *of license*.

- The facility’s main studio shall be located within the boundaries of its COL. No waiver of the main studio rule shall be granted to a facility that benefits from a local service preference of any degree.
- Legal station “I.D.s” shall name *only* the community of license.

These measures are hardly a return to the “age of regulation,” with its logs and ascertainment, but they create incentives to encourage real and lasting local service.

D. Community Rank Works in Urban and Non-Urban Settings.

62. How effective is the policy proposed in these *Comments* compared to the proposal of the *NPRM*? If the entire proposal – including the adaptive selection of either principal community or protected contour for coverage computations – is used, three of the 164 first local service changes in COL analyzed here would unquestionably be granted. In these three cases, the new COL is the largest community covered by both protected and principal contour and represents at least 25% of their city-grade population. Attribution of an incentive for these facilities to provide meaningful local service to their new COL is eminently reasonable and rational.

63. A fourth case appears to be grantable under the policy proposed by these *Comments*, but its choice of COL was justified upon Longley-Rice coverage computations, which this analysis could not duplicate. This case’s apparent acceptability seems to be due to use of inappropriate contour computations, and underscores the importance of using a consistent coverage model for community ranking under this policy.

64. If the adaptive contour selection method is abandoned, and solely the principal community contour used to determine covered community rank, an additional 15 changes in COL would be granted (including one that the *NPRM* proposal would bar). In each of these cases, the facility's protected contour population is at least double its city-grade population; in most cases, it is triple or more. Examination of these facilities shows that the real market they seek is almost certainly a population center (usually not a UA) that is reached by their protected – but not city-grade – contour.

65. What about the 161 first local service grants that the policy proposed by these *Comments* would deny? Some might be grantable under the fourth allotment preference, other public interest matters, or by adoption of criteria for rebuttal of the proposed presumption that they will provide local service to their largest covered community or Urbanized Area. However, inspection of their COLs' share of covered population and their COLs' ranks among covered communities leaves little doubt that it is rational and reasonable to presume that they have no strong and durable incentive to provide their COLs with any distinctive and meaningful local transmission service.

66. The analysis above, like the policies proposed in ¶ 9 the *NPRM*, focuses on changes in COL that aim to penetrate Urbanized Areas. Yet of the 102 first local service changes in COL listed in Exhibit D that the *NPRM* proposals would permit, 82 (80%) would be granted a first local service preference simply because their principal community contour does not include any part of an Urbanized Area defined by the US Census. As the figures in Exhibit D show, those facilities have little more incentive to provide meaningful local service to their new COLs than their large-market cousins.

67. NPRM ¶ 13 seeks “alternate metrics for defining underserved populations or rural areas.” Alternatives to the policies proposed in ¶ 9 would be needed in such areas because those policies impact only Urbanized Areas. However, the community rank metric proposed in these *Comments* is not exclusive to Urbanized Areas. The community rank metric is based upon the same factor – signal population coverage – that influences licensee decisions on the service their facilities render, regardless of their urban or rural location. There is thus no motive to restrict application of the community rank policy presumption for local service preference to facilities that penetrate Urbanized Areas, nor is any alternate metric necessary for rural areas.

68. The same economic incentive exists for licensees to seek to cover concentrated population centers whether or not those centers satisfy the Census definition of “Urbanized Area.” This incentive motivates use of the easy but specious trump card of claiming a facility change will provide “first local service” to some smaller, nearby community so that the facility may cover a population center that already enjoys local service. The community rank policy proposed in these *Comments* is equally effective in managing these incentives in urban and non-urban settings.

V. CONCLUSION.

69. The foregoing *Comments*, which focus upon the FM radio broadcast service and respond to questions posed at NPRM ¶¶ 9 and 13, have shown:

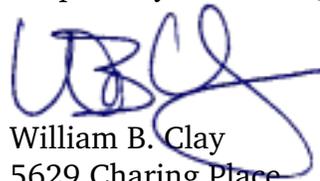
- The Commission is correct: local service preferences are often conferred upon FM changes in community of license that are “antithetical to the public interest.”
- The Commission’s intent to use signal population coverage data that the one-step process to change FM community of license makes available is reasonable – indeed,

obligatory, given the statutory prohibition of arbitrary and capricious Agency action.

- Despite its use of the newly-available coverage data, the policy proposed at *NPRM* ¶ 9 suffers from some of the same flaws as previous policy, as well as some new flaws.
- A presumption that local service is rendered to the largest community or UA covered by a facility seeking a local service preference aligns the economic incentives that are most likely to influence licensee service offerings strongly and durably with the Commission's local service policy objectives.
- The policy advocated in these *Comments* works well in urban and rural markets. Different policies for the two settings are not needed in such a regime.

The data presented in these *Comments* and its Exhibits provide extremely strong support for these showings. In recognition of the substantial public benefits they would yield, The Commission should adopt the policy proposals contained in these *Comments*.

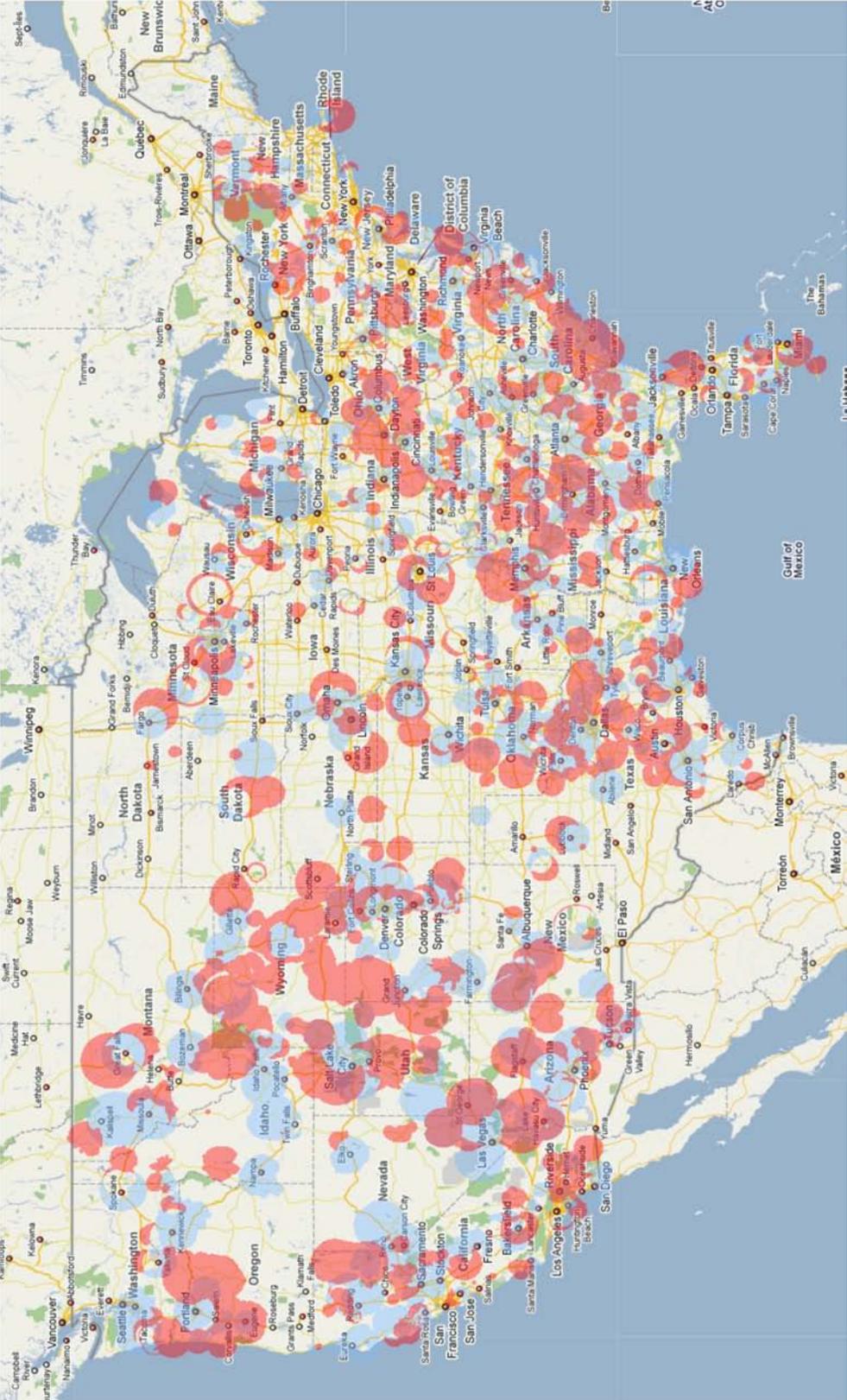
Respectfully submitted,



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pro se

July 13, 2009

Exhibit A: Geographic Overview, FM Changes in Community of License, 1982-2009



Shaded territory shows changes in FM protected contour coverage due to change in community of license.

red = losing territory
blue = gaining territory

Map data ©2009 Tele Atlas except FCC data in the public domain.

Exhibit B: FM Facilities Changing Community of License Since 1992

This Exhibit lists each full-power FM facility to which a change in community of license (“COL”) has been granted or was pending on June 30, 2009. The list was produced by automated analysis of the Media Bureau’s CDBS; it has not been exhaustively verified. The automated selection logic may have omitted some changes; some older two-step (rule making) changes in COL may not be reflected in CDBS. A small number of changes may have been incorrectly categorized as changes in COL due to misspelled community names on applications.

Description of columns of Exh-B.pdf:

1. **sequence** number of row
2. **date** of grant, if granted, else filing date
3. **facility** ID number
4. **file** number of latest technical application at new COL
5. **status** of application as of June 30, 2009: **Granted** or **Pending**.
6. **NC** = ‘Y’ for non-commercial facility; else blank
7. **old COL** that the listed application seeks to abandon; blank where the analysis tool detected a change in COL but did not identify the old COL (older changes and complex sequences of applications)
8. **o-channel** and class at old COL, if different from new COL
9. **new COL** specified in the listed application
10. **n-channel** and class at new COL

Accompanying file Exh-B.pdf contains Exhibit B pages 2-14.

Exhibit C: FM Changes in Community of License Granted 1/19/07 to 7/8/08

This Exhibit lists all full-power FM changes in community of license (“COL”) for which the Commission gave public notice of an application to change COL in the Federal Register and which were granted in the 18 months between January 19, 2007 (when the “streamlined” rules to change COL became effective) and July 8, 2008. All entries on this list have been manually verified.

Signal population coverage data were obtained manually from data provided by licensees in their applications, where available. Where the desired coverage data were not available in the application, the data were computed as described in Exhibit E, items 4-11. Coverage figures not supplied by licensees are indicated in *Italic* typeface. All coverage data in this exhibit are based upon the subject facility’s *protected* contour. COL community rank is computed using licensee-supplied data for COL population, wherever provided in applications; otherwise, COL populations were obtained from public sources.

Description of columns of Exh-C.pdf (self-explanatory columns are not listed; “CCOL” means change in COL; “1LS” means first local service; “LS” means local service):

2. **key**: unique record ID; correlates rows between Exhibits C and D
6. **new COL**: COL granted or requested
7. **pop**: population of COL in preceding column
8. **cov pop**: total resident population covered by facility after CCOL
9. **COL % cov pop**: fraction of covered population resident within COL
10. **COL rank**: rank of COL among communities, by covered population; special code: boldface 11 = rank unavailable; understated artificial rank for summary statistics
11. **excep**: COL rank exception; one of the following:
 - USGS = COL recognized as populated place by USGS; not Census community
 - Undef = COL recognized by neither Census nor USGS
 - NoCont = Commission-computed contour unavailable for COL rank computation
 - Lic = license to cover granted to new facility as of July 2008
12. **Arbitron Metro**: July 2008 Arbitron rank of metro market significantly covered by new facility.
13. **MSA**: metropolitan statistical area significantly covered by new facility.
14. **MSA UA cov pop**: Covered population within urbanized areas of MSA.
15. **MSA UA % cov**: Fraction of MSA UA population covered by facility; item II.8 above.

Accompanying file Exh-C.pdf contains Exhibit C pages 2-5.

Exhibit D: Analysis of Proposed and Suggested Policies for Attribution of Local Service

Exhibit D compares the results of the Urbanized Area coverage policy proposed in the *NPRM* with the policy adjustment proposed in these *Comments*. It examines the 164 first local service changes in community of license (“COL”) tabulated in Exhibit C and adds the criteria that determine the effect of both proposed policies upon each of the 164 changes in COL.

Protected contour population coverage data are the same data described in Exhibit C. Principal contour population coverage data (except for non-commercial facilities in the reserved band) were computed as described in Exhibit E, items 4-8 and 12-13 (the Commission does not not publish city-grade coverage contours in its public databases).

Exhibit D divides facilities into color-coded groups, first by their disposition under the policy proposed in the *NPRM*, then, indented within each such group, by their disposition under the policy proposed in these *Comments*. The color of each group’s heading row signals the effect of the proposed policy upon the facilities in the group.

- Red: the facilities’ change in COL would be barred.
- Yellow: the facilities’ change in COL would be barred, but could be granted under the stated circumstances.
- Green: the facilities’ change in COL would be permitted.

Color-coded columns highlight criteria used by the proposed policies:

- Sky blue: *NPRM*-proposed policy criteria.
- Lilac: *Comments*-proposed policy criteria.

(Refer to next page for description of columns.)

Description of columns of Exh-D.pdf (self-explanatory columns and columns identical to Exhibit C omitted):

4. **NC:** “Y” = non-commercial facility.
5. **UB:** “Y” = unbuilt facility (at neither old nor new COL) as of July 8, 2008.
12. **app:** CDBS application ID.

The following coverage data are determined by facilities’ *principal community* contours.

13. **princ pcov:** total population covered.
14. **top UA:** UA having largest covered population (not necessarily UA containing COL).
15. **UA pop:** population of top UA (may differ slightly from Census figures due to block-group fraction granularity of population computation; Exhibit E, item 5).
16. **UA pcov:** covered population within top UA.
17. **UA %:** percent of UA population covered by facility.
18. **COL UA rank:** rank of UA (within UAs) containing COL; if blank, COL is not located in any UA; if larger than 1, COL is located in a UA other than top UA.
19. **COL prank:** community rank of COL (number of communities having more covered population than COL plus one).
20. **non-UA COL candidate:** top-ranked covered non-UA community, if any (*i.e.*, a non-UA community that the facility might claim as its COL; no verification of existing local service has been made).
21. **cand prank:** community rank of non-UA COL candidate community.
22. **COL %:** fraction of all covered population that resides in COL (based on application statement of COL population, where available; exceeds 100% if the application statement exceeds the Census count).
23. **UA % tot pcov:** fraction of all covered population that resides in a UA.
24. **prot/princ:** ratio of protected contour population to principal community contour population (protected contour population *includes* principal contour population).

Accompanying file Exh-D.pdf contains Exhibit D pages 3-7.

Exhibit E: Data Sources and Analysis Methods

The notes below describe the sources and methods by which quantitative data presented in the foregoing *Comments* were obtained. Most notes apply to specific data sets, not the entire collection. Except where the note itself describes the data sets to which it applies, the *Comment* text cites specific items below wherever they apply.

1. Summary counts of broadcast applications and facilities are drawn from a June 30, 2009 snapshot of the publicly-available version of the Media Bureau's Consolidated Database System Electronic Filing System ("CDBS").
2. Summary counts were produced by automated analysis of CDBS data. These counts have not been manually verified and may incorporate minor errors due to, *inter alia*, inconsistent status coding and unusual sequences of applications that are tabulated incorrectly by the filtering and summarization logic driving the analysis. Regardless of such errors, the counts cited are believed to fairly represent the trends described.
3. Each facility for which a change in community of license has been granted or applied for is counted only once, under the year of its most recent such application.
4. The *FM Allotments* Order requires all one-step changes in COL be announced by public notice published at irregular intervals in the Federal Register. This analysis includes all FM changes in COL listed in notices published between February 14, 2007 and July 9, 2008.
5. Granularity of population computations is by Census 2000 block group urban/rural fraction (summary level 090). Block group fractions are counted as entirely within or outside of a station's protected service contour based upon the Census-defined "internal point" of each block group fraction.
6. "Communities" upon which rankings are based are as defined by Census 2000, and include cities, towns, villages, etc., and Census-designated places (CDPs).
7. COL rank is one more than the count of Communities recognized by the US Census having a larger covered population than the COL.
8. COL ranking is based on the COL population claimed by the licensee in the "307(b) showing" or engineering attachments of its application. It is assumed that the claimed COL population is entirely covered by the new facility.

The items 4-8 above and following apply to the facility coverage analysis presented in Section II.C. and Exhibit C.

9. Application status and technical data were obtained from the Media Bureau's CDBS electronic filing system, including attachments in PDF form associated with applications filed in CDBS. CDBS data base table data were obtained from the Bureau's public CDBS data base snapshot retrieved on July 10, 2008. Application

data not available from CDBS data base public tables were retrieved from the CDBS public access Internet Web site at various times between July 10, 2008 and August 18, 2008.

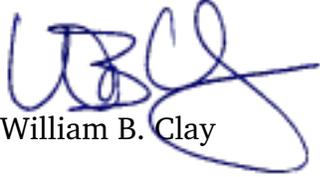
10. Population data in Roman (erect) typeface were supplied by licensees in application text or attachments. Population data in *Italic* (cursive) typeface were computed using FCC-supplied coverage contours and Census 2000 data as described here. Wherever available and not obviously erroneous (*i.e.*, typographical errors or grossly inaccurate data), licensee-supplied data were used in preference to data computed by the author of these *Comments*.
11. Coverage computations are (in order of preference) taken directly from the subject application; based upon the protected service areas of full-power FM facilities published by the Audio Division (wherever available); or computed using an adaptation of computer code published by the Audio Division. The adapted code has been shown to produce results that closely match those published by the Audio Division.

Items 4-8 above and the following notes apply to the coverage analysis of 164 “first local service” changes in COL presented in Section III., Section IV., and Exhibit D.

12. Analysis of the proposed “50% Urbanized Area Coverage” rule assumes that each studied change in COL achieved maximum possible UA coverage given its channel, class, requested COL, and then-current adjacencies. The extent of analysis required to exhaustively verify this assumption is prohibitive. Examination of samples of the 164 first local service grants confirms this assumption is generally valid.
13. Coverage computations are based upon protected and/or city-grade service contours computed by the author of these *Comments* using an adaptation of computer code published by the Audio Division. The adapted code has been shown to produce results that closely match those published by the Audio Division.

Verification

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 13, 2009.

A handwritten signature in blue ink, appearing to read 'WBC', with a large, sweeping flourish extending from the end of the signature.

William B. Clay