

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of	)	
	)	
Review of Technical Policies and Rules	)	
Presenting Obstacles to Implementation	)	RM-11565
of Section 307(b) of the Communications	)	MB Docket No. 09-52
Act and to the Promotion of Diversity	)	
And Localism	)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

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To the Commission:

**COMMENTS OF THE
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The National Association of Broadcasters (NAB)¹ respectfully submits these comments on the above-captioned Petition for Rulemaking.² NAB supports the goal of MMTC's Petition, which is to review the Commission's rules and policies relating to radio broadcasting to ensure they provide broadcasters with needed flexibility to preserve and improve service to their local communities. NAB also shares MMTC's view that Commission action is urgently needed, given current competitive and financial conditions in the media marketplace.

¹ NAB is a nonprofit trade association that advocates on behalf of free, local radio and television stations and also broadcast networks before Congress, the Commission and the Courts.

² Petition for Rulemaking of Minority Media and Telecommunications Council (MMTC), Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, RM-11565, MB Docket No. 09-52) (filed July 19, 2009) (MMTC Petition); Federal Communications Commission, *Public Notice*, Report No. 2899 (Sep. 23, 2009) (establishing comment and reply comment deadlines).

I. Introduction and Summary

Local radio broadcasters offer a wealth of national and local news and other informational programming, vital emergency information and entertainment to the American public, free of charge, and provide additional, unique community service, including giving a voice to local organizations and raising money for charities and other local entities. Serving the needs of local communities is the cornerstone of broadcasting.³

Given the rapidly changing media market, with new competition from multiple digital sources, as well as the challenging economic conditions facing all advertising supported media, NAB agrees with MMTC that a review of certain rules and policies pertaining to radio is timely to enhance local stations' ability to deliver the information and entertainment the American public has come to expect. The Commission, as MMTC urges, should ensure its rules remain appropriate in light of current market realities.

As discussed in detail below, NAB endorses many of MMTC's suggestions and urges the Commission, as MMTC urges, to examine them further in a rulemaking proceeding. In particular, MMTC's proposals regarding a number of technical and application-processing related rules should provide increased operational flexibility for local stations, including smaller ones, in serving their communities and listeners. NAB does have concerns about certain of MMTC's proposals, however, and does not believe they should be the subject of a rulemaking at this time. NAB is particularly concerned that a few of these proposals could have a wider impact on other broadcasters,

³ See Comments of National Association of Broadcasters, MB Docket 04-233 (filed Apr. 287, 2008), at i-iv.

including television stations, and their continued ability to offer optimal service to their communities and audiences.

II. The Commission Should Explore Several MMTC Proposals as Positive Improvements that Would Provide Broadcasters With Needed Flexibility to Preserve or Enhance Service

MMTC offers several reasonable improvements (MMTC Proposals) to the Commission's rules and procedures that could enhance broadcasters' efforts to provide superior service to their local communities, including:

- Proposal #2: Remove the nighttime coverage rules from Section 73.24(i);
- Proposal #3: Modify the principal community coverage rules for commercial stations;
- Proposal #4: Replace the minimum efficiency standard for AM stations with a "minimum radiation" standard;
- Proposal #5: Allow FM applicants to specify Class C, C0, C1, C2 and C3 facilities in Zones 1 and 1A;
- Proposal #6: Remove non-viable FM allotments;
- Proposal #10: Relax the limit of four contingent applications;
- Proposal #11: Relax the main studio rule;
- Proposal #15: Conduct tutorials on the radio engineering rules; and
- Proposal # 16: Appoint a public engineer.

MMTC Proposals #2 and #3. NAB applauds MMTC's creative efforts to generate practical ideas for reforming certain technical rules to allow broadcasters greater flexibility in serving listeners. For instance, MMTC Proposals #2 and #3 -- deleting the AM nighttime coverage rule and modifying the principal community coverage rules -- would open more opportunities for AM stations to relocate their transmitter sites. The nighttime coverage rule requires that 80% of an AM station's

principal community be encompassed by the nighttime 5 mV/m contour or the nighttime interference-free contour, whichever value is higher. MMTC Petition at 10, citing 47 C.F.R. § 73.24(i). This restriction can hamper AM stations by making it more difficult for them to increase daytime coverage while using the same transmitter site, due to the physics of nighttime propagation and protection requirements. For the same reasons, it can also increase the difficulty of locating another suitable site if a station should lose its current site or wants to relocate. For example, if the land value of an old site that is located within a community rises, moving to a less developed parcel will become attractive, especially because AM antenna systems require substantial real estate. However, moving to the outer limits of a community may mean that the station can no longer cover 80% of the community's nighttime contour, even if the station can satisfy the daytime contour rules. Elimination of the nighttime coverage rule would give stations more flexibility to choose a transmitter site, if they are new entrants, or to relocate to more reasonably priced property.

MMTC's next proposal would similarly assist broadcasters in serving their communities. *Id.* at 14-16. Modifying the principal community coverage rules for commercial stations to permit a slightly reduced minimum signal strength at night would simplify the burdens associated with identifying a transmitter site capable of providing sufficient signal coverage to the community of license. As MMTC observes, many stations have trouble reaching their target audiences because of this rule. *Id.* at 15. Also, in certain cases this rule can make relocating antennas extremely difficult, especially near metropolitan areas. As a result, many stations are unable to improve or expand service because they are locked into their current antenna sites. Therefore, the

Commission should explore MMTC's suggestion that the community of license coverage rules for commercial stations be conformed to the rules governing non-commercial stations. *Id.* at 15.

MMTC Proposal #4. Relatedly, MMTC suggests changes to the Commission's minimum efficiency standards for AM stations that would provide broadcasters with more flexibility in choosing both an antenna and in turn, an antenna site. *Id.* at 17-20. The Commission's current rules require very specific antenna systems for AM stations; in particular, stations at lower frequencies typically need very large antennas to meet the minimum efficiency standards. See 47 C.F.R. §§ 73.45, 73.186, and 73.189. As a result, lower frequency stations are often tied to large, sometimes expensive transmitter property sites. By replacing the minimum efficiency standards with some kind of "minimum radiation" that is expressed in mV/m, as MMTC suggests, AM stations would have much more flexibility to use shorter antennas, including antennas that could fit on building rooftops and on other much smaller, cheaper parcels of land. This more cost effective approach would benefit stations and deserves the Commission's consideration.

MMTC Proposal #5. NAB also agrees that the Commission should reexamine the current limits on the zones that FM stations may specify, as suggested in MMTC Proposal #5. The current rules permit only Class A, B1 and B stations to be authorized in Zones 1 and 1A, while Class A, C3, C2, C1, C0 and C stations can be authorized only in Zone II. 47 C.F.R. § 73.210. The Commission should consider an amendment to the rules that would permit FM stations in the latter classes also to specify Zones 1 and 1A, so they could be located anywhere in the United States. MMTC Petition at 21.

This change would serve the public interest by enabling some stations to upgrade to a higher class of facility, and better serve their local communities.

MMTC Proposal #6. MMTC's proposal to remove "non-viable" FM allotments could promote spectrum efficiency by allowing other stations to upgrade and expand their service, as well as open additional spectrum to new entrants. MMTC Petition at 22-24.⁴ NAB agrees that the Commission's existing process for removing non-viable allotments is cumbersome. The Commission may wish to take this opportunity to review its policies for removing non-viable allotments from the FM Table of Allotments.

MMTC Proposal #10. With regard to community of license changes, MMTC suggests raising the current maximum number of contingent applications that may be filed in connection with a community of license change application from four to ten. MMTC Petition at 28-33.⁵ MMTC supports the Commission's earlier actions, but argues that the Commission erred in the FM Streamlining Order by applying the existing limit of four contingent applications for minor modifications under 47 C.F.R. § 73.3517(e) to

⁴ See *also* First Broadcasting Investment Partners, LLC, Amendment of the Commission's Rules Governing Modification of FM and AM Authorizations, Petition for Rulemaking (filed Mar. 5, 2004), at 1-2.

⁵ See 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) (FM Streamlining Order). Before this FM Streamlining Order, an FM station had to file a petition for rulemaking to change its community of license, which was often delayed while the Commission resolved counterproposals. Then, the FM station had to submit a minor change application to implement the community change, which could take additional time. AM stations faced their own obstacles to community of license changes, as they were forced to wait for the Commission to open an application window, and to file major change applications that were similarly subject to competing applications. The FM Streamlining Order substantially eased these processes by reclassifying both FM and AM community of changes as minor modifications to be implemented on a first come-first served basis. *Id.* at 14217.

community of license change applications proposed under these new procedures. MMTC points out that no such limit applied before the Commission reclassified community of change proposals as minor modifications. MMTC Petition at 30. MMTC now asks the Commission to gradually relax this limit to ten, and then to twenty, in order to promote spectrum efficiency and to create new opportunities for allotments in and nearby metropolitan areas.⁶ *Id.* at 33.

As a general matter, NAB agrees. In our comments in the FM Streamlining proceeding,⁷ we recognized the burden on Commission staff of reviewing long chains of proposed channel changes. We explained, however, that capping the number of proposals in uncontested petitions to change a community of license could unintentionally impede public interest benefits, including permitting broadcasters to improve service in their current communities, or to expand their service to reach a larger audience, or to bring a first local transmission service to a new community.⁸

NAB thus previously encouraged the Commission to take a cautious approach in deciding whether to restrict the number of channel changes that may be proposed in one proceeding to amend the Table of Allotments, or, in the alternative, to exempt such

⁶ Specifically, MMTC urges the Commission to resolve a pending Petition for Partial Reconsideration of the FM Streamlining Order that MMTC filed on this point. Petition for Partial Reconsideration, American Media Services, LLC, Mattox Broadcasting, Inc., and MMTC, Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, MB Docket 05-210 (filed Jan. 19, 2007).

⁷ Comments of National Association of Broadcasters, Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services, MB Docket 05-210 (filed Oct. 3, 2005), at 3-5.

⁸ See, e.g., Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Murrieta, CA), *Report and Order*, MM Docket No. 01-11, 17 FCC Rcd 19458 (2002); Amendment of Section 73.202(B), Table of Allotments, FM Broadcast Stations (Woodbury, GA), *Report and Order*, MM Docket No. 01-201, 17 FCC Rcd 6630 (2002).

petitions from the Commission's rules prohibiting contingent applications. 47 C.F.R. § 73.3518. As stated by another party in favor of flexibility, "[l]arge proposals . . . often result in a concomitant greater number of new local services, thereby achieving a more efficient use of spectrum than could be achieved by a proposal involving a fewer number of changes."⁹ Accordingly, NAB urges the Commission to consider MMTC's proposal as a reasonable means to promote spectrum efficiency and enable stations improve their service.

MMTC Proposal #11. NAB also agrees generally that stations need flexibility as to the location of their main studios. MMTC Petition at 33-35. The current rule allows a station to locate its main studio within either the principal contour of any station licensed to its community of license or 25 miles from the center of its community of license. 47 C.F.R. § 73.1125. We agree with MMTC that these limits may unduly burden certain smaller and independent stations, given that the fixed costs of maintaining a main studio are relatively level regardless of station size. NAB accordingly supports MMTC's request that the Commission seek comment on allowing stations to locate its studio somewhere outside the current rule's boundaries. *Id.* at 34. As long ago as 1987, the Commission recognized that the location of a station's main studio did not substantially impact the level of accessibility for the public or a station's responsiveness to community needs, given the development of new technologies and program production methods (*e.g.*, mobile units, remote studios, satellite links) and improvements in the

⁹ Comments of Cox Radio, Inc. RM-10960 (May 24, 2005), at 3.

ability of the public to communicate with stations.¹⁰ The Commission therefore relaxed its rules to allow stations more flexibility in locating its main studio. Subsequently, in 1998, the Commission further relaxed the main studio rule to assuage some of the negative effects the previous rule had on certain classes of stations which enjoyed less flexibility because of the smaller size of their principal community contours.¹¹

Since these earlier decisions, communications technologies have continued to evolve. Today, for example, the public can learn about station programming and other activities, and can easily communicate and interact with stations, via the Internet. Given these and other technological advancements, there is a decreasing relationship between a station's studio location and the station's responsiveness to its community.¹² Accordingly, NAB believes the Commission should consider whether stations can be afforded increased flexibility in locating their main studios.¹³

¹⁰ Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations, *Report and Order*, 2 FCC Rcd 3215, 3132 ¶14 (1987).

¹¹ Review of the Commission's Rules Regarding the Main Studio and Local Public File Inspection Files of Broadcast Television and Radio Stations, *Report and Order*, 13 FCC Rcd 15691, 15693 ¶ 7 (1998).

¹² See, e.g., Comments of Gray Television, Inc., MB Docket No. 04-244 (Apr. 28, 2009) at 19 (in Gray's experience, "there is no connection between the amount and quality of local programming provided by stations physically located within their community of license and those stations located outside their community of license").

¹³ NAB does have concerns about the contingencies that MMTC proposes to attach to relaxation of the main studio rule. MMTC suggests that a station with a main studio outside the boundaries of the current rule should have to: (1) maintain its public file at the nearest library; (2) maintain at that library a direct telephone line to station management; and (3) host three town hall meetings a year in the community of license. It is unclear whether additional conditions are needed to ensure that a station locating its main studio outside the boundaries of the existing rule remains accessible and responsive to the public. It is also unclear whether these particular proposed conditions are the most appropriate.

MMTC Proposals #15 and #16. The Commission should also make it as simple as possible for broadcasters to understand and apply its technical rules, including any modifications ultimately made in this proceeding. NAB therefore supports MMTC's suggestions that the Commission offer regularly scheduled tutorials on its radio engineering rules, and designate a "Public Engineer" to assist small and nonprofit entities with routine engineering matters. MMTC Petition at 44-50. NAB agrees that broadcast stations, especially smaller stations, would benefit from a Commission-sponsored, calendared education program on its engineering rules. As MMTC suggests, the tutorials could take place at the Commission's headquarters, as well as several conferences around the country. NAB would be pleased to partner with the Commission on holding such sessions at our annual convention in Las Vegas and the annual NAB Radio Show.

NAB additionally supports MMTC's concept of a Commission "Public Engineer" who would assist industry with routine engineering matters. This office would also help the Commission save resources by reducing the number of incomplete or inaccurate filings. NAB is particularly intrigued by MMTC's suggestion that a Public Engineer's office would have ongoing responsibilities to explore and develop proposals for streamlining and clarifying the Commission's applications and filing procedures. MMTC Petition at 48. Having one office dedicated to examining ways to make the preparation, submission and review of technical filings more efficient would benefit both industry and the Commission. NAB thus strongly supports the Petition in these two respects.

III. The Commission Should Refrain from Initiating a Rulemaking Proceeding on Certain of MMTC's proposals at this Time

As explained above, NAB believes that many of MMTC's proposals should move forward. A small number of their suggestions, however, especially those that could have wider impact on other broadcasters', including television stations', ability to continue offering optimal service to their communities and audiences, raise concerns and should not be pursued at this time.

MMTC Proposal #1. MMTC supports a proposal made last year by the Broadcast Maximization Committee (BMC) that calls for a major migration of the noncommercial educational (NCE) FM service, the low power FM service (LPFM), and some AM radio stations to television Channels 5 and 6 (76-88 MHz). According to MMTC, this reallocation would provide needed opportunities for minority-owned radio stations to serve the same metropolitan audiences as large commercial stations.¹⁴ MMTC urges the Commission to appoint a special advisory committee to examine this proposition. MMTC Petition at 8.

As an initial matter, NAB agrees with the comments of the Association of Maximum Service Television (MSTV) that MMTC's proposal presupposes the outcome of such an advisory committee.¹⁵ MSTV notes that MMTC's Petition "contemplates that the committee would 'make suggestions on how to best achieve the exodus of AM radio to the 5/6 band.'"¹⁶ This assumption presupposes that such a committee would likely conclude that AM radio and other radio services should be moved to channels 5 and 6,

¹⁴ MMTC Petition at 8 citing Comments of the Broadcast Maximization Committee, MB Docket Nos. 07-294 *et al.* (filed July 30, 2008).

¹⁵ Comments of the Association of Maximum Service Television, MMTC Radio Rescue Petition for Rulemaking, RM-11565 (filed Oct. 23, 2009), at 2.

¹⁶ *Id.* citing MMTC Petition at 9.

but ignores the fact that hundreds of television stations—including full-power stations and Class A, low power television stations, and translator stations—already operate on these channels. We agree with MSTV that there is no basis to presume that Channels 5 and 6 could accommodate an influx of radio stations, and in turn, no basis to presume the ultimate outcome of any special advisory committee.

In addition, as NAB has previously explained,¹⁷ the envisioned reallocation of TV channels 5 and 6 for radio service could cause significant disruption to post-transition digital television service, particularly given the substantial number of full-power TV stations that were assigned DTV channel 5 or 6. The proposal further discounts the potential impact on the more than 250 Class A, low power and TV translator stations that currently utilize DTV channels 5 and 6, and would reduce the potential for protecting 175 new DTV allotments, as required under the Community Broadcasters Protection Act of 1999.¹⁸ NAB Ownership Diversity Reply Comments at 5-7. In light of these and other serious difficulties with reallocating digital television channels, NAB continues to believe that the Commission was correct in its earlier conclusion that “the additional opportunities for increasing FM noncommercial coverage do not outweigh the costs of eliminating channel 6 from TV service.”¹⁹ Accordingly, NAB believes the Commission should refrain from pursuing this reallocation proposal at this time, but

¹⁷ Comments of the National Association of Broadcasters, MB Docket Nos. 07-294 *et al.* (filed July 20, 2008) (NAB Ownership Diversity Comments); Reply Comments of the National Association of Broadcasters, MB Docket Nos. 07-294 *et al.* (filed Aug. 29, 2008) (NAB Ownership Diversity Reply Comments).

¹⁸ See Pub. L. No. 106-113, § 1000(a), 113 Stat. 1536 (1999; 47 U.S.C. § 336(f)(6)(B)).

¹⁹ In the Matter of Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service, *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order*, 23 FCC Rcd 4220, 4235 (2008).

instead focus on other proposals for improving radio service that do not create numerous and difficult issues for digital television service.

MMTC Proposals #7, #8 and #9. With regard to MMTC's proposals concerning low power FM stations and FM translators, NAB has concerns about the effect these proposals could have on the ability of full-power commercial stations and FM translators to serve their local communities.

NAB believes that full power and LPFM stations can and should continue to coexist, since each provides unique benefits for the American public. Full power radio broadcasters provide a free service that reaches virtually every household in America, keeping local communities informed and connected. They provide a wealth of local news and public affairs programming, political information, vital emergency information, and additional, unique community service including public service announcements, fundraising for local charities, and promoting local public service organizations. Full power radio stations deliver a diverse variety of music and entertainment to entire markets, so that all listeners can find programming that suits their tastes.

Full power radio stations also provide critical content during times of emergency, such as severe weather conditions and traffic accidents. No other industry can match the ability of full power broadcasting to provide comprehensive alerts to entire markets and large populations. Through participation in the Emergency Alert System (EAS) and additional coverage that can reach citizens in a car, at home or even walking around with a mobile device, broadcasters help save lives with extensive, timely emergency information. Moreover, the effects of a disaster on a community can be long-lasting, and when national attention turns away to the next newsworthy event, local

broadcasters remain to assist their community and listeners with ongoing public safety and recovery-related information and fundraising.

Full power FM stations use translators to provide to all of the critical news and information described above, as do some AM stations following the Commission's recent amendment of its rules to allow AM broadcast stations to operate FM translators under certain conditions.²⁰ In rural and terrain-challenged areas, fill-in translators are vital to the delivery of community-responsive informational and entertainment programming to listeners. In many small towns near mountains and valleys, citizen would not receive any radio service at all without broadcasters' use of translators.²¹

LPFM stations also provide a valuable service. These stations can be operated by a wide variety of organizations, such as religious groups, students, labor unions and musicians, and can serve very localized, sometimes underrepresented, groups within communities.²² Since the creation of LPFM, a variety of services have been launched, including, for example, LPFM stations that specialize in providing content concerning the Chesapeake Bay, or Zydeco music, and immigrant farm workers. These outlets may be able to provide programming of interest to small groups within their communities that would be unlikely to appeal to larger audiences.

Thus, both full power and low power radio services are valuable in discrete ways. NAB does respectfully reject any suggestion that LPFM stations provide programming

²⁰ Amendment of Service and Eligibility Rules for FM Broadcast Translator Stations, *Report and Order*, MB Docket No. 07-172 (*rel.* June 29, 2009).

²¹ Comments of National Association of Broadcasters, Creation of Low Power Radio Service, MM Docket No. 99-25 (filed Apr. 7, 2008) at 27 (describing multiple examples of situations where translators are necessary to deliver radio service).

²² Creation of a Low Power Radio Service, *Report and Order*, 15 FCC Rcd 19208, 19210 (2000).

that should supplant full power stations, or that full power broadcasters do not offer high quality content, including local, community-oriented content. Full power and LPFM services can be complementary, but low power service cannot substitute for the service provided to entire communities and markets by full power stations. Thus, to the extent MMTC's proposals would limit full power radio station access to FM translators, either by heightened priority status for LPFM or limiting access to FM translators, NAB respectfully submits they would not promote the public interest, and the Commission should not pursue them further at this time.

IV. Conclusion

For the foregoing reasons, NAB supports in part the Petition for Rulemaking filed by the Minority Media and Telecommunications Council, and urges the Commission to explore certain of MMTC's proposals in a further rulemaking proceeding.

Respectfully submitted,

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Dated: October 23, 2009

CERTIFICATE OF SERVICE

I, Patricia Jones, a secretary at the National Association of Broadcasters, do hereby certify that on this 23rd day of October, 2009, I caused a copy of the foregoing "Comments of the National Association of Broadcasters" to be sent via first-class U.S. Mail, postage prepaid, to the following:

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