

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of
AMENDMENT OF PART 73 OF THE COMMISSION'S
RULES REGARDING AM STATION ASSIGNMENT
STANDARDS } Docket No. 20265

NOTICE OF PROPOSED RULEMAKING

(Adopted November 27, 1974; Released December 5, 1974)

BY THE COMMISSION:

1. Notice is hereby given of rulemaking in the above-entitled matter.
2. In the Commission's 1964 Report and Order concerning the amendment of part 73 of the rules regarding AM station assignment standards,¹ as well as in the 1973 Report and Order in this matter,² rules were adopted which restricted the assignment of additional new stations, as well as proposals from existing stations for changes in frequency or new nighttime hours of operation. The 1973 rule changes also imposed rather severe restrictions on power increases, both day and night, for existing AM stations. [See section 73.37 (e) (3) (ii) and (iii).] These changes in our rules were adopted in an effort to conserve the remaining AM spectrum space for the assignment of stations which would provide service to areas which are presently underserved.
3. Subsequent to adoption of rule changes, we have received and continue to receive numerous inquiries and requests urging a relaxation of the rules in order that existing stations may obtain power increases and thereby provide improved service to their communities and the adjoining areas. Almost all of the comments favoring power increases point to the rapid expansion and great increase in population that has occurred in many cities and urban areas and the need for greater power to provide adequate service to these areas. Coupled with the general problem of providing satisfactory service to communities which have rapidly expanded is the additional consideration that many stations are now being forced to change their antenna sites. Many of the antenna sites which were previously satisfactory have now become engulfed in urban expansion and are no longer satisfactory or desirable from either a technical or coverage standpoint. Often, because of the non-availability of suitable land, the site changes require moves of several miles. This, of course, also aggravates the general problem of providing adequate signal strength over the licensee's city of designation.
4. One of our prime concerns in adopting our present AM rules was the promotion of FM service in areas where a paucity of aural service

¹ Report and Order adopted July 1, 1964, 45 FCC (Part 2) 1515, 2 RR 2d 1658.
² Report and Order adopted February 21, 1973, 39 FCC 2d 645, 26 RR 2d 1189.

existed. Thus, we accorded FM equal status with AM and treated it "as a full and viable partner of AM."³ Eighteen months have now passed since these rules became effective and we have had ample time to gauge their impact on FM. During that period we find that applications for new commercial FM stations and major improvements in existing facilities have increased 45 percent when compared to the 18 months immediately preceding adoption of the rules. In light of the recently increased filing of FM applications and the improved economic conditions in FM broadcasting generally, it appears that continued stimulation of industry demand for FM authorizations by means of restrictive AM allocation policies would be superfluous, particularly when viewed in the light of the public interest considerations favoring power increases set forth in paragraph 3, *supra*.

5. In view of the foregoing considerations and on the basis of our further study of this matter, we now are of the view that it would be in the public interest to amend our rules so as to permit power increases for existing AM stations if those increases can be accomplished on their present frequencies without any derogation of our present rules prohibiting increased interference, and if the power increases would otherwise comply with our rules and regulations. In arriving at this conclusion, however, we must emphasize that we are not contemplating any relaxation in our present "go-no-go" standards concerning prohibited overlap, as set forth in section 73.37 (a) (b) (c), and (d) and that nighttime proposals must not cause objectionable interference to other stations as determined pursuant to section 73.182(o).

6. The Commission also continues to receive numerous requests urging relaxation of our rules in a manner which would more readily permit the assignment of (i) new daytime-only stations, (ii) nighttime operation for existing daytime-only stations, (iii) new unlimited-time stations, and (iv) changes in frequency for existing daytime-only or unlimited-time stations. For reasons articulated in the Commission's previous rule-making proceedings governing the allocation of broadcast facilities, we concluded that the allocation of stations in these categories should be restricted to those assignments which will provide service to areas presently devoid of service or where an additional service is clearly needed and there is no available alternative means (i.e., FM) for providing this service. With regard to new nighttime operations, we have particularly expressed our concern that each new assignment, regardless of the degree of protection offered pursuant to existing rules, adds its degree of interference and contributes to an overall deterioration in the nighttime service provided by existing stations. Accordingly, although this rule-making proceeding does not include any specific proposed changes in our present rules governing the allocation of new daytime-only stations, new unlimited-time stations, changes in frequency or nighttime operation by existing daytime-only stations, interested parties may submit comments concerning rule changes with regard to these matters if they so desire.⁴

³ *Id.*, at 670.

⁴ Based on such comments directed at the aforementioned subjects and issues, the Commission may adopt rules thereon without issuing a further notice of proposed rule making. Comments are not invited in this proceeding for any change in our present rules governing the Class I-A Clear Channel Frequencies.

Parties submitting comments supporting nighttime hours of operation for existing daytime-only stations, however, should note that our comments in previous rule-making proceedings relevant to new unlimited-time stations are also applicable to daytime-only stations seeking nighttime operation.

7. In 1965, we promulgated our *Policy Statement on Section 307 (b) Considerations for Standard Broadcast Facilities Involving Suburban Communities*, 2 FCC 2d 190, 6 RR 2d 1901. Under this policy, we require suburban applicants to rebut a presumption that they are realistically proposing to serve a larger community in those instances where their proposed 5 mV/m daytime contour penetrates the geographic boundaries of another community with a population of 50,000 persons having at least twice the population of the specified community. This policy at present governs not only proposed new stations but power increases by existing facilities. Furthermore, it also applies to stations whose present 5 mV/m contour already covers all or a portion of the larger community and the proposed power increase would result in greater 5 mV/m penetration or envelopment. *Madison County Broadcasting Co., Inc.*, 5 FCC 2d 674, reconsideration denied, 8 FCC 2d 752 (1967). Although the presumption which arises under the *Policy Statement, supra*, may be rebutted prior to hearing by a showing that the 5 mV/m penetration is occasioned by protection requirements, high conductivity saltwater paths, or other engineering considerations beyond the control of the applicant which tend to negate an intent to serve the larger community,⁵ the burden of overcoming the presumption short of hearing is not a light one. Thus, if this proceeding results in the adoption of less stringent acceptability standards for daytime power increases, the continuation of our 307(b) suburban policy, in that respect, would appear to countervail a more liberal allocation policy. Accordingly, we invite comments on the question of whether our 307(b) suburban policy should be maintained in its present form as it applies to major changes in existing operations.

8. We cannot accurately predict the number of applications which may be filed as a result of the rule changes which may be adopted. However, if the number submitted becomes administratively burdensome, it may be necessary to impose some control measures. As we indicated in our Report and Order adopting AM rule changes in 1973 (Docket 18651), the control measures would probably involve the declaration of periodic "open" and "closed" seasons for the filing of applications. If it becomes necessary to institute such measures, they will be temporary in nature, and advance notice will be given so that all parties will have ample time to complete and submit any applications which are in preparation.

9. In view of the foregoing, comments are invited on the rule changes proposed for adoption as set forth in the Appendix hereto, and on the other matters set forth in paragraphs 6 and 7 above.

10. Pursuant to applicable procedures set out in section 1.415 of the Commission's rules, interested parties may file comments on or before

⁵ See e.g., *Major Markets Stations, Inc. (KREL)*, 8 FCC 2d 13 (1967) *WTOW, Inc. (WTOW)*, 11 FCC 2d 277 (1968); *KACY, Inc. (KACY)*, 15 FCC 2d 33 (1968).

January 31, 1975, and reply comments on or before March 4, 1975. All relevant and timely comments and reply comments will be considered by the Commission before final action is taken in the proceeding. In reaching its decision in this proceeding, the Commission may also take into account other relevant information before it, in addition to the specific comments invited by this notice.

11. In accordance with the provisions of section 1.419 of the rules, an original and 14 copies of all written comments, replies, pleadings, briefs, or other documents shall be furnished the Commission. Responses will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS, *Secretary*.

APPENDIX

Section 73.37(e) (3) is amended by deleting subdivisions (i), (ii), and (iii) and by changing the language of the introductory text to read as follows:

§ 73.37 APPLICATIONS FOR BROADCAST FACILITIES, SHOWING REQUIRED.

* * * * *

(e) * * *

(3) Application by an authorized station (other than a class IV station) proposing changes in nighttime facilities, other than a change in frequency, must make a satisfactory showing that the proposed change will not result in objectionable interference to other stations as determined pursuant to section 73.182 (o). Applications for changes in frequency are governed by the provisions of subparagraph (2) of this paragraph.

* * * * *

49 F.C.C. 2d