
FCC Proposal to Promote Rural Radio Service and Simplify Allotment/Assignment Process: Comments Due July 13, Replies Due Aug. 11

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Through the vehicle of a Notice of Proposed Rule Making (“NPRM”), Acting Chairman Michael J. Copps, and Commissioners Jonathan Adelstein and Robert McDowell are looking to change the way the FCC decides what communities and areas deserve new or modified commercial and noncommercial, full-power AM and FM radio stations.

Because the decisions the FCC makes as a result of the NPRM may well determine whether existing, as well as newly proposed, free, over-the-air radio stations thrive or perish, the rule making is likely to have a very significant effect on the radio broadcast industry, including its ownership and program diversity, going forward. If adopted, the FCC’s proposals would substantially reduce or eliminate the flexibility broadcasters currently have to locate or move small community and rural stations to areas where they can serve more listeners and/or listeners with different programming needs. Another effect of the NPRM could be to move more competing applications into an auction process which, in turn, may discourage filings altogether.

The rule making deals with a rather arcane area of Communications Law that involves the application of Section 307(b) of the Communications Act. The provision requires the FCC to “provide a fair, efficient, and equitable distribution” of radio and television service among the “several States and communities.” During the course of administering the provision over many decades, the FCC has, largely through case law, developed numerous policies, procedures, priorities, presumptions and showings that have resulted in the launch of thousands of new radio stations and in the modification of a substantial number of stations in terms of the communities of license served.

In deciding where a new or modified radio station should be allotted under Section 307(b) the FCC uses a set of four “Priorities.” Under the most favored priority (“Priority #1”), the proposal that would provide the first full-time reception service (i.e., “white area”) is highly preferred. The rationale is that people should be able to live any where and go any where and still be able to pick up the over-the-air signal of at least one radio station. The second most important priority (“Priority 2”) focuses on whether the proposal would pro-

vide at least a second full-time reception service (i.e., “gray area”). The third priority (“Priority 3”) changes the focus from who can receive the signal to what community needs a local radio station more. Under this priority, a station’s proposal to serve as a community’s only local radio station is often the preferred proposal (i.e., “first local transmission service”). Where the first three priorities are not decisional, the fourth priority (“Priority 4”) (i.e., “other public interest benefits”) is relied upon. Priority 4 often turns on the number of listeners to be served by a station as compared to the number of listeners that are currently served by the station. Usually, the Commission can be expected to grant the proposal that involves the highest ranked priority.

Due to the large number of radio station signals that can be heard all over the country, rarely are there any “white” or “gray” areas to be served. As a consequence, very few proposals will involve either of the first two priorities. Thus, most proposals are decided based upon whether a proposal will result in “first local transmission service” to a community under Priority 3, or whether the proposal satisfies the “other public interest benefit” factors of Priority 4. In practice, if a party proposes a “first local transmission service” for a suburban community that is located near an Urbanized Area, but otherwise independent of the Urbanized Area, that party has been able to satisfy both the first local transmission service preference under Priority 3 and the “other public interest factors” under Priority 4 because, by definition, the proposal will serve a greater population than a proposal for a more rural area.

According to the NPRM, the FCC is concerned that its current reliance on the four Priorities is resulting in decisions favoring proposals to move radio stations near larger population centers more often than not, “at the expense of new and needed service at smaller communities and in rural areas.” Based on this tentative conclusion, the FCC is proposing to create a presumption that would have the effect of not awarding a “Priority 3” (first local transmission service) preference to a community that has no local radio station licensed to it when a proposed station relocation would or could place a daytime principal community signal over more than 50% of an Urbanized Area. The FCC is also proposing to “de-emphasize” population totals under its “Priority 4” (other public interest benefits) analysis, which, together with the proposed nullification of the “Priority 3” preference, would significantly reduce the number of radio stations and relocations in or near Urbanized Areas, even if it is not economically feasible to sustain a radio station in a small community or in a rural area.

As part of its attempt to stop the perceived migration of radio stations from smaller communities and rural areas to larger communities and Urbanized Areas, the FCC is also seeking public comment on the following items, among others:

- What factors should the FCC consider in determining whether the “Priority 3” presumption mentioned above has been rebutted.
- Whether the FCC should eliminate the “Priority 4” preference altogether (because it emphasizes larger populations over smaller populations), or at least limit it to rare and exceptional circumstances, such as when a proposal will serve an area that receives fewer than 5 aural services.
- Whether the FCC should deny station relocations if the proposal would remove the second local transmission service from a community (the usual case), even in cases where the proposal would provide first local transmission service to a new community.
- Whether the FCC should ban *any* move of a station’s community of license that would create white (areas of no reception service) or gray areas (areas where there is only one reception service).
- Whether the FCC should include a new 307(b) priority for federally recognized Native American Tribes and Alaska Native Tribal groups filing for FM allotments and for AM and noncommercial FM construction

permits and whether this would be deemed a racial classification subject to “strict scrutiny” under the Constitution.

- Whether the FCC should prohibit FM translator “band hopping” from the commercial (non-reserved) FM band to the noncommercial (reserved FM band), and the other way around, for the first two years of a station’s operation.
- Whether applicants in future AM broadcast windows should be required to meet all basic technical eligibility criteria at the time of filing and whether technically deficient applications should be allowed to be amended to prevent their dismissal.
- Whether or not the FCC should cap the number of AM applications that may be filed by individual applicants in an AM auction window.
- Whether the FCC should clarify certain aspects of its new entrant bidding credit policies.

The potential impact of the proposed changes on the way radio stations can locate or move in or near metropolitan areas cannot be overstated. Acting Chairman Copps and Commissioner Adelstein both support the proposals and seem to believe that the FCC should be able to force stations to operate in small communities and in rural areas even if listenership and advertiser support in those locations will not support a full-power radio station. While serving small communities and rural communities is obviously an important goal, the FCC’s NPRM appears to rest on the assumption that station survival is not a cognizable concern. It is also important to note that if the proposals were adopted they would arguably make it more difficult for minority owners and other new entrants to enter broadcast ownership ranks as well as improve their facilities and respond to the programming needs of their listeners.

Comments in the proceeding are due to be filed by **July 13**, with reply comments due to be filed by **August 11**.

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