

F.C.C. 63-702

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

In the Matter of
 CLEAR CHANNEL BROADCASTING IN THE } Docket No. 6741
 STANDARD BROADCAST BAND }

MEMORANDUM OPINION AND ORDER

BY THE COMMISSION:

1. The Commission has before it for consideration petitions filed March 12, 1962 by WAEB Broadcasters, Inc., The Berkshire Broadcasting Corporation, New Broadcasting Co., Inc., and Middlesex Broadcasting Company, seeking reconsideration of the Commission's action adopting a new Section 1.351(b)(2)(i) as part of the Further Supplement to the Report and Order of September 13, 1961, concluding the Clear Channel proceeding. Each petitioner is licensee of an existing station on a frequency adjacent to one or more Class I-A channels left unduplicated by the Clear Channel Decision and each is applicant for increased power on its present frequency. Each of the applications has been placed in the pending file pursuant to the provisions of Section 1.351(b)(2)(i) of the Rules, the Section here disputed. Each of the petitions contains an alternative request for waiver of the Rule, should the rule change suggested in the petitions not be adopted.

2. On February 5, 1962,¹ the Commission released its "Further Supplement" to the Clear Channel Report and Order of September 13, 1961. The purpose of the Further Supplement was to adopt criteria which would govern our acceptance and action upon applications for new or changed facilities on channels adjacent to the clear channels. The criteria so adopted reflected the Commission's consideration of two possible future uses for the unduplicated 1-A channels: high power, to a maximum of 750kw, and duplication in specified areas with a new Class II unlimited time assignment similar to the proposed assignments specified in the September Report and Order. The criteria also reflects minimum permissible protection to contemplated Class II-A assignments or the duplicated Class I-A channels pending receipt of such proposals.

3. Petitioners' objections (which are identical), go to only one of the criteria adopted in the Further Supplement. Section 1.351(b)(2)(i), as amended, provides that applications involving channels adjacent to unduplicated Class I-A frequencies must meet, among other criteria, the following condition:

(i) The proposed transmitter site is located inside the area encompassed by a 500 mile extension of the 0.5 mv/m—50%

¹ Published in the Federal Register, February 8, 1962, 27 FR 1169.

nighttime contour of Class I-A stations on unduplicated channels.

The purpose of this condition is to insure that no new or changed assignment can be made within the area it is considered possible to place new Class II-A stations, should it be decided in the future to duplicate the Class I-A facility on the frequency. Petitioners' request that the subsection be amended to add the following language, immediately following the word "channels":

. . . ; or in the case of applications for improvement of facilities by existing stations already operating on the designated frequencies, if a showing is made that even though the station is located outside of that area, a grant of the proposal will not significantly limit the area in which a Class II-A station may be assigned on an unduplicated clear channel in the future.

4. In general, petitioners allege that the absolute prohibition against applications for stations located outside the area defined in Section 1.351 (b) (2) (i) goes much further than necessary to preserve the Commission's freedom of action in dealing with unduplicated clear channels in the future. Each of the petitioners cites its own case as an illustration of an application which fails to meet the literal terms of the Rule, but which can have only minimal effect upon the future assignment of a Class II-A station upon a presently unduplicated I-A channel. In terms of the amendment proposed, each is offered as an example of a presently existing station applying to improve facilities in a manner which would not "significantly limit" the area in which a II-A station might someday be assigned.

5. We agree that when an existing station seeks to improve its facilities and it can be shown that a grant of the proposal could have no material effect upon potential Class II-A assignments, there is no reason to preclude our acting upon the application in normal course. Moreover, since each proposal must be considered on its own merits and the number of such cases is small, it appears preferable to grant waivers where appropriate rather than make a general change in the rules at this time.

6. Under the provisions of Section 1.12 of the Commission Rules it would have been appropriate for Petitioners' requests for (1) reconsideration of our Further Supplement to Report and Order (FCC 62-117), and (2) in the alternative for waiver of Section 1.351 (b) (2) (i), to be submitted as separate pleadings. Thus, Petitioners' alternative requests, except for that of WAEB Broadcasters, Inc., for waiver of this Section will be disposed of in separate documents. Since WAEB's application, File No. BP-12918, is in hearing, the WAEB request for waiver must be considered in connection with the hearing proceeding.

Accordingly, IT IS ORDERED, This 24th day of July, 1963, That Petitioners' requests for reconsideration of the Commission's Further Supplement to Report and Order (FCC 62-117) ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION,

BEN F. WAPLE, *Secretary*.