

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

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

**SECOND ORDER ON RECONSIDERATION**

**Adopted: October 11, 2012**

**Released: October 12, 2012**

By the Commission:

**I. INTRODUCTION**

1. In this *Second Order on Reconsideration*, we grant in part certain Petitions for Reconsideration of the *Second Report and Order* in this proceeding.<sup>1</sup> In particular, we clarify certain aspects of the new policies for evaluating mutually exclusive proposals for radio service, as well as for considering applications to change a station's community of license, under Section 307(b) of the Communications Act.<sup>2</sup> We also consider and deny a number of Petitions for Reconsideration that merely repeat arguments raised in the comments in this proceeding, and that we rejected in the *Second R&O*.

**II. BACKGROUND**

3. On April 20, 2009, the Commission released a *Notice of Proposed Rule Making* ("*Rural NPRM*") in this proceeding.<sup>3</sup> In the *Rural NPRM* the Commission proposed, among other things, changes to the Commission's allotment and assignment procedures, including the award of preferences to applicants under the provisions of Section 307(b), which directs the Commission to provide a fair, efficient, and equitable distribution of radio service among the States and communities.

4. In the *Second R&O* we adopted a number of measures designed to limit the use of population as the principal metric when considering competing proposals for new radio stations. This licensing standard has almost always favored proposals located in or near large urbanized areas, rather

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<sup>1</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Second Report and Order, 26 FCC Rcd 2556 (2011) ("*Second R&O*"). The Media Bureau complied with the Commission's rules by providing notice of the petitions for reconsideration and partial reconsideration filed, and an opportunity to respond. *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Public Notice, Report No. 2940 (MB/CGB Dec. 12, 2011), 76 Fed. Reg. 79112 (Dec. 21, 2011).

<sup>2</sup> 47 U.S.C. § 307(b) ("Section 307(b)").

<sup>3</sup> *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures*, Notice of Proposed Rule Making, 24 FCC Rcd 5239 (2009) ("*Rural NPRM*").

than those located in rural areas and smaller communities, which are typically less well served.<sup>4</sup> As we noted in the *Rural NPRM*, a disproportionate number of new AM stations were being awarded based on dispositive Section 307(b) preferences rather than through competitive bidding.<sup>5</sup> Moreover, these dispositive preferences were often being awarded for service at communities or to populations located in or very near large urbanized areas.<sup>6</sup> In the *Second R&O*, we adopted procedures to limit dispositive Section 307(b) preferences for new AM construction permits, as well as new FM allotments, in already well-served urbanized areas.<sup>7</sup>

5. We also, in the *Second R&O*, adopted procedures to forestall the movement of radio service from rural areas to more urban areas absent a compelling showing of need.<sup>8</sup> Among these procedures was an urbanized area service presumption (“UASP”), under which a proposal for new or relocated radio service that would constitute the first local transmission service at a specified community is presumed to be a proposal to serve an entire urbanized area if the community is located within the urbanized area, or if the proposal would place, or could be modified to place, a daytime principal community signal over 50 percent or more of the urbanized area.<sup>9</sup> The UASP can be rebutted by a compelling showing (1) that the specified community is truly independent of the urbanized area, (2) that the community has a specific need for an outlet for local expression separate from the urbanized area and (3) that the proposed station is able to provide that outlet.<sup>10</sup> The basis for such a rebuttal showing is the longstanding test first set forth in *Faye and Richard Tuck*,<sup>11</sup> although we noted that some of the *Tuck* factors indicating independence of the proposed community from the larger urbanized area have become outmoded and should be de-emphasized in analyzing rebuttal showings.<sup>12</sup> The UASP applies to applications for new AM stations, proposals for new FM allotments, and applications to change a station’s community of license, and it applies differently according to the situation presented.<sup>13</sup>

6. We also limited the circumstances under which a mutually exclusive applicant for a new AM station may receive a dispositive Section 307(b) preference under Priority (4), other public interest matters.<sup>14</sup> In the context of proposals for new FM allotments, raw reception population totals – of whatever magnitude – will receive less weight under our new approach than other legitimate service-based considerations, especially service to underserved populations.<sup>15</sup> As for applications to change a

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<sup>4</sup> See generally *Second R&O*, 26 FCC Rcd at 2563-78.

<sup>5</sup> *Rural NPRM*, 24 FCC Rcd at 5242-44.

<sup>6</sup> *Id.*

<sup>7</sup> *Second R&O*, 26 FCC Rcd at 2572-76.

<sup>8</sup> *Id.* at 2576-77.

<sup>9</sup> *Id.* at 2572-73.

<sup>10</sup> *Id.*

<sup>11</sup> Memorandum Opinion and Order, 3 FCC Rcd 5374, 5376 (1988) (“*Tuck*”).

<sup>12</sup> *Second R&O*, 26 FCC Rcd at 2573.

<sup>13</sup> *Id.* at 2572-73, 2575-77.

<sup>14</sup> *Id.* at 2573-74.

<sup>15</sup> *Id.* at 2576.

station's community of license, in addition to applying the UASP to such applications, we mandated greater transparency in applicants' Section 307(b) showings.<sup>16</sup> Specifically, we required applicants to submit more detailed showings demonstrating the populations gaining and losing radio service, and the numbers of services those populations receive before and after the proposed move.<sup>17</sup> We also introduced other criteria to proposed community of license changes, for example, strongly disfavoring any change that would result in the net loss of third, fourth, or fifth reception service to more than 15 percent of the population in the station's current protected contour, or loss of a second local transmission service to a community with a population of 7,500 or greater.<sup>18</sup> With two exceptions, we stated that the new procedures would apply to all applications or proposals pending at the time we adopted the *Second R&O*.<sup>19</sup>

### III. DISCUSSION

7. Of the six Petitions for Reconsideration or Partial Reconsideration ("Petitions") filed, most repeated points from the comments filed in this proceeding that were considered and rejected in the *Second R&O*. For the reasons set forth below, we deny these Petitions.<sup>20</sup> However, we will address a number of requests for clarification of certain issues. Specifically, we address a request for clarification of our methodology for calculating reception service in Section 307(b) analyses under Priority (4), other public interest matters, submitted by the Radio One Parties. Additionally, we discuss the Radio One

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<sup>16</sup> *Id.* at 2577-78.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 2575-76. We stated that the new procedures for deciding among mutually exclusive AM applications would not apply to those applications filed during the 2004 AM Auction 84 filing window, and would not apply to any non-final FM allotment proceeding, including "hybrid" coordinated application/allotment proceedings, in which the Commission has modified a radio station license or granted a construction permit. *Id.*

<sup>20</sup> Specifically, we deny the "Petition for Reconsideration & Comments Regarding the Following Matter" filed April 21, 2011, by Anthony V. Bono, Friendship Broadcasting, LLC ("Friendship Petition"); the Petition for Partial Reconsideration filed May 6, 2011, by William B. Clay ("Clay") ("Clay Petition"); the Petition for Partial Reconsideration filed May 6, 2011, by M&M Broadcasters, Ltd. ("M&M Petition"); and the Petition for Reconsideration filed May 6, 2011, by Educational Media Foundation and the Kent Frandsen Radio Companies ("EMF/Frandsen Petition"). We deny in part and grant in part, as discussed below, the Petition for Reconsideration and/or Clarification filed May 6, 2011, by Entravision Communications Corporation ("Entravision Petition") and the Petition for Partial Reconsideration filed May 6, 2011, by Radio One, Inc.; Minority Media and Telecommunications Council; Ace Radio Corporation; Magnolia Radio Corporation; Auburn Network, Inc.; Chisholm Trail Broadcasting Co.; Communications Technologies, Inc.; Radio K-T, Inc.; Great South Wireless, LLC; Brantley Broadcast Associates, LLC; RAMS; Skytower Communications – E'town, Inc.; Heritage Communications, Inc.; Anderson Associates; Holladay Broadcasting of Louisiana; Alatron Corp., Inc.; Legend Communications of Wyoming, LLC; Border Media Business Trust; Music Ministries, Inc.; Mullaney Engineering, Inc.; Mattox Broadcasting, Inc.; Multicultural Radio Broadcasting Licenses, LLC; Way Broadcasting Licensee, LLC; Mississippi Broadcasters, LLC; Scott Communications, Inc.; Alexander Broadcasting Company, LLC; Jackson Radio, LLC; Radiotechniques Engineering LLC; Signal Ventures LLC; Wagon Wheel Broadcasting, LLC; WRNJ, Inc.; Dot Com Plus LLC; Independence Broadcast Services; Provident Broadcasting Company, Inc.; Radio Training Network, Inc.; Sacred Heart University, Inc.; Horizon Broadcast Solutions; The Ridgefield Broadcasting Corp.; Westport Broadcasting; Radio New England Broadcasting, LLC; Flinn Broadcasting Corporation; Arlington Broadcast Company; Memphis First Ventures, LP; First Ventures Capital Partners, Inc.; and Autaugaville Broadcasting, Inc. (collectively, the "Radio One Parties") ("Radio One Petition").

Parties' request to amend some of the factors used to determine whether a community is independent of an urbanized area. We further clarify, at the request of Entravision Communications Corporation ("Entravision"), the applicability of the UASP to intra-urbanized area station relocations. Finally, we deny the request of petitioner M&M Broadcasters, Inc. ("M&M") to exclude all pending community of license change applications from the new policies, but grant Entravision's request that the new policies not apply to any pending community of license change application or FM allotment proceeding in which a decision on the application, or allotment *Report and Order*, was released prior to the release date of the *Second R&O*. We also, as discussed below, reconsider and modify the *Second R&O* by clarifying that the new policies shall not apply to any application filed or FM allotment proceeding initiated prior to the release date of the *Rural NPRM*.

8. As noted above, many of the arguments in the Petitions were considered and rejected in the *Second R&O*. However, we believe it to be in the public interest to discuss the merits of these arguments in light of our contrary determinations. Educational Media Foundation ("EMF"), petitioning jointly with the Kent Frandsen Radio Companies ("Frandsen"), argues that the new procedures "ignore current marketplace realities,"<sup>21</sup> and that radio stations must relocate to more populous areas because there is little or no money to be made in rural areas.<sup>22</sup> As we stated in the *Second R&O*, however, new stations are assigned or allotted on a demand basis,<sup>23</sup> with the economic decision to locate a station in a particular community resting solely with the applicant. If it makes no economic sense to propose a station in a given area then there should be no applicants for that area.<sup>24</sup> In the context of new AM applications in particular (and FM allotment proposals to the extent they may be subject to counter-proposals), the modified procedures we adopted apply only insofar as there are mutually exclusive applications or proposals, and are designed to give proponents for needed service in small communities and rural areas a fair chance *vis-à-vis* proponents for additional service to already well-served urban populations.<sup>25</sup>

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<sup>21</sup> EMF/Frandsen Petition at 3.

<sup>22</sup> See also Friendship Petition at 1-3 ("Where there are more people to support more Stations, there should be more Stations to serve that population.").

<sup>23</sup> *Second R&O*, 26 FCC Rcd at 2568-69.

<sup>24</sup> *Id.*

<sup>25</sup> *Second R&O*, 26 FCC Rcd at 2567. For example, prior to the adoption of our modified procedures, of the 26 Category II Mutually Exclusive ("MX") groups in AM Auction 84 (those not allowed to eliminate their mutual exclusivity through settlement or technical resolution) in which the applicants were compared under Priority (4), 17, or over 65 percent, were resolved by granting a dispositive Section 307(b) preference to one of the applicants based on superior population coverage. In nine of these groups (53 percent), the prevailing applicant proposed a community in an urbanized area, while most or all of the other mutually exclusive applicants did not. See also *Green Valley Broadcasters, Inc., Nelson Multimedia, Inc., and Kemp Communications, Inc.*, Memorandum Opinion and Order, 19 FCC Rcd 13341, 13349 (2004) (Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein Concurring); *Nelson Enterprises, Inc. and D&E Communications*, Memorandum Opinion and Order, 19 FCC Rcd 13350, 13355 (2004) (Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein Concurring); *Robert E. Combs*, Memorandum Opinion and Order, 19 FCC Rcd 13421, 13431 (2004) (Joint Statement of Commissioners Michael J. Copps and Jonathan S. Adelstein Concurring) (stating, in context of Auction 32 applications, that Section 307(b) analysis under Priority (4) "has devolved into a raw population comparison where the applicant seeking to serve the larger, more urban area nearly always wins irrespective of the number of stations already serving each community. While service to a greater population is an important criterion under our public interest examination, we have concerns when it becomes the sole criterion. As a general public interest priority, an applicant should have a chance to convince us that there are other compelling reasons – beyond mere population – to award its proposal a dispositive preference. . . It is vital that the Commission provide all (continued....)

Moreover, existing licensees seeking to change their communities of license presumably have, at one time, determined the economic viability of service to their existing communities. To the extent that changed circumstances render it an economic hardship to remain in the community of license, the new procedures allow for such a showing.<sup>26</sup> EMF also contends that FCC licensing policies protect listeners in rural areas with a “base level” of over-the-air radio, as few as two services,<sup>27</sup> and that listeners can readily augment terrestrial broadcast radio service with satellite subscription services or other non-broadcast media.<sup>28</sup> We again reject the suggestion that rural residents should simply purchase any radio service they desire above “basic” broadcast service,<sup>29</sup> or that Section 307(b) obliges us only to assign minimal free radio service to certain Americans, based solely on where they choose to live.

9. The Radio One Parties contend that the new procedures, particularly the UASP, are arbitrary and capricious.<sup>30</sup> They support this contention, however, largely by reiterating arguments made in their comments, which are mostly confined to the context of community of license change applications. For example, they state again that there is no problem warranting revised processing policies, citing their own study showing that “only” 19 percent of community of license change applications filed since 2007 would trigger the UASP.<sup>31</sup> We reject the suggestion that one in five applications constitutes a “relatively small” percentage, and that this level of activity is insufficient to warrant remedial agency action.<sup>32</sup>

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applicants – whether seeking to serve rural or urban America – an effective process to achieve the distribution goals set forth by Congress”).

<sup>26</sup> *Second R&O*, 26 FCC Rcd at 2578 (“Finally, as is and has always been the case, under Priority (4) applicants may offer any other information they believe to be pertinent to a public interest showing, including the need for further transmission service at the new community, a drop in population justifying the removal of transmission service at the old community, population growth in areas surrounding the proposed new community that can best be met by a centrally located service, or any other changes in circumstance believed relevant to our consideration.”).

<sup>27</sup> See EMF/Frandsen Petition at 3-4 (“Many broadcasters, including EMF, argued in comments in this proceeding that the needs of rural communities are already met through the base level of service that the FCC guarantees when it essentially prohibits the movement of stations that are providing a first or second broadcast service to a geographic area.”).

<sup>28</sup> *Id.* at 8 (“Given today’s technology, listeners in even the most rural areas have access to satellite radio and television, and other portable music and news sources, and often have access to the Internet in addition to broadcast radio and TV. Moreover, service from translators and LPFM stations should count in analyzing any third, fourth, or fifth service area loss. After the basic service has been provided by first and second full-power, local reception services, additional additive service from secondary sources should suffice to provide the populations of these areas with the programming choices the Commission seems to be encouraging.”).

<sup>29</sup> *Id.* at 6-7. See *Second R&O*, 26 FCC Rcd at 2566 (rejecting same argument).

<sup>30</sup> We decline to consider the supplemental arguments of the Radio One Parties in their “Comments in Response to Petitions for Reconsideration” filed January 5, 2012 (“Radio One Comments in Response”). Under our Rules, no supplement to a petition for reconsideration filed more than 30 days after public notice of the order for which reconsideration is sought – in this case, the *Second R&O* – will be considered, except upon leave granted pursuant to a separate pleading request that states the grounds for its acceptance. 47 C.F.R. §1.429(d); see *Dismissal of All Pending Pioneer’s Preference Requests*, Memorandum Opinion and Order, 13 FCC Rcd 11485, 11492 (1998).

<sup>31</sup> Radio One Petition at 15-16; see also EMF/Frandsen Petition at 3.

<sup>32</sup> Radio One Petition at 4. Radio One Parties’ own evidence shows that over 100 community of license change applications since 2007 would be subject to the modified policies. More specifically, they assert that 110 out of 561 community of license change applications – 19.6 percent – included *Tuck* showings and, thus, arguably would be subject to the UASP. While we recognize the Radio One Parties’ 19 percent figure for the sake of argument, we do (continued....)

Indeed, we think the strong interest of many radio broadcasters in relocating to more populated areas as indicated in the record in this proceeding reflects the importance of the UASP as a Section 307(b) licensing policy.<sup>33</sup> For the reasons we set forth in the *Second R&O*, we do not believe that allowing such migration in all cases comports with our statutory duty under Section 307(b).<sup>34</sup> Our prior policies may have promoted a surfeit of service to those in large urbanized areas and a deficit to residents of smaller communities and rural areas,<sup>35</sup> even when there were mutually exclusive applicants seeking to provide such service, contrary to our statutory responsibilities under Section 307(b).<sup>36</sup> Moreover, because the UASP is a presumption, not a hard-and-fast rule, a licensee seeking to relocate its facilities due, for example, to changed conditions in its current community of license may rebut the presumption.<sup>37</sup>

10. The Radio One Parties also assert the importance of providing radio service to suburban communities, and argue that the UASP constitutes an improper attempt to divine an applicant's service intentions based on the fact that the population of the proposed community of license may constitute a very small percentage of the overall coverage population.<sup>38</sup> The UASP was not designed to divine an applicant's service intent, but rather to eliminate the undue, often dispositive advantage that our prior Section 307(b) policies conferred on proposals to serve communities located in large urbanized areas, especially in the context of selecting among mutually exclusive applications for new AM service.<sup>39</sup> This advantage was based largely on the fact that applicants would often designate as the community of license a community lacking local transmission service but whose population constituted a small percentage of the total audience to be served, to the detriment of mutually exclusive applicants proposing service to smaller, non-urbanized communities that might benefit more from new service.<sup>40</sup> The record, particularly the data provided by commenter Clay, provides ample support for our conclusion that, in a substantial

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not concede the accuracy of its study. Additionally, while the Radio One Parties focus on community of license change applications, we note that this is not the only category of applications to which the UASP applies. For example, in the filing window for AM Auction 84, out of 89 Category II MX groups (*see supra* note 25), 42, or 47 percent, included at least one applicant that was required to submit a *Tuck* showing and thus would be subject to the UASP under the new procedures. Over a third of those groups included more than one application that would have been subject to the UASP.

<sup>33</sup> *See, e.g.*, Comments of Miller Communications, Inc., et al. at 3; Comments of American Media Services, LLC at 3; Comments of Booth, Freret, Imlay & Tepper at 4. *See also* EMF/Frandsen Petition at 2.

<sup>34</sup> *Second R&O*, 26 FCC Rcd at 2568.

<sup>35</sup> Certain Petitioners also repeat the argument that large urbanized areas are actually underserved when viewed on a *per capita* basis. *See, e.g.*, EMF/Frandsen Petition at 4; Radio One Petition at 15. Based on data provided by certain commenters (*see Second R&O*, 26 FCC Rcd at 2566 and n.50), these petitioners maintain that, for example, Cheyenne, Wyoming, with 13 radio stations, is actually better served than New York City, with 80 stations, based on the larger population-to-station ratio in Cheyenne. This argument is based on the faulty premise that radio programming is a finite, depletable commodity like groceries or automobiles. A radio listener in Manhattan can tune in six times as many stations as a listener in Cheyenne, irrespective of how many more people live in Manhattan. Thus, the argument that the Cheyenne listener is "overserved" lacks merit.

<sup>36</sup> *Id.* at 2568-69.

<sup>37</sup> *Second R&O*, 26 FCC Rcd at 2570. *See supra* note 26.

<sup>38</sup> Radio One Petition at 3, 5.

<sup>39</sup> *See, e.g.*, *Second R&O*, 26 FCC Rcd at 2573-74.

<sup>40</sup> *Id.* at 2563-64. *See also Rural NPRM*, 24 FCC Rcd at 5242-44.

number of cases, the population actually covered by a station's signal in an urbanized area is many times that of the population of the community of license.<sup>41</sup>

11. We considered and rejected in the *Second R&O* the Radio One Parties' argument that our new procedures constitute a return to the policies eliminated in *The Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy*.<sup>42</sup> As we observed, the Commission discontinued those policies based in part on application processes and procedural safeguards that now no longer exist.<sup>43</sup> We also noted the dissimilarities between our new procedures and the processes formerly used to implement the policies that were discontinued in *Suburban Community Policy*.<sup>44</sup> To the extent that similarities exist, it is because both are grounded in fulfilling our Section 307(b) responsibilities. The record in this case and our recent experience with broadcast auctions and community of license change proposals filed as minor modification applications – both licensing processes that post-date *Suburban Community Policy* by many years – convinced us that the new procedures are necessary.<sup>45</sup>

12. We decline the Radio One Parties' invitation to revise the *Tuck* factors used to evaluate the interdependence of the specified community with the larger metropolitan area.<sup>46</sup> We disagree with the Radio One Parties' critiques of some of the *Tuck* factors of community independence. We believe that the first factor, whether a significant number of local residents work in the community as opposed to the urbanized area, may be a relevant indicator of independent community status, notwithstanding that the Census Bureau measures this statistic by way of survey data rather than enumeration.<sup>47</sup> However, although we disagree with the Radio One Parties' claim that the closing or consolidation of post office facilities necessarily invalidates the use of the remaining ZIP code as an indicator of community independence, we agree that the ubiquity of ZIP codes gives the presence of a dedicated ZIP code little probative significance of itself in establishing a community's independence. We therefore agree with the Radio One Parties that this factor should be given little weight. Finally, we question the assertion that Factor 8 – the extent to which the community relies on the larger metropolitan area for municipal services

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<sup>41</sup> *Second R&O*, 26 FCC Rcd at 2570.

<sup>42</sup> Report and Order, 93 F.C.C.2d 436 (1983) ("*Suburban Community Policy*"). See *Second R&O*, 26 FCC Rcd at 2570-71.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> See *supra* paragraph 9, notes 25, 32.

<sup>46</sup> The eight factors set forth in *Tuck* are: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own local telephone book provided by the local telephone company or zip code; (6) whether the community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services. *Tuck*, 3 FCC Rcd at 5378. In the *Second R&O*, we indicated that we would de-emphasize certain of those factors, based on changed circumstances since the *Tuck* case's release 23 years ago. *Second R&O*, 26 FCC Rcd at 2573.

<sup>47</sup> See Radio One Petition at 17 and n.42. See also <http://www.census.gov/hhes/commuting/> (accessed Apr. 20, 2012).

– is duplicative of Factor 4, whether the community has its own local government and elected officials. These factors are necessarily fact-specific, and must take into account the various ways in which communities are structured. While both factors are often present in the same community, this is not universally the case.<sup>48</sup> We thus decline at this time to revise the *Tuck* factors. We will, however, provide applicants seeking to rebut the UASP wide latitude to present whatever facts they deem appropriate to our evaluation. While we will scrutinize such showings, we will be receptive to presentations that may in some cases provide better and more reliable measures of community status than those set forth in *Tuck*. We emphasize that the eight *Tuck* factors are merely potential indicators of independence or interdependence and that the burden remains on the applicant to show that the presence of such factors provides meaningful and relevant support for an “independent” community finding. We clarify, however, that our analysis of showings rebutting the UASP will place primary emphasis on the first two prongs of the *Tuck* test, namely, the degree to which the proposed station will provide coverage to the urbanized area, and the size and proximity of the proposed community of license relative to the central city of the urbanized area.<sup>49</sup>

13. The Radio One Parties also ask us to clarify the methodology for measuring “reception service” for Priority (4) analyses of applications to change a station’s community of license, as discussed in paragraph 39 of the *Second R&O*.<sup>50</sup> Specifically, they ask, first, whether the contours of a non-reserved band FM station, for purposes of gain/loss analysis of a community of license change, should be calculated from the allotment coordinates at the proposed new community or from the transmitter coordinates specified in the actual proposal; second, when evaluating gain and loss areas, and in particular when determining the number of reception services to the gain and loss areas, which signal contour should be used; and third, in assessing reception service, whether “potential services,” such as vacant FM allotments or granted but unbuilt construction permits, should be counted. We clarify below the standards for evaluating reception services in the gain and loss areas for applications to change community of license, and thus grant the Radio One Petition in part.

14. First, when determining gain and loss areas for an FM station changing its community of license, we agree with the Radio One Parties that the contours should be calculated using the authorized transmitter coordinates for the current facility, and the transmitter coordinates specified for the proposed new or modified facility. We recognize that this is a change from past practice, under which the staff used allotment coordinates rather than the transmitter coordinates specified in the actual proposal. That practice, however, was an artifact of our former licensing procedures, under which all community of license changes for FM stations first involved a reallocation of the station’s channel at the new community. As a result, the staff only had the allotment coordinates on which to base gain and loss area calculations; the actual application for a new construction permit was filed only after reallocation. Since the Commission changed its procedures in 2006 to permit the filing of community of license change proposals by minor change applications,<sup>51</sup> the staff can now evaluate the actual proposed transmitter site. It is more appropriate to do so than to use allotment coordinates that, as the Radio One Parties point out,

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<sup>48</sup> For example, some communities with no local government nevertheless provide some municipal services, or may receive them from a governmental unit other than that in which the larger urbanized area is centered.

<sup>49</sup> See *Tuck*, 3 FCC Rcd at 5378.

<sup>50</sup> *Second R&O*, 26 FCC Rcd at 2577-78.

<sup>51</sup> *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, 14217-23 (2006), recon. pending (“*Community of License R&O*”).



may be miles from the actual transmitter site specified in the proposal. Moreover, this new approach is consistent with our practice with regard to AM change of community applications, for which we calculate contours from the applicants' authorized and proposed transmitter sites.

15. Second, we clarify that, when determining the number of reception services in gain and loss areas, the signal level to be evaluated for non-reserved band FM stations (including noncommercial educational ("NCE") stations in the non-reserved band) shall be the service contour originating at the currently authorized and proposed transmitter coordinates. The service contour shall be calculated based on the facility's authorized and proposed effective radiated power ("ERP") and height above average terrain ("HAAT") and shall, as described below, take into account actual terrain. We recognize that this is a departure from the method previously used to determine the number of reception services in gain and loss areas, which was based on maximum class facilities for all FM stations except for full Class C and NCE stations, and did not take into account actual terrain.<sup>52</sup> However, in the *Second R&O*, we required applicants proposing to change a station's community of license to provide detailed reports of populations receiving service and the numbers of services received.<sup>53</sup> This increased scrutiny of the current and proposed reception service landscape demands a realistic picture of the populations receiving various levels of service, overruling the considerations of "uniformity and certainty" in service area calculations cited in *Greenup* to justify the use of maximum rather than actual facilities.<sup>54</sup> Additionally, as the Radio One Parties point out, many existing stations, for technical, economic, or other reasons, may never be able to realize full class facilities.<sup>55</sup> Thus, we believe it more appropriate to base an evaluation of the Section 307(b) merits of community of license change applications on the populations actually receiving service from stations in an area, rather than on what may be, in many cases, merely a hypothetical level of reception service. For purposes of these gain and loss area calculations, the FM service contour shall be that set forth for the class of station in Section 73.215(a)(1) of the Rules,<sup>56</sup> and shall be calculated using actual terrain under the standard prediction methodology set forth in Section 73.313 of the Rules rather

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<sup>52</sup> See *Greenup, Kentucky, and Athens, Ohio*, Memorandum Opinion and Order, 6 FCC Rcd 1493, 1494 (1991) ("*Greenup*"). See also, e.g., *Sells, Willcox, and Davis-Monthan AFB, Arizona*, Memorandum Opinion and Order, 23 FCC Rcd 1242, 1247 n.32 (MB 2008), review pending.

<sup>53</sup> See *Second R&O*, 26 FCC Rcd at 2577-78.

<sup>54</sup> *Greenup*, 6 FCC Rcd at 1494. Furthermore, calculations of FM service contours based on currently authorized facilities and actual terrain do not lack "certainty." Section 73.313 of the Rules (47 C.F.R. § 73.313) clearly defines our methodology for calculating FM contours, and the contours predicted using this methodology provide the basis for all of the Commission's FM service and interference analyses.

<sup>55</sup> Radio One Parties Petition at 21. See also du Treil, Lundin, & Rackley, Inc. Technical Statement Comments to Petitions for Reconsideration in MB Docket 09-52 ("*DLR Statement*"), at second unnumbered page (contending that most FM stations "have RF transmission facilities maximized as much as the applicable regulations (either FCC, local and/or FAA limitations) would allow."). Moreover, unlike an evaluation under the UASP, which includes any rule-compliant facility modifications the applicant might implement, a community change applicant does not control the implementation and timing of modifications to other stations that might provide service to the proposed gain and loss areas.

<sup>56</sup> 47 C.F.R. § 73.215(a)(1). For Class A, C3, C2, C1, C0, and C stations, the protected contour is the 60 dB $\mu$  (1.0 mV/m) F(50,50) contour. For Class B stations, the protected contour is 54 dB $\mu$  (0.5 mV/m) F(50,50). For Class B1 stations, the protected contour is 57 dB $\mu$  (0.7 mV/m) F(50,50). For purposes of gain and loss area calculations in applications to change community of license, we shall use these contours for non-reserved band commercial and NCE stations in Puerto Rico and the U.S. Virgin Islands, rather than the contours set forth in 47 C.F.R. § 73.215(b)(4).

than assuming uniform terrain.<sup>57</sup> For NCE reserved band stations, the service contours will be determined in the same manner, using actual currently authorized and proposed facilities (including directional patterns) and actual terrain. The service contour shall be the 60 dB $\mu$  contour, calculated as set forth in Section 73.509(c)(1) of the Rules.<sup>58</sup>

16. For an AM station, the signal level to be evaluated for purposes of gain and loss calculations in applications to change community of license shall be the predicted or measured daytime 2.0 mV/m groundwave contour, calculated from the current and proposed transmitter coordinates using authorized facilities. When calculating AM reception services in gain and loss areas under Priority (4), we agree with the Radio One Parties that “reception service” should not be limited to full-time reception services, but should include all AM daytime reception services.<sup>59</sup> In this regard, we note that the AM primary service contours are set forth in Section 73.182(d) of the Rules, and are the daytime 0.5 mV/m groundwave contour for communities under 2,500 population, and the daytime 2.0 mV/m groundwave contour for communities over 2,500 population.<sup>60</sup> The different primary service contours take into account the higher level of environmental noise resulting from greater population density. However, using different contours for communities of different sizes will often result in complicated calculations of the number of services to certain areas lying between the daytime 2.0 mV/m and 0.5 mV/m groundwave contours of an AM station. Because Section 73.182 implicitly recognizes that all areas, of whatever population, receive primary service within an AM station’s daytime 2.0 mV/m groundwave contour, for purposes of determining the number of AM services and populations in gain and loss areas, we shall use the daytime 2.0 mV/m groundwave contour.<sup>61</sup>

17. Third, for purposes of the gain and loss calculations in Priority (4) analyses, as described in paragraph 39 of the *Second R&O*,<sup>62</sup> applicants shall count all full-service AM (including daytime-only AM),<sup>63</sup> FM, and NCE FM stations,<sup>64</sup> including granted, but unbuilt, construction permits for new

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<sup>57</sup> 47 C.F.R. § 73.313. All calculations must be made using the same terrain database. Similarly, all contour calculations must be completed using the standard contour prediction method in 47 C.F.R. §§ 73.313(a)-(f), without recourse to supplemental terrain showings or alternative contour prediction methods.

<sup>58</sup> 47 C.F.R. § 73.509(c)(1).

<sup>59</sup> See Radio One Petition at 22. See also DLR Statement at second unnumbered page. Current staff practice in such analyses is to consider only nighttime interference-free (“NIF”) reception service.

<sup>60</sup> 47 C.F.R. § 73.182(d).

<sup>61</sup> Applicants for new commercial AM stations providing showings under Section 307(b) should, however, continue to count populations to be served by using the primary service contours (0.5 mV/m for communities under 2,500 population, 2.0 mV/m for communities over 2,500) set forth in 47 C.F.R. § 73.182(d). See, e.g., *Second R&O*, 26 FCC Rcd at 2574. An applicant for a new AM station provides a Section 307(b) showing only after being directed to do so by the staff (that is, after its application has been determined to be mutually exclusive with one or more other AM proposals), and in such cases the staff typically directs the applicant to provide the populations receiving both 0.5 mV/m and 2.0 mV/m daytime service from the proposed facilities. See, e.g., *AM Auction 84 Mutually Exclusive Applicants Subject to Auction*, Public Notice, 20 FCC Rcd 10563, 10565 (MB/WTB 2005).

<sup>62</sup> *Second R&O*, 26 FCC Rcd at 2577-78.

<sup>63</sup> For purposes of the prohibition against any facility change that would create white or gray area, however (see *Second R&O*, 26 FCC Rcd at 2577), daytime-only AM stations will not count as providing full-time reception service. See *Policies to Encourage Interference Reduction Between AM Broadcast Stations*, Report and Order, 5 FCC Rcd 4492, 4496 n.14 (1990) (“A ‘white’ area is an area that receives no full-time aural service. A ‘gray’ area receives one full-time aural service.”). Full-time aural (reception) service means both day and night. While FM (continued....)

stations.<sup>65</sup> However, for purposes of these calculations applicants should not count vacant FM allotments. In other contexts we have curbed the use of vacant FM allotments, for example, when such allotments were proposed to “backfill” for the removal of a sole local transmission service.<sup>66</sup> Additionally, in recent FM auctions a number of vacant allotments have gone unsold, calling into question whether such allotments may realistically be considered as future service.<sup>67</sup> Moreover, for the reasons cited in paragraph 15, above, our increased scrutiny of reception service in gain and loss areas requires that we evaluate actual, rather than hypothetical service. We therefore believe the better approach is to evaluate the reception service as of the time of application, and to count only those facilities that have advanced to the point of a granted construction permit. Accordingly, in conducting the remaining services analysis and making a showing as described in paragraph 39 of the *Second R&O*,<sup>68</sup> applicants should exclude vacant FM allotments from counts of reception services.<sup>69</sup> Applicants for changes to a station’s community of license following release of this *Second Order on Reconsideration* shall use these clarified

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service contours are consistent for all dayparts, AM service contours vary between daytime and nighttime operation. AM full-time reception service areas are those receiving both daytime 2.0 mV/m groundwave service and NIF service. For most stations, the daytime 2.0 mV/m groundwave contour completely encompasses the NIF contour, thus the NIF contour constitutes the full-time service area for such stations. Where the daytime 2.0 mV/m groundwave and NIF contours neither completely encompass nor are completely encompassed by the other, due to changes in antenna pattern and/or transmitter site between daytime and nighttime operation, the full-time service area is the common area within both contours.

<sup>64</sup> We decline to adopt EMF/Frandsen’s suggestion that secondary services, such as FM translators and low-power FM stations, be counted as reception services. EMF/Frandsen Petition at 8. Such secondary services are not protected from interference by full-service stations.

<sup>65</sup> In the case of stations with granted, but unbuilt construction permits for modifications to their currently licensed or permitted facilities, the authorized but unbuilt modified facilities shall be used. In many such cases, the station authorization is modified upon grant of the modification application.

<sup>66</sup> See *Pacific Broadcasting of Missouri, LLC*, Memorandum Opinion and Order, 19 FCC Rcd 10950, 10956 (2004) (“*Pacific Broadcasting*”) (under the “new circumstances” in which FM construction permits are awarded through competitive bidding, “the licensing of vacant allotments is too remote and too contingent to justify the filing of move-out proposals premised on such replacement services.”).

<sup>67</sup> At the end of FM Auction 91 in May of 2011, three dozen permits remained unsold, including many that had been offered in previous auctions. We recognize that economic factors undoubtedly played a part in this outcome, and moreover that certain recent policy changes (for example, requiring new allotment proponents simultaneously to file Form 301 applications – see *Community of License R&O*, 21 FCC Rcd at 14223-25) may well alleviate this situation. The number of unsold allotments nevertheless serves as a reminder that a vacant allotment, while somewhat more than a mere promise of future service, is something short of a guarantee of such service.

<sup>68</sup> See *supra* note 62.

<sup>69</sup> We will, however, continue to count vacant FM allotments for purposes of Section 307(b) analyses under Priority (3), provision of first local transmission service. This is because only one applicant or allotment proponent can claim to provide “first” transmission service at a given community. It would be inappropriate to accept a claim by a community of license change applicant to provide first local transmission service at the new community, if we had already allotted a channel there based on a showing that the allotment would constitute the first local transmission service. Of course, should the only channel allocated to a community be re-allotted to another community, a subsequent applicant or allotment proponent could propose first local transmission service there.

procedures when determining the number of reception services to gain and loss areas, and the procedures shall also apply to pending applications.<sup>70</sup>

18. Clay seeks reconsideration because he believes the *Second R&O* did not go far enough.<sup>71</sup> He argues that our new procedures will still allow grant of most applications claiming to provide first local transmission service while primarily serving communities and populations other than the proposed community of license, because the majority of the proposed communities are not located in or near urbanized areas and are thus not subject to the UASP.<sup>72</sup> Clay further argues that the procedures set forth in the *Second R&O* still fail to guarantee service to, and an outlet for self-expression of, the nominal community of license rather than the greatest populations to be served by a proposal.<sup>73</sup> He contends that we should replace the UASP with “a universal policy that directly links grant of any ‘local service’ preference to the community or collection of communities *most likely to benefit* from the transmission service provided by a facility proposed in *any* geographic area,” rather than just those in or near urbanized areas.<sup>74</sup> In essence, Clay would take the choice of community of license – at least where first transmission service is being claimed – away from the applicant, and have the Commission determine the community or communities provided the greatest reception service under the proposed facilities, and so designate the community of license.<sup>75</sup> We reject Clay’s proposal as overbroad. While we share Clay’s belief that localism is a fundamental attribute of broadcast service, our goal in this proceeding has been to preserve existing service at, and provide greater opportunity for new service to, rural areas and smaller communities. We believe our approach strikes an appropriate balance between encouraging the goals of localism, allowing an applicant to propose to provide a chosen community with an outlet for expression, and the economic reality that a broadcaster will and must also provide for the needs and interests of its entire service area, of which the designated community of license may constitute a very small percentage. The record and our experience has shown this problem to be most acute in the case of applications for new and relocated radio service in and near urbanized areas. Accordingly, we limited the UASP to situations in which a station is located in or will cover most of an urbanized area, rather than any situation in which a proposed station’s service area might include communities more populous than the specified community of license. Although Clay believes that our new procedures are not optimal, we believe that they will promote the Commission’s goals under Section 307(b) in a reasonable manner.<sup>76</sup>

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<sup>70</sup> See *Pacific Broadcasting*, 19 FCC Rcd at 19056-57 and cases cited therein. Given that the Radio One Petition did not constitute notice to applicants of the exact nature of any clarifications of procedure, however, we shall allow parties with pending change of community applications as of the release date of this order the option of either amending their application showings to conform to the clarified procedures we announce here, or proceeding based on the reception service counts in their already-filed technical showings.

<sup>71</sup> The Clay Petition was opposed by EMF and Bryan Broadcasting Corporation, filing a joint Opposition. Additionally, the Radio One Parties Comments in Response includes a brief opposition to the Clay Petition. See Radio One Parties Comments in Response at 5-6.

<sup>72</sup> Clay Petition at 2-3, 5-6.

<sup>73</sup> *Id.* at 3-5.

<sup>74</sup> *Id.* at 8 (emphasis in original). See also Clay Comments at 22-27.

<sup>75</sup> *Second R&O*, 26 FCC Rcd at 2567 and n.54.

<sup>76</sup> See *AT&T Corp. v. FCC*, 220 F.3d 607, 621 (D.C. Cir. 2000) (“As long as the agency’s interpretation is reasonable, we uphold it ‘regardless whether there may be other reasonable, or even more reasonable, views.’” quoting *Serono Lab, Inc. v. Shalala*, 158 F.3d 1313, 1321 (D.C. Cir. 1998)).

19. Entravision, in its Petition for Reconsideration and/or Clarification, raises issues concerning two aspects of the modified procedures. Entravision notes that we have not typically required a *Tuck* showing for community of license change applications where both the current and the proposed communities of license are located in the same urbanized area,<sup>77</sup> and asks that we clarify whether the UASP will apply, and a *Tuck* showing be required, in such situations in the future. We clarify that applicants will not be required to submit *Tuck* showings where both the current and proposed communities are located in the same urbanized area, or the current facilities cover, and the proposed facilities would or could be modified to cover, more than 50 percent of the same urbanized area with a daytime principal community signal. However, in such community of license change cases, the UASP presumption would apply to the new community, i.e., would presumptively prohibit treating the service at the new community as a first local transmission service under Priority (3). Thus, an applicant proposing such an intra-urbanized area move may not claim a Priority (3) preference, unless it also makes a showing to rebut the UASP. Absent such a showing, the applicant must claim a preference under Priority (4), other public interest matters, by demonstrating from which of the two communities the station would provide service to a greater area and population within the urbanized area.<sup>78</sup>

20. Entravision and M&M also seek changes in the categories of cases subject to the new procedures.<sup>79</sup> In the *Second R&O*, we stated that the new procedures would apply to all pending applications and allotment rulemaking proceedings, with two exceptions. The first was AM Auction 84 applications, which were filed in 2004 and the majority of which have been processed under the prior procedures.<sup>80</sup> The second was “any non-final FM allotment proceeding, including ‘hybrid’ coordinated application/allotment proceedings, in which the Commission has modified a radio station license or granted a construction permit.”<sup>81</sup> M&M argues that the same equities we articulated to exempt these two categories should apply equally to pending community of license change applications, especially those in which other stations were required to make facility modifications.<sup>82</sup> It concludes that our decision to apply the new procedures to pending community of license change applications is arbitrary and capricious because we did not treat the “similarly situated” new AM applications and FM allotment proceedings the same.<sup>83</sup> Entravision, for its part, suggests that we apply the prior procedures to any case in which there has been an “initial decision” as of March 2, 2011, the day before release of the *Second R&O*, even if the action is not final (i.e., if there is a pending petition for reconsideration or application for review).<sup>84</sup>

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<sup>77</sup> See *East Los Angeles, Long Beach, and Frazier Park, California*, Report and Order, 10 FCC Rcd 2864, 2868 (MMB 1995).

<sup>78</sup> See, e.g., *Gearhart, Madras, Manzanita, and Seaside, Oregon*, Report and Order, 26 FCC Rcd 10259 (MB 2011).

<sup>79</sup> See also EMF/Frandsen Petition at 9.

<sup>80</sup> *Second R&O*, 26 FCC Rcd at 2575.

<sup>81</sup> *Id.* at 2576.

<sup>82</sup> M&M Petition for Partial Reconsideration (“M&M Petition”) at 2-3. M&M points in particular to its own application, File No. BPH-20091211AFR, which it asserts has been pending for nearly one and one-half years.

<sup>83</sup> *Id.* at 4.

<sup>84</sup> Entravision Petition at 2-3.

21. As we stated in the *Second R&O*, it is well settled that we may apply modified rules and procedures to applications that are pending at the time of rule modification.<sup>85</sup> Moreover, we question whether applicants proposing community of license modification are “similarly situated” to those two classes of applicants, permittees, and licensees that were exempted from the new policy. In the case of AM Auction 84 filing window applicants in particular, those applicants were required to file their applications during a filing window that antedated the *Rural NPRM* by over five years.<sup>86</sup> These applicants therefore had no reason to expect that their applications would be evaluated under a new Section 307(b) standard. We recognize, however, that the same equities apply to those few pending community of license change applicants, and petitioners seeking to amend the FM Table of Allotments, that filed their applications or rulemaking petitions before release of the *Rural NPRM*. For this reason, on reconsideration we determine that the new procedures should not apply to (1) applications for minor modification of a station to specify a new community of license filed before April 20, 2009, the release date of the *Rural NPRM*; or (2) FM allotment proceedings where the petition for rulemaking had been filed, and the rulemaking proceeding thus initiated, prior to the release date of the *Rural NPRM*.

22. Entravision, in its Petition, states that the Commission did not “precisely answer the question” as to those cases to which the new Section 307(b) procedures would apply.<sup>87</sup> Both Entravision and M&M suggest we establish a “bright line” to clarify the cases to which the new rules apply, and would draw that line as of the release date of the *Second R&O*.<sup>88</sup> Entravision requests that we continue to apply the prior Section 307(b) procedures in any instance in which the Commission had rendered a decision as of March 2, 2011, even if there is still a petition for reconsideration or application for review pending.<sup>89</sup> It urges this as an equitable solution that will keep parties from having to expend further time and resources revising their Section 307(b) showings after having already obtained a favorable result from the Commission under pre-*Second R&O* procedures.<sup>90</sup> M&M goes a step further, requesting that we only apply the new procedures to community of license change applications filed after release of the *Second R&O*.<sup>91</sup>

23. We disagree with Entravision that the Commission was unclear, in the *Second R&O*, as to when the new procedures would apply, and further disagree with M&M that all pending community of license change applications are “similarly situated” to the categories of cases the Commission exempted from the new procedures. As discussed above, the majority of pending community of license change applications were filed after release of the *Rural NPRM*, and thus were on notice that the procedures could change while their applications were pending.<sup>92</sup> The Commission further carved out a limited

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<sup>85</sup> *Second R&O*, 26 FCC Rcd at 2576, citing *Review of the Pioneer’s Preference Rules*, First Report and Order, 9 FCC Rcd 605, 610 n.24 (1994).

<sup>86</sup> The AM Auction 84 filing window was open from January 26 – 30, 2004.

<sup>87</sup> Entravision Petition at 2.

<sup>88</sup> *Id.*; M&M Petition at 5.

<sup>89</sup> Entravision Petition at 2.

<sup>90</sup> *Id.* at 2-3.

<sup>91</sup> M&M Petition at 5.

<sup>92</sup> For example, Truth Broadcasting Corporation (“Truth Broadcasting”), in its January 17, 2012, Reply Comments in Response to [Radio One Comments in Response] (“Truth Reply Comments”), complains that its application for a change in community of license of station KTIA-FM, File No. BPH-20100126AGR, should not be subject to the (continued....)

exception to the new procedures in FM allotment and hybrid proceedings where licenses were modified or construction permits granted, based in part on the difficulty and expense of “unwinding” actions taken subsequent to, and in reliance upon, such license modifications or authorization grants.<sup>93</sup> To the extent that similar equities may exist in the case of certain pending community of license change applications – where, for example, the modification is contingent on a modification to another facility that cannot easily be undone due to subsequent actions by other licensees – we will entertain requests for waiver of the revised procedures on a case-by-case basis. We reject M&M’s attempt to analogize those pending community of license change applications without such equities, however, and therefore reject M&M’s request to apply the prior procedures to all such applications pending as of release of the *Second R&O*.

24. We are more persuaded, however, by Entravision’s equitable argument. One can envision a situation in which, for example, two applications for change of community of license were granted on the same day, but one would become final under the pre-*Second R&O* procedures while the other would be subject to the new procedures merely because of a factor beyond the applicant’s control, i.e., the filing of a petition for reconsideration or application for review of the application grant. There seems no principled reason to apply different procedures to such otherwise similarly situated applications, especially where, as Entravision notes, any applicant facing reconsideration or review would have to go to the additional expense of revising its (previously successful) Section 307(b) showing, above and beyond the expense of rebutting a reconsideration petition. We therefore, on reconsideration, revise our determination as to the application of the new procedures. In addition to those categories of applications and rulemaking proceedings listed in paragraph 21, above, and in the *Second R&O*,<sup>94</sup> the revised Section 307(b) procedures shall not apply to any pending community of license change application or FM allotment proceeding in which a decision on the application, or allotment *Report and Order*, was released prior to March 3, 2011, the release date of the *Second R&O*. We therefore grant the Entravision Petition to the extent set forth herein, and deny the M&M Petition.

#### IV. ORDERING CLAUSES

25. Accordingly, IT IS ORDERED, pursuant to the authority contained in Sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. §§ 151, 152, 154(i), 303, 307, and 309(j), that this *Second Order on Reconsideration* IS ADOPTED.

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new procedures because “it was filed with the FCC fourteen months prior to the Commission’s adoption [of the *Second R&O*].” Truth Reply Comments at 2. However, its January 26, 2010, application was filed nine months after the *Rural NPRM* proposing the new procedures was released on April 20, 2009. Accordingly, the Media Bureau applied the new procedures to Truth Broadcasting’s application, requesting further information to rebut the UASP. *James P. Riley, Esq.*, Letter, 27 FCC Rcd 169 (MB 2012).

<sup>93</sup> *Id.* at 2576.

<sup>94</sup> *Second R&O*, 26 FCC Rcd at 2575-76.

26. IT IS FURTHER ORDERED that the Petition for Reconsideration & Comments Regarding the Following Matter, filed by Anthony V. Bono, Friendship Broadcasting, LLC; the Petition for Partial Reconsideration, filed by William B. Clay; the Petition for Partial Reconsideration, filed by M&M Broadcasters, Ltd.; and the Petition for Reconsideration, filed by Educational Media Foundation and the Kent Frandsen Radio Companies, ARE DENIED. IT IS FURTHER ORDERED that the Petition for Reconsideration and/or Clarification, filed by Entravision Communications Corporation; and the Petition for Partial Reconsideration, filed by Radio One, Inc., et al., ARE GRANTED IN PART AND DENIED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary



**APPENDIX****Parties Filing Petitions for Reconsideration, Oppositions, and Replies****Parties Filing Petitions for Reconsideration or Partial Reconsideration**

Anthony V. Bono, Friendship Broadcasting, LLC

Entravision Communications Corporation

William B. Clay

M&M Broadcasters, Ltd.

Radio One, Inc.; Minority Media and Telecommunications Council; Ace Radio Corporation; Magnolia Radio Corporation; Auburn Network, Inc.; Chisholm Trail Broadcasting Co.; Communications Technologies, Inc.; Radio K-T, Inc.; Great South Wireless, LLC; Brantley Broadcast Associates, LLC; RAMS; Skytower Communications – E'town, Inc.; Heritage Communications, Inc.; Anderson Associates; Holladay Broadcasting of Louisiana; Alatron Corp., Inc.; Legend Communications of Wyoming, LLC; Border Media Business Trust; Music Ministries, Inc.; Mullaney Engineering, Inc.; Mattox Broadcasting, Inc.; Multicultural Radio Broadcasting Licenses, LLC; Way Broadcasting Licensee, LLC; Mississippi Broadcasters, LLC; Scott Communications, Inc.; Alexander Broadcasting Company, LLC; Jackson Radio, LLC; Radiotechniques Engineering LLC; Signal Ventures LLC; Wagon Wheel Broadcasting, LLC; WRNJ, Inc.; Dot Com Plus LLC; Independence Broadcast Services; Provident Broadcasting Company, Inc.; Radio Training Network, Inc.; Sacred Heart University, Inc.; Horizon Broadcast Solutions; The Ridgefield Broadcasting Corp.; Westport Broadcasting; Radio New England Broadcasting, LLC; Flinn Broadcasting Corporation; Arlington Broadcast Company; Memphis First Ventures, LP; First Ventures Capital Partners, Inc.; and Autaugaville Broadcasting, Inc. ("Radio One Parties")

Educational Media Foundation and the Kent Frandsen Radio Companies

**Parties Filing Oppositions to Petitions**

du Treil, Lundin & Rackley, Inc. (Technical Statement – Comments to Petitions for Reconsideration)

Radio One Parties (Comments in Response to Petitions for Reconsideration)

Educational Media Foundation and Bryan Broadcasting Corporation

**Parties Filing Replies**

William B. Clay (2)

Truth Broadcasting Corporation