

ORIGINAL

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

FILED/ACCEPTED

JAN -5 2012

Federal Communications Commission
Office of the Secretary

In the Matter of:)
)
Policies to Promote Rural Radio Service and to)
Streamline Allotment and)
Assignment Procedures)
)
)

MB Docket No. 09-52
RM-11528

To: The Commission, Office of the Secretary

OPPOSITION TO PETITION FOR RECONSIDERATION

By its attorney and pursuant to Section 1.429 of the Commission's Rules,¹ Educational Media Foundation ("EMF") and Bryan Broadcasting Corporation ("BBC") (collectively, the "Joint Parties") hereby oppose the Petition for Reconsideration ("Petition") filed by William B. Clay in the above-referenced proceeding. In his Petition, Mr. Clay supports the FCC's decision in the *Rural Radio Order* limiting city of license changes that move stations from communities outside of an urbanized area to communities within those areas.² Mr. Clay's Petition is based on his claim that the Commission did not go far enough, and that city of license changes outside of urbanized areas should also be subjected to greater scrutiny as to whether or not they serve the public interest. As set forth below, Mr. Clay's Petition fails to identify any specific harm that his proposed new extension of the FCC's policies would address. More significantly, he does not spell out exactly what presumptions and policies he would apply to city of license changes outside of urbanized areas. EMF and BBC feel that the policies already adopted by the Commission in the

¹ 47 CFR §1.429 (2010).

² *In the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, First Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 26 FCC Rcd 2556 (2011) ("*Rural Radio Order*").

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Rural Radio Order in connection with the analysis of moves into urbanized areas are so subjective that it is impossible to know when a proposed city of license change will be permissible and when it will be forbidden. Extending these unclear, subjective policies to all community of license changes will only make the application process unmanageably burdensome, without any appreciable public interest benefits.

Mr. Clay contends that any first local service presumption accorded in any city of license change proceeding needs to be investigated under new, enhanced public interest standards, as stations have a natural incentive to serve their entire service area whether or not these areas are urbanized. Thus, he concludes, licensees who are changing their city of license may in fact be looking to serve areas with larger populations, not just the community that they have identified as their community of license. Yet Mr. Clay does not suggest how the public interest evaluation be applied in any consistent manner that would ultimately benefit the public interest.

All of the parties who filed for reconsideration of the Commission's *Rural Radio Order*, other than Mr. Clay, have in some way challenged the Commission's decision to retreat from well-established prior precedent and to make community of license changes more difficult.³ Many parties seeking reconsideration of the *Order* have taken issue with the grandfathering provisions of the new rules. Many (including EMF) also raise questions about how the Commission will draw lines between applications that are acceptable under the new criteria and ones which are

³ Just three years prior to initiating the *Rural Radio* rule making proceeding, the FCC revised its rules to make changes in community of license easier, allowing them to be accomplished through one-step minor modification applications and making other rule changes to facilitate such moves. *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 (2006). More than 30 years ago, the FCC abandoned its Suburban Community Policy, which had set out principles similar to those that have now been readopted by the Commission. See *Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy*, 93 FCC 2d 436 (1983).

prohibited.⁴ The Commission's decision eliminates the first service preference in many cases where moves are proposed into urbanized areas. Instead, such cases will be decided on the subjective criteria of Priority Number 4 – “other public interest benefits.” As raised in EMF's own Petition for Reconsideration of the *Rural Radio Order*, it is unclear exactly how such determinations will be made. This lack of clarity is compounded under the *Rural Radio Order*, as applicants for a new service in an urbanized area must now document more than just the increased population that they will serve, and more than simply service to underserved areas. Now, the Commission is demanding that applicants document the number of services that will be available in all areas that a station plans to serve and in all areas that it will leave behind, and to explain how each level of service is in the public interest – no matter how well served these areas may be. Thus, applicants will be forced to engage in philosophical arguments about the relative merits of, for instance, providing a 15th service to 1,000 people versus the loss of an 8th service to 100 people – and applicants will be forced to do so with no guidance as to what the Commission believes to be important in making such evaluations.

Mr. Clay, in his reconsideration request, looks to make things worse – extending this regime into non-urbanized areas, with no explanation of what criteria would be used to judge applications that are filed in these areas. Mr. Clay makes much of applicants specifying a particular community of license with no real intent to serve that community – but instead to serve some greater area surrounding that community. How does he propose to judge the intent of

⁴ BBC itself has had an application dismissed by the FCC that merely sought to reinstate an expired permit previously granted by the FCC and approving the same city of license change that was now dismissed by the Commission. The current dismissal was essentially based solely on the fact that the community that was being left behind had fewer licensed stations than the community to which the station was moving, and some analysis that there were more reception services available in the new community – without any analysis of the economic needs of the communities, the service available in the entire service area, and the vast increase in population served by the new application.

applicants to serve a community? Will we have hearings to make determinations as to an applicant's true intent?

Moreover, Mr. Clay implies that there is something inherently wrong with broadcasters looking to improve the coverage of their stations so as to maximize their service. Stations were never limited to service areas restricted to their communities of license. The FCC has never claimed that all service provided by a station should stop at the boundaries of the station's city of license. If it did, the Commission would never have licensed Class B or Class C FM stations or high powered AM stations. Under such an approach, the country would have nothing but low power FM stations all across the country, many of which would never be able to economically survive serving the population of a single community. The fact is that the Commission has authorized stations to serve wide areas, and expects that they will provide programming addressing the totality of their service areas. Maximizing service to greater populations has often been found to be in the public interest, a fact acknowledged by the *Rural Radio Order* itself. There is no reason that such proposals should somehow be viewed through a veil of suspicion, as Mr. Clay suggests.

The Petition for Reconsideration filed by Radio One, et al., in this proceeding makes several points that the Commission must keep in mind when evaluating all of the various requests for reconsideration – including that of Mr. Clay. The Radio One, et al., Petition suggests that the basis for the initial decision in the Rural Radio proceeding was flawed, and thus any extension of that decision as proposed by Mr. Clay must be viewed with great suspicion. Further, the Petition points to record evidence in this proceeding that shows that there was no real loss of service to rural areas in the 30 years since the Commission abandoned its urbanized area presumptions.⁵

⁵ See *Petition for Partial Reconsideration of Radio One et al.*, MB Docket No. 09-52, filed May 6, 2011, at pp. 14-16.

There is no significant record evidence in this proceeding of any outcry from citizens in rural communities about the loss of broadcast service, nor does Mr. Clay offer any evidence of a real injury that would be remedied by the expansion that he proposes.

Thus, based on little or no record evidence of any harm, the *Rural Radio Order* has frozen many stations in place, making service to urbanized areas where there is an economic need for such service difficult or impossible. The decision has essentially frozen the competitive landscape in these markets, making new entry virtually impossible. Mr. Clay's Petition seems to seek to extend this regime across the country, putting new hurdles in the way of broadcasters looking to maximize the service they provide to the public and to make more efficient use of the broadcast spectrum. Making better service more difficult is not in the public interest. Thus, Mr. Clay's Petition for Reconsideration must be denied.

For the reasons set forth above, the Petition for Reconsideration must be denied.

Respectfully submitted,

**EDUCATIONAL MEDIA FOUNDATION
BRYAN BROADCASTING CORPORATION**

By:  _____
David D. Oxenford
Their Counsel

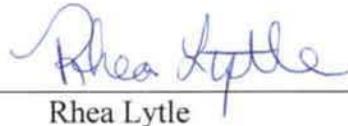
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Dated: January 5, 2012

CERTIFICATE OF SERVICE

I, Rhea Lytle, a Secretary in the law firm of Davis Wright Tremaine LLP, hereby certify that on this 5th day of January, 2012, I caused a copy of the foregoing "**OPPOSITION TO PETITION FOR RECONSIDERATION**" to be served by U.S. Mail upon the following:

Michael Couzens, Esq.
Michael Couzens Law Office
P.O. Box 3642
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Counsel for William B. Clay

A handwritten signature in blue ink that reads "Rhea Lytle". The signature is written in a cursive style with a large initial "R".

Rhea Lytle