

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

MM Docket No. 87-267

In the Matter of

Review of the Technical  
Assignment Criteria for the  
AM Broadcast Service

MEMORANDUM OPINION AND ORDER

Adopted: April 13, 1993;

Released: April 29, 1993

By the Commission: Commissioner Barrett concurring  
and issuing a statement.

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I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses issues raised in petitions for reconsideration of the *Report and Order* in this proceeding concerning the AM broadcast service.<sup>1</sup> That *Report and Order* took major steps to improve technical standards, to reduce the level of interference in the existing AM band, to encourage certain existing licensees to move into the expanded portion of the AM band, and to consolidate existing broadcasting facilities in order to further reduce congestion and interference in the existing band.

<sup>1</sup> *Report and Order* in MM Docket No. 87-267, 6 FCC Rcd 6273 (1991).

<sup>2</sup> *Notice of Inquiry*, 2 FCC Rcd 5014 (1987); *Notice of Proposed Rule Making* (NPRM), 5 FCC Rcd 4381 (1990).

<sup>3</sup> Appendix A lists the parties filing in the reconsideration

2. The *Report and Order* was the culmination of an omnibus rule making begun in 1987 to review all AM technical and legal standards, rules and policies with the intent of making needed revisions and devising new approaches that would help achieve a significantly improved AM service.<sup>2</sup> To help reach this goal, we relied on three essential and mutually supportive elements designed to assist in reducing congestion and interference in the AM band. The first element, Technical Standards, implemented new and revised AM technical standards that should reduce the interference with which AM broadcasters must contend in their primary service areas. The second element, Migration, opened ten new frequencies in the expanded band (1605-1705 kHz) to those existing stations that most significantly contribute to congestion and interference in the existing band. The third element, Consolidation, provided broadcasters greater incentive and flexibility to reduce interference through non-technical means. The *Report and Order* also addressed the issue of AM stereo as a means of making the AM service more competitive and relaxed the rules pertaining to Travelers Information Stations to allow for the authorization (on a secondary basis) of such stations on any assignable frequency in the AM band. Also, the *Report and Order* dealt with several other miscellaneous and administrative matters necessary to the implementation of the various initiatives adopted.

II. SUMMARY

3. Twenty-two petitions for reconsideration of the *Report and Order* have been filed.<sup>3</sup> Generally, the parties filing in this reconsideration proceeding supported the actions taken in the *Report and Order*. Those filing petitions for reconsideration, comments and reply comments mainly seek clarification or revision of specific rules or policy decisions relating to the new technical standards, the migration of existing licensees to the expanded band, the matter of AM receiver standards, Travelers Information Stations, and other miscellaneous matters. This Memorandum Opinion and Order addresses the issues raised in the petitions. Except for minor modifications to our technical standards and a reordering of the priorities governing migration to the expanded band, this Order affirms the decisions reached in the *Report and Order*.

III. TECHNICAL STANDARDS

A. Nighttime Interference Calculations.

4. *Background*. In the NPRM, we proposed an RSS 0% exclusion and a 1 mV/m limit threshold as the basis for a stricter nighttime calculation methodology. Additionally, the NPRM proposed to require existing stations that already exceeded this threshold to reduce their signal by 10% when proposing to modify their facilities. Most commenters opposed this proposal because it substantially reduced licensees' ability to modify and improve their stations. In response to their concerns, a modified approach was adopted in the *Report & Order*. The modified approach places

proceeding. While the petitions for reconsideration submitted by John R. Furr and the Illinois Department of Transportation were filed late, they will be treated as informal comments since we find that no party to this proceeding will be prejudiced thereby.

nighttime interference contributors into one of three categories: (a) high-level interferers, those which contribute to a station's 50% RSS; (b) mid-level interferers, those contributing to a 25% but not a 50% RSS; and (c) low-level interferers, those that do not enter the 25% RSS. Stations falling into the high interferer category must reduce radiation by 10% toward each affected station if a modification is proposed. Stations in the mid-level category are allowed to maintain current levels of radiation and stations falling in the low interferer category can increase radiation up to the 25% exclusion. New stations would have to comply with the low level, category (c), requirements. Both co- and adjacent channel contributions are considered in these calculations.

5. *Comments.* Several petitioners (CDE, dLR, Burrow) expressed concern that the impact of the adopted nighttime interference reduction method would fall most heavily on the older Class A and B stations. It is precisely these stations, dLR maintains, that generally will be most in need of modifications because of their older and oftentimes deteriorating antenna systems. LSC expressed concern that service losses resulting from the application of the adopted provisions might, in actuality, outweigh service gains arising from any reduction in interference.

6. Petitioners suggested a variety of alternatives as possible remedies to the perceived unfairness of our adopted nighttime interference reduction provisions. LSC and AFCCE suggested that the 10% reduction be applied only when the application proposes to increase power by 3 dB (double) or more. LSC also suggested that the 10% reduction requirement should be waived where it is demonstrated that applying the requirements would cause a net reduction in service. As an alternative, dLR suggests that stations proposing changes that are contributing to the 50% RSS of other stations should be allowed to maintain radiation rights to these other stations. CDE also presented several alternatives. CDE explains that for some stations proposing changes, a 10% reduction would drop the station from the 50% exclusion category to the 25% exclusion category. In these situations, CDE recommends that the rule be changed to require either 10% reduction or a reduction sufficient to remove the station from the 50% exclusion calculation, whichever is less. CDE also recommends that, in order to encourage the use of stereo in the AM band, the FCC eliminate the 10% reduction requirement for stations that choose to broadcast in AM stereo. For "all talk" stations, where stereo would be of little or no benefit, CDE suggests that installation of an appropriate audio filter could be substituted for the 10% reduction.

7. NAB maintains that the Commission should establish a clear waiver policy for the 10% interference reduction rule to cover stations that are forced to make involuntary changes. NAB agrees with some of the petitioners that existing stations should be allowed some latitude to make certain voluntary improvements to their facilities without being penalized by the full 10% interference reduction criteria. NAB supports CDE's proposal to require either a 10% reduction or a reduction sufficient to remove it from the 50% exclusion calculation, whichever is less. NAB also supports AFCCE's proposal that stations adversely affected by environmental changes should be able to augment their directional pattern without being subject to the 10% reduction criteria.

8. Petitioners raise other matters relating directly or indirectly to the adopted nighttime calculation methodology. Burrow, who opposes our 3 tier approach, is also opposed

to the inclusion of adjacent channel contributions to the RSS since it will result in a reduction in predicted coverage and will thus have an adverse economic impact on AM stations. AFCCE and Burrow both express concerns related to the consequences of applying domestic interference standards that are more strict than those contained in international agreements. They fear that stations in other countries could increase radiation toward this country, thus negating the practical effect of the interference decreases mandated by the new domestic rules. AFCCE questions whether the 10% reduction was intended to apply to pattern augmentations and suggests some minor clarifications and revisions to the rules. dLR questions the applicability of the 10% reduction to stations already at minimum radiation because of the minimum Q-factor permitted.

9. *Discussion.* We have carefully considered whether to further relax the modified nighttime interference standards as suggested by several petitioners. We conclude, however, that with one exception, the Rules and procedures adopted in the *Report and Order* strike an appropriate balance between the need to improve those situations where significant interference impairs a station's signal quality, and the need for flexibility in our treatment of applications for modification of station facilities where the interference involved is less significant.

10. A fundamental focus of the entire AM proceeding has been to ameliorate the interference present in the AM Band. The requirement for a 10% signal reduction under certain circumstances is a key element of our plan to accomplish this goal. In fact, it is the only provision adopted in the *Report and Order* that will directly reduce interference in the AM band. The standards and procedures adopted in the *Report and Order* were themselves a carefully crafted relaxation of the proposals set forth in the NPRM made in response to commenters concerns. We believe that any further major compromises in our approach would significantly diminish the possibility of meaningful nighttime interference reduction in the AM band.

11. We note that virtually all of the suggestions presented by the petitioners involve exceptions to the 10% reduction provision for certain special case situations. Some suggest that the 10% reduction not apply in the special case where power is increased by less than 3 dB, or where the resulting net area served is decreased. Yet all of these proposals would, if put into effect, significantly lessen the benefit of the 10% reduction provision. A principle objective of the rule making, however, is to restore the technical quality of AM service rather than to benefit a few narrow segments of that industry. Thus, we decline to make any substantial changes to the interference criteria adopted in the *Report and Order*.

12. Petitioners have persuaded us, however, to make one minor adjustment to our approach to nighttime interference calculations. In situations where a station proposing a change in facilities presently is included within the 50% RSS of another station, but with a reduction of less than 10% would drop into the mid-level 25% category, we agree with the petitioners who argue that it would be inequitable to require the station to meet the full 10% reduction criteria. In fact, in certain situations, such a 10% reduction could result in a station's interference contribution falling below that of other stations already in the 25% category. Accordingly, we are revising our rules governing these situations to require either an interference reduction of

10% or a lesser amount that would be sufficient to remove the station's interference contribution from the 50% exclusion calculation, whichever is the smaller change.

13. With regard to the suggestion that we establish a clear waiver policy for stations that must make involuntary changes, we believe that adoption of such a policy would likely limit our future flexibility to determine when waivers are warranted. We continue to believe that the case-by-case waiver policy articulated in paragraph 71 of the *Report and Order* is a more effective tool for determining whether applying the 10% reduction rule in a given situation will serve the public interest.

14. With respect to Burrow's opposition to the 3 tier approach and inclusion of adjacent channel signals, we note that he offered no information or argument not previously considered. Therefore, we deny his requested changes.

15. AFCCE and Burrow expressed concerns about the potential consequences of applying domestic interference standards that are more strict than those contained in international agreements. However, we believe it extremely unlikely that these changes to our domestic rules would permit foreign stations to increase radiation toward the United States. Nor do we believe that any significant radiation rights of U.S. stations would be lost internationally as a result of our changes. Nonetheless, we will carefully monitor any international activity that could possibly result in loss of domestic radiation rights. If indeed it appears that U.S. stations could actually suffer any significant loss of radiation rights internationally, we will take whatever steps are necessary to preserve U.S. interests.

16. Regarding AFCCE's concern about applicability of the 10% reduction provisions to augmentations needed to comply with the terms of a construction permit, we did not intend to make the 10% reduction applicable in routine augmentation cases necessitated by an out-of-tolerance proof-of-performance filed with a license application to cover an outstanding construction permit. On the other hand, we are convinced that augmentations necessitated by antenna readjustments caused by environmental changes or other circumstances beyond the licensee's control should be considered for waiver of the 10% reduction requirement, if otherwise applicable, on a case-by-case basis. Likewise, waivers related to reductions beyond the minimum pattern Q will also be handled on a case-by-case basis in accordance with Footnote 39 of the *Report and Order*.

#### B. Normally Protected Contour.

17. *Background.* A station's normally protected contour defines the area within which it is desirable to promote quality service and minimize interference, insofar as possible. During the comment phase of this proceeding, some parties proposed to change the Class B daytime protected contour to the 2 mV/m contour, from the 0.5 mV/m contour currently specified in the Commission's Rules. Such a change would, generally, permit many stations to increase their daytime power, and, therefore, provide a stronger signal in areas where it was alleged that the natural and man-made noise level precluded reception of 0.5 mV/m signals. The *Report and Order* retained the 0.5 mV/m protected contour for Class B stations operating during daytime.

18. *Comments.* CDE and dLR proposed to make the 1 mV/m contour the Class B protected contour, which would allow many stations to increase power. They argue that

increases in man-made noise and the new preference for stereo operation in the expanded band indicate that such a change is needed.

19. *Discussion.* Paragraph 56 of the *Report and Order* noted that 2 mV/m signals were needed for satisfactory wide-band reception, which would provide for the best reception of stereo signals. Indeed, this fact was crucial to our decision regarding the adjacent channel protection ratio, where we decided to apply a 6 dB protection ratio at the 0.5 mV/m contour that would only protect narrow band signals from adjacent channel interference, with wide-band reception protected at the 2 mV/m contour. Since CDE and dLR provided no new information in this matter in their petitions, no change in our decision is warranted.

#### C. "Simple" Directional Antennas in the Expanded Band.

20. *Background.* The Commission generally requires that a full Proof-of-Performance be submitted at the licensing stage for a directional AM station in order to demonstrate that the antenna system is operating within the authorized construction permit limits. Sections 73.151 and 73.186 set forth the specific requirements for the field strength measurement data necessary. These sections include details such as the number of measured radials necessary, their locations relative to pattern lobes and nulls, number and location of data points on each radial as well as other information essential to ensure that the actual antenna system is operating within specified tolerances. Often, full Proofs-of-Performance are extremely complex and time consuming, frequently necessitating the services of consulting engineers specializing in this area. At times, these proofs can also be prohibitively expensive. With these factors in mind, the Commission found it desirable to explore possible alternatives to full Proofs-of-Performance for directional AM stations in the expanded band. The *Report and Order* defined a simple directional antenna as one which uses two towers. Since interference prevention in the expanded band will be primarily accomplished by means of inter-station spacings, we decided that extensive proof-of-performance requirements would not be necessary for such simple directional antennas. Instead, for simple directional antennas in the expanded band, a measured radial would be required only in the directions for which the facility is short-spaced to other co-channel or adjacent channel stations.

21. *Comments.* AFCCE contends that the definition of simple directional antenna is vague and does not take into account the radiating characteristics of the pattern or the nature of the radiating elements themselves. AFCCE suggests that a simple directional antenna should be defined as one using series-fed radiators without top-loading or sectionalization. Further, AFCCE requests that a maximum-to-minimum radiation limit of 15 dB or less be established.

22. *Discussion.* The reason for exemption from the normal proof-of-performance requirements for simple directional antennas in the expanded band is that spacings between stations will make patterns with deep nulls unnecessary for protection purposes. Our experience over the years with AM directional arrays leads us to conclude that the definition of a "simple" directional antenna as one with two towers is sufficient for the limited purpose of distinguishing those antennas for which full Proof-of-Performance can be waived without being unnecessarily complex. No evidence has been presented to convince us that a

more detailed definition is necessary under the circumstances, and thus we will not alter the conclusions of the *Report and Order*.

#### D. 80% Coverage Criteria.

23. *Background.* The Commission has had a policy that 80% coverage of the principle community is sufficient for AM nighttime coverage requirements. The *Report and Order* codified this policy into the Rules in Section 73.24(i).

24. *Comments.* AFCCE states that the Commission has applied the 80% coverage criterion to the fulltime service of FM stations in recent years. AFCCE requests clarification as to whether the Commission intends to extend this 80% coverage criterion to the daytime operations of AM stations as well.

25. *Discussion.* The Commission did not intend to extend the existing "substantial compliance" policy for nighttime coverage to the daytime operation of AM stations. Rather, our intent was to codify the existing policy. Coverage of AM stations often varies widely from day to night. In fact, many AM stations operate with different power and antenna patterns day and night. For these reasons, we do not believe it is unreasonable to draw a distinction between coverage standards for day and night service. Further, the focus of this proceeding is the improvement of the AM service as a whole. Relaxation of coverage requirements is not generally consistent with that objective. Finally, AFCCE has shown no compelling need for a relaxation of AM daytime coverage requirements. Accordingly, we will make no changes in this rule.

#### E. Section 73.37(b).

26. *Background.* The *Report and Order* deleted Section 73.37(b) of the Commission's Rules. Consequently, the Commission no longer will permit a first local AM service to receive added interference within its 0.5 mV/m contour and up to its 1 mV/m contour.

27. *Comments.* Larry S. Tschirhart and dLR ask the Commission to reconsider its decision to delete section 73.37(b). Petitioners claim that if a station's nighttime operation can accept interference and still provide an interference-free signal over much of the city, it is only fair that daytime facilities receive the same treatment. Furthermore, they argue, retention of the provisions of section 73.37(b) would not have a deleterious effect on the availability of wideband radios since this rule applies to co-channel received interference only. Petitioner Jeffrey N. Eustis requests the Commission to consider the effect of the rule's deletion on those existing stations authorized as first service under Section 73.37(b) who wish to change their community of license. Such changes, from one first service community to presumably a larger first service community, may occur due to loss of a transmitter site, or the desire to serve a larger, rapidly growing neighboring area. Such moves will be impossible if a station cannot receive interference up to its new 1.0 mV/m at the new community. Therefore, Eustis reasons, Section 73.37(b) is a pro-service rule that has served the industry well in the past and can continue to do so.

28. On the other hand, the National Association of Broadcasters applauds the Commission decision to delete Section 73.37(b) of the Commission's Rules. NAB also proposes the deletion of Section 73.37(c) and (d). Section 73.37(c) allows Class C stations to receive overlap to their 0.5 mV/m contour under the assumption that both the

proposed operation and all existing Class C stations operate with 250 watts and use non-directional antennas for proposals requesting 1 kw. The same rationale applies for Section 73.37(d) where 100 watt Class C stations may propose to increase their power to 500 watts.

29. *Discussion.* While we understand the petitioners' arguments, we continue to believe that Section 73.37(b) encourages substandard operations and permits increased AM congestion and distorted service areas. Nighttime interference received is a function of stations already operating on the channel and is beyond the control of the applicant. Daytime interference received, however, is a function of both existing stations causing interference and the proposed facilities modifications. We note that our rules permit stations that already receive interference to their 1 mV/m contour to change sites or communities of license as long as there would be no net increase in the area within their 0.5 mV/m contour. Finally, regarding NAB's suggestion that we delete sections 73.37(c) and (d), we conclude that these sections should be maintained to accommodate modifications for the existing Class C stations. The probability of a new Class C station in the existing band is not great since these frequencies are already virtually saturated.

#### F. Applications for New Daytime-Only Stations in the Existing Band.

30. *Background.* The Commission discontinued the authorization of new daytime-only stations in 1987. In the *Report and Order* the Commission decided not to authorize new daytime-only stations in the expanded band.

31. *Comments.* Jeffrey Eustis supports acceptance of certain daytime-only applications in the existing band under limited circumstances. NAB supports the freeze on new AM daytime-only stations as well as its logical extension to the expanded band. NAB cites the likely diminution of at least some daytime coverage and probable future urging by daytime-only stations for extended hours.

32. *Discussion.* Petitioner presents no new information or arguments to persuade us that a continuation of the prohibition on the authorization of new daytime-only AM applications is not in the public interest. Each additional daytime-only station has a substantial preclusive effect on the potential assignment of unlimited-time stations on seven channels: the channel occupied by the daytime station, and three adjacent channels higher and lower in frequency. Moreover, the preclusive effect of additional daytime-only stations would not be confined to blocking possibilities for new unlimited-time stations. Such stations could also foreclose opportunities for existing stations to improve their nighttime services to the public because some stations may need to change their daytime facilities in order to upgrade their nighttime service. For these reasons we decline to encourage the filing of applications for more AM daytime-only stations.

#### IV. MIGRATION

33. *Background.* The Commission decided, as had been proposed in the NPRM, to limit initial eligibility to occupy the expanded band to existing stations. It declined to reserve channels in the expanded band for minorities or non-commercial operations, concluding that to do so would be inconsistent with the public interest objectives of reducing interference and congestion and improving technical quality in the existing AM band. It also concluded that little, if any, overall improvement in AM reception in

the existing band would be gained by allowing Class C (formerly Class IV) stations to migrate to the expanded band. The Commission further found that there is nothing in the record to show that the migration of Class C stations would significantly reduce overall interference in the existing band.

34. The *Report and Order* also established an order of priority for migration by existing licensees to the expanded band. Fulltime licensees who would most reduce interference and congestion by moving to the expanded band would be given top priority for slots in that band. If no fulltime station asked for a particular channel in an area, the next priority would go to daytime stations located within the 0.5 mV/m-50% skywave contours of Class A stations and which are licensed to serve communities of 100,000 or more that currently lack a local fulltime aural service. The next priority would go to other daytime-only stations that under current rules cannot operate at night. Finally, for ranking applicants within the respective fulltime and daytime categories, improvement factors were defined as the ratio of nighttime and daytime interference caused to the amount of nighttime and daytime service that the station provides.

35. Petitioners request that we reconsider: (a) our decision to restrict eligibility to migrate initially to existing licensees excluding Class C stations; (b) the order of migration priority among the eligible classes of existing licensees; and (c) the improvement factor we would use to rank applicants within each of these categories.

#### A. Migration Eligibility

36. *Reserved Channels for Minorities.* In a joint petition, the National Association for the Advancement of Colored People, the League of United Latin American Citizens and the National Black Media Coalition assert that awarding 100% of the expanded band to incumbent broadcasters "will have little or no impact on AM band interference," whereas awarding some of the expanded band to minorities would substantially alleviate the "gross underrepresentation" of minorities in the ownership of broadcast stations.<sup>4</sup> Petitioners also, for the first time, propose a scheme whereby incumbent broadcasters migrating to the expanded band would be issued tax certificates for selling their existing band stations to minorities. The seller would retain its license for a station in the expanded band. As part of this proposal, the minority buyers would then be allowed to operate these existing band stations together with new expanded band stations to be awarded them for a five year transitional period. Petitioners argue that this approach would give a cash infusion (along with a tax certificate) to any incumbent migrating to the expanded band and ensure the more rapid occupation of the band with incumbents plus minorities. Finally, petitioners point to a study by the NTIA released after adoption of the *Report & Order* that shows a decrease in the percentage and number of minor-

ity owned stations between 1990-91. They contend that such a decrease compels the Commission to reconsider its decision.<sup>5</sup>

37. *Discussion.* We decided in the *Report and Order* to restrict initial eligibility for expanded band allotments to existing licensees to maximize interference and congestion reduction in the existing band. We concluded that initially allowing new applicants in the expanded band would not further that primary goal of interference and congestion reduction. For the same reason we declined to reserve exclusive use of channels for minority, female or educational entities. Reserving even one channel of the ten available for a particular group's exclusive use would reduce by 10% the expanded band capacity available for achieving interference and congestion reduction. The petitioners have offered no persuasive reason for altering the *Report and Order* with respect to the issue of reserved channels in the expanded band. The Commission is concerned about the NTIA study cited by the petitioners showing a decrease in the percentage and number of minority owned stations between 1990-91. As noted earlier, we recognize that increasing the levels of minority ownership promotes diversity and therefore advances the public interest. Indeed, the Commission has taken action through further revisions to the radio ownership rules to address the need to increase opportunities for minority ownership. See *Revision of Radio Rules and Policies*, 7 FCC Rcd 6387 (1992) (reinstating and expanding minority ownership incentives). Moreover, minority applicants will have the opportunity to apply for channels remaining after the initial migration, using available comparative preferences. Petitioners' new proposal regarding the use of tax certificates is not a viable option in light of our decision to limit initial migration to the expanded band to existing licensees, and to require the eventual deletion of one existing band station for every expanded band station authorized. Moreover, this proposal would undermine the basic rationale of our decision, *i.e.*, the overall reduction of interference and congestion in the existing band. Also, the proposal is untimely since it is an entirely new proposal that should have been submitted earlier as a comment in response to the *NPRM*.

38. *Class C Licensees.* In its petition for reconsideration the National Association of Broadcasters (NAB) requests that the Commission consider giving Class C (formerly Class IV) licensees a chance to migrate to the expanded band during the "second round" of licensing. While it concedes that the migration of Class C stations to the expanded band may not result in the degree of interference reduction that might be achieved by the migration of other, higher-powered stations, NAB asserts that equity dictates giving these licensees a chance to migrate after the initial round of licensing. Petitioner notes that fifty-four Class C licensees had submitted letters of intent to migrate.

39. *Discussion.* The NAB has failed to refute our conclusion that little, if any, overall improvement in reception in the existing AM band would be gained by allowing Class C

<sup>4</sup> Petitioners have submitted no evidence in support of their claim that awarding all of the expanded band to incumbents will have little or no impact on interference.

<sup>5</sup> In paragraph 109 of the *Report and Order*, we noted that Multilingual Communications Association and Global Broadcasting System, Inc. had suggested that channels in the expanded band be set aside for minorities and women. Both

parties have advised the Commission that this statement mischaracterizes their respective positions. In fact, in its comments, Multilingual only asked that the expanded band be made available to all currently eligible parties while Global specifically asks that one channel be set aside for applicants who propose to provide multi-ethnic, multilingual broadcast service on a non-profit basis.

stations to migrate, and we decline to grant its request. As explained in the *Report and Order*, Class C stations provide local service to small communities without regard to either service or interference beyond their immediate service areas. Most Class C stations operate at a power of 1 kW, day and night, without consideration of interference to other Class C stations. Even if it were possible to accommodate a relatively large number of Class C stations in the expanded band, which is not feasible, no evidence has been presented anywhere in this proceeding to persuade us that any significant improvement in AM reception on Class C channels would result. For these reasons, we continue to find Class C stations ineligible for migration to the AM expanded band.

#### B. Existing Stations Causing Interference and Preferred Migrants.

40. *Background.* After the close of the comment period in this proceeding, Congress amended Section 331 of the Communications Act to add Section 331(b). Section 331(b) requires that, if technically feasible, the Commission must find a means to enable current daytime-only stations located in communities of more than 100,000 and within a Class I station primary service area to provide service to those communities 24 hours a day, if these licensees notify the Commission that they seek to provide fulltime service.<sup>6</sup>

41. *Comments.* In its petition for reconsideration, Radio Elizabeth, Inc., licensee of daytime-only AM station WJDM, Elizabeth, New Jersey, notifies the Commission that it seeks to provide full-time service to Elizabeth, New Jersey which has a population of more than 100,000 and is located within the primary service area of a Class I (now Class A) station. It contends that revising Section 73.30 of the Rules on reconsideration to give an overriding preference for migration to the expanded band to this special class of daytime-only AM stations is the obvious means of complying with the goals of Section 331(b) of the Act. Petitioner submits that the scope of the notice given in the NPRM envisioned establishing a set of priorities for migration and that the revision of these priorities on reconsideration is proper and does not require a further rule making. Petitioner states that apparently no more than four or five AM daytime-only stations across the country would fall in this special category.

42. *Discussion.* The NPRM in this proceeding gave notice of our intention to establish a set of priorities for the migration of existing AM licensees to the expanded band. While the *Report and Order* placed stations such as WJDM, in Elizabeth, New Jersey in the number 2 priority category, we now revise our criteria. This revision enables us to comply with the subject amendment to the Communications Act, which reflects a congressional determination that

enabling stations like WJDM to offer fulltime local service would be a significant benefit to the public interest. Furthermore, we find that, in view of the few stations involved, this reordering of the priorities does not impede our main policy objective of interference and congestion reduction in the existing AM band. Accordingly, Section 73.30 of the Commission's Rules will be amended to provide that stations defined in Section 331(b) of the Communications Act be given the first priority for migration to the expanded band. See *Policy Statement In the Matter of Amendment of Section 331 of the Communications Act of 1934*, 7 FCC Rcd 4905 (1992).

#### C. Improvement Factors

43. *Comments.* AFCCE and LSC assert that the ratio used to rank licensees seeking to migrate to the expanded band does not take service gains and losses directly into account<sup>7</sup> and therefore does not satisfy Section 307(b) considerations. AFCCE suggests that the ratio be calculated based upon the net change in total service area rather than the ratio of interference caused to service provided. Specifically, AFCCE requests that the ratio be redefined "by using the sum of the migrating station's and other stations' service differences as the numerator and the migrator's existing service as the denominator." In essence, this proposal adds an additional factor for the net change in service area for the migrating station in the numerator. LSC concurs with AFCCE on this matter.

44. Schober maintains that if a former Class II-S and III-S (now Class D) station enters the 25% exclusion RSS of some stations, it should be given nighttime improvement factor credit in priority ranking for the expanded band. CDE also supports adopting additional provisions to enhance the opportunities for Class D stations to migrate to the expanded band.

45. Schober also suggests that "immediate" migrants, those willing to relinquish their existing band licenses immediately as opposed to within 5 years, should be given some priority enhancement because they will improve the interference situation immediately as opposed to 5 years from now. Finally, Schober believes that existing stations on 1590 and 1600 should be given a special preference because they preclude operations on 1610 and 1620 in the expanded band.

46. Polnet maintains that our prioritization scheme is contradictory. It notes that on the one hand we claim that reduction of daytime interference is important enough to warrant considering a fulltime station's daytime interference in calculating its ranking within the fulltime station category, yet we continue to maintain an entirely separate category for daytime stations in the ranking. Polnet argues that a daytimer, who by migrating could eliminate massive

<sup>6</sup> Section 331(b) of the Communications Act of 1934, as amended, reads as follows:

(b) AM RADIO STATIONS -- It shall be the policy of the Commission, in any case in which the licensee of an existing AM daytime-only station located in a community with a population of more than 100,000 persons that lacks a local full-time aural station licensed to that community and that is located within a Class I station primary service area notifies the Commission that such licensee seeks to provide full-time service, to ensure that such a licensee is able to place a principal community contour signal

over its entire community of license 24 hours a day, if technically feasible. The Commission shall report to the appropriate Committees of Congress within 30 days after the date of enactment of this Act on how it intends to meet this policy goal.

<sup>7</sup> The ratio of daytime and nighttime interference a station causes to the amount of daytime and nighttime service that the station provides will be used to determine its improvement factor.

daytime interference, would be beaten by an unlimited time facility with only minimal interference improvement. Polnet believes that there should be no arbitrary distinction for ranking purposes between unlimited time and daytime only stations.

47. *Discussion.* We have carefully reviewed the factors chosen in the *Report & Order* to define the ratio that will rank applicants within each preference category. We remain convinced that this carefully crafted formula will permit an equitable selection of migrators to the expanded band and improve service quality in the existing band.

48. The concept of considering net gain or loss in service area would be worthwhile if our objective was to improve the circumstances of those licensees seeking to migrate to a new channel. However, our goal in selecting potential migrators has been to favor those who, by changing frequency, would offer the greatest benefit to those licensees who remain behind in the existing band (535 - 1605 kHz). AFCCE's suggested revision to the adopted improvement factor would disproportionately favor those prospective migrating AM stations who, while not significantly reducing interference to the existing band, would gain large amounts of service area by trading, for example, a relatively low power existing band operation for a higher power expanded band operation. This is inconsistent with our overall interference reduction theme since it does not necessarily effectuate a migration of those stations which cause the most interference and congestion. Further, we believe that AFCCE's proposal, to include the difference between a migrating station's existing and expanded bands' service areas in the numerator and then subsequently dividing by the migrating station's existing service area, effectively double-counts the significance of the existing service area factor and thereby tends to diminish the importance of the interference reduction factor. We do not believe such a double-count is appropriate. Additionally, we note that accurate computation of expanded band service areas presents serious practical problems. It is impossible to precisely compute expanded band service areas until the entire planning process has been finalized since this computation requires knowledge of all the operational details of the expanded band stations, including site locations, and some of these parameters will not be available until the planning and application processes have been completed.

49. We also do not believe that it is appropriate to revise the improvement factor calculations to consider the nighttime improvement that would result from the migration of former Class II-S and III-S facilities that enter the 25% exclusion RSS. Nighttime operations by former Class II-S and III-S facilities are secondary; their permitted power levels were calculated on a non-interfering basis in accordance with the rules in effect at the time they were originally authorized. These power levels were assigned without consideration of coverage or service or whether these operations would experience interference from subsequently authorized facilities. Additionally, these operations are not obligated to comply with the rules governing minimum operating schedules and therefore provision of such service is completely at the licensee's discretion. For these reasons, such services do not warrant inclusion in the improvement factor calculations. We also decline to revise

the ranking factor calculation to remove the distinction between unlimited time and daytime only categories because we believe that, wherever possible, a licensee's migrating to the expanded band should produce a net reduction in interference experienced during nighttime hours. We take that position because nighttime is the period subject to the most pervasive reception of undesired signals affecting operation in the AM Band. This is due to the enhanced propagation of skywave signals. Nor do we find compelling reason to favor applications of "immediate" migrators. In effect, such a move would tend to forego greater long term benefits for lesser short term gains. Finally, while operations on 1590 and 1600 kHz do impose some constraints on the use of the expanded band, all assignments, in both the existing and expanded bands, impose constraints upon future assignment flexibility to some degree. Such an imposition of constraints is not, in and of itself, sufficient justification, in our view, to warrant a favored status among applicants for the expanded band channels.

## V. AM RECEIVER STANDARDS

50. *Background.* In the *Report and Order*, the Commission declined to set mandatory standards for either AM stereo capability or technical quality of AM receivers.<sup>8</sup> The Commission noted that receiver design involves many tradeoffs among performance, features and cost. Achieving the proper balance among these competing factors is best left to receiver manufacturers and, ultimately, the marketplace. Additionally, the imposition of compulsory standards would likely raise the cost of receivers and eliminate models with which some buyers are presently satisfied. The Commission encouraged receiver manufacturers to market receivers with AM stereo capability as well as NRSC-3 characteristics, on a voluntary basis.

51. *Comments.* Burrow argues that the Commission should direct receiver manufacturers to incorporate expanded band and variable bandwidth I.F. and audio stages in new units. Burrow also maintains that the Commission should require stereo reception capability for automotive and high-end receivers.

52. The EIA opposes Burrow's suggestions stating that Burrow "does not explain the bases for these proposals, nor does he acknowledge, much less attempt to refute, the Commission's stated reasons for relying on marketplace factors to address these matters." EIA goes on to cite interindustry coordination efforts such as the NRSC and joint NAB-EIA AMax certification program as examples of successful voluntary efforts regarding the technical aspects of AM receivers.

53. *Discussion.* We will continue to rely on marketplace factors to determine the characteristics appropriate for AM receivers. Industry is in a much better position than government to ascertain and respond to the consumer demand regarding price, quality and features desirable in an AM receiver. In this regard, we note the progress made toward this end with industry groups such as the NRSC and joint NAB-EIA AMax certification program. No new informa-

<sup>8</sup> Subsequent to release of the *Report and Order* in this proceeding, the Telecommunications Authorization Act of 1992 was enacted. Section 214 of the Authorization Act requires the

Commission to adopt a single AM broadcasting stereo transmission standard. See *Notice of Proposed Rulemaking* in ET Docket No. 92-298, adopted December 10, 1992, 8 FCC Rcd 688 (1992).

tion has been submitted that persuades us that our initial decision to let the marketplace set AM receiver standards was incorrect.<sup>9</sup>

## VI. TRAVELERS INFORMATION STATIONS

### Travelers Information Service Operating Frequency and Technical Standards.

54. *Background.* In the *Report and Order*, the Commission decided to permit Travelers Information Stations (TIS) to operate on any channel in the AM band, on a secondary basis, and adopted co-channel separation criteria in Part 90 of the Rules.

55. *Comments.* NAB opposes TIS operations throughout the AM band, even on a secondary basis, and proposes instead that 530 and 1710 kHz be used. NTIA, having proposed a primary and exclusive allocation to TIS at 1700 kHz during the proceeding, requests that we repeal the newly adopted rules affecting TIS operations and instead use the usual interagency coordination process in order to obtain a mutually acceptable resolution to the issue. NTIA's position on 1700 kHz was supported by petitions from four other TIS interests: AASHTO and the Maryland, Oklahoma and Illinois Departments of Transportation. AASHTO and the Illinois DOT went further and also support the alternative of staying on 1610 kHz, at least for a period of time. NTIA, in its petition, also referred to a new law, "The Intermodal Surface Transportation Efficiency Act of 1991" (Pub. L. No. 102-240, 105 Stat. 1914 (1991), which refers to the "Intelligent Vehicle Highway System, IVHS." NTIA states that the Federal Highway Administration planned to use 1700 kHz to transmit IVHS messages. CDE proposes that initial assignment of TIS stations be made to specific frequencies such as 530, 1690 and 1700 kHz, with other channels employed only after the first ones are saturated, amounting to a TIS set-aside. Radio Station WBZK-AM suggests that a single frequency be used for TIS operation, although no specific frequency was cited.

56. CDE and dLR also propose that the frequency tolerance for TIS comply with that specified for the AM band (20 Hz compared to current 100 Hz for TIS) in order to minimize interference and that TIS be made generally subject to the same technical standards as AM stations. CDE lays out a comprehensive procedure for accomplishing that end in seven detailed recommendations based upon a worst-case application of the technical standards now proposed for TIS in Part 90. A prominent feature of CDE's proposal is the requirement that the Commission's AM Branch review every TIS application.

57. *Discussion.* Petitioners renew arguments concerning TIS stations that the *Report and Order* already considered and rejected. The *Report and Order* addressed NTIA's argument concerning the dedication of 1700 kHz to TIS,

explaining that such an action would not achieve the principal goal of this proceeding, a reduction of interference in the existing AM band. Moreover, our decision to provide multiple channel assignment flexibility for TIS offers new prospects for the growth of the TIS service, as well as imposing minimal impact on existing use of 1610 kHz by the TIS service. Appendix D of the *Report and Order* showed that only four broadcast stations could migrate to 1610 kHz in the Sample Allotment Plan. "The Intermodal Surface Transportation Efficiency Act of 1991" cited by NTIA was not previously considered in this proceeding. Since this law (adopted December 18, 1991) does not address TIS operations as part of the IVHS, its relevance to this proceeding is unclear. Regarding NAB's suggestion to use 530 kHz and 1710 kHz for TIS, we note that 530 kHz is already available for use and that since 1710 kHz is outside of the broadcast band under consideration in this proceeding, it is too late to consider making it available for TIS in this proceeding.<sup>10</sup>

58. CDE's approach to the administration of the TIS would place a substantial paper work burden on the applicants, who currently certify compliance with Part 90, and do not submit detailed engineering exhibits, since TIS licenses are often valid over large areas. We find it unnecessary to impose such a burden on the TIS, since the stations will operate on a secondary basis. Another new issue raised by petitioners is whether we should change the existing 100 Hz frequency tolerance for TIS stations. We acknowledge that unless TIS stations operate with the same frequency tolerance as broadcast stations, there would be a greater potential for interference than assumed by the new co-channel separation requirements. Once again, however, we note that TIS stations will be operating on a secondary basis to broadcasting. Additionally, we understand that typical TIS equipment now in use meets a much higher standard (around 20 Hz). For these reasons, we find that changing the existing frequency tolerance is not necessary.

## VII. OTHER MATTERS

59. *Cuban Interference Relief STA's.* Comments were filed by Cox Enterprises, Inc. (Cox), parent company of the licensees of two stations that face similar, though somewhat exceptional, difficulties, WIOD, Miami, Florida and WSUN, St. Petersburg, Florida. Both stations currently operate under separate Special Temporary Authorizations (STA's) to permit increased power levels to compensate for interference received from Cuban stations that were not coordinated under the terms of relevant international notification agreements. Cox cites the persistent nature of the Cuban interference and the substantial expense involved in upgrading each of the affected facilities, and therefore requests that WIOD and WSUN be permanently licensed to operate with those increased facilities.<sup>11</sup>

<sup>9</sup> At a minimum, AM stereo receivers would be manufactured to conform with the stereo transmission standard adopted in ET Docket 92-298.

<sup>10</sup> We are sensitive to concerns that public reliance on TIS requires that such service not be subject to undue disruption. Therefore, in a future proceeding, we will reexamine the status of travelers' information stations and explore the feasibility of a primary allocation for TIS at 1710 kHz. Federal government TIS

operations will continue on 1610 kHz on a co-primary basis until they can be reaccommodated in an orderly fashion on an alternative frequency.

<sup>11</sup> The WIOD and WSUN authorizations, as well as 14 other such STA's, were conditioned on there being no interference to any other valid station assignments. Because of the more restrictive allocation requirements adopted in the *Report and Order*, subsequent renewals of these authorities would likely require the reduction of existing STA power levels to maintain their non-interfering status.

60. We believe that the public interest requires some accommodation to the group of stations which find themselves caught in this situation. Upon demonstration that Cuban interference is still occurring to at least the same degree as it had been when the STA was last renewed, and barring complaints from any of the newly affected stations, we will not require stations operating under the authority of the existing Cuban STA's to modify their present operations to comply with the new technical criteria each time the STA is renewed. Any new requests or modifications of existing STA's will, however, be required to show compliance with the new, more restrictive allocations standards. At such time as the U.S. and Cuba reach agreement regarding their AM broadcast services, these STA's will be cancelled.

61. *Classification of sub-50 kilowatt Class 1 stations.* The AFCCE and Buckley Broadcasting Corporation of California, Inc. (Buckley) sought reconsideration on a change made in the *Report and Order* to Section 73.182(a)(1)(ii) of our rules. Previously, the rules had permitted Class 1-B stations operating within the coterminous 48 states to use power levels as low as 10 kilowatts. Section 73.182(a)(1)(i) as modified in the *Report and Order* now requires all mainland Class A stations to operate with 50 kW, a provision which would ostensibly downgrade those former Class 1-B stations operating with less than 50 kW to Class B status, thereby depriving those operations of the considerably enhanced protection to which former Class 1 and present Class A stations are beneficiary.

62. The vast majority of mainland Class A stations are licensed to operate with 50 kW, a power level best suited for stations intended to provide wide-area service in the most efficient manner. It was not the Commission's intent to diminish protection to any category of AM station; quite the contrary, the goal was to improve protection wherever possible. We now clarify the status of these stations under our revised rules.

63. Those stations listed as Class 1-A and 1-B prior to the *Report and Order* will be classified as Class A stations regardless of their presently licensed power levels. We will update the records for these facilities in the FCC files and data bases to reflect this change. This "grandfathering" treatment shall also apply to any Class A station that in the future decreases its power below the 50 kW level to achieve interference reduction or to obtain authorization to modify its facilities. All shall continue to be classified as Class A unless a power level is used which is below that required to generate a secondary service contour, *i.e.*, a skywave signal of at least 0.5 mV/m for 50% of the time that extends beyond the groundwave service contour.

64. *Directional Antenna Augmentation Requests.* LSC and the AFCCE question changes made in the *Report and Order* to procedures for the filing of directional antenna pattern augmentation requests. Specifically, these commenters ask whether additional tolerance should be permitted at non-monitored azimuths after the analysis of measurement data indicates a radiated field in excess of the permitted value. At those azimuths the *Report and Order* specifies that the allowable augmentation value shall be the measured value in that direction with no additional tolerance. Commenters point to procedures established in Docket No.

21473<sup>12</sup> and observe that the "no-tolerance" approach is inconsistent with the methods used in that docket. They suggest that a 5% tolerance be added in those directions.

65. The Standard Pattern Conversion made in Docket No. 21473 presented general guidelines to be used for the conversion of many hundreds of theoretical patterns into standard and modified standard antenna patterns. Most of these individual conversions required unique administrative manipulation because they defied the application of a simple computerized methodology for processing of these theoretical patterns. Pattern maximum expected operating values (MEOV's), point MEOV's, previously accepted measured patterns that had radiated fields in excess of the theoretical limits, RMS deficiencies, and numerous other anomalous developments created the need for general guidelines and a procedure incorporating a liberal tolerance to treat the largest variety of these situations in the most uniform manner.

66. The focus of our efforts now is concentrated on the concept of AM improvement and reducing the potential for interference within the band rather than accommodating a large number of difficult-to-adjust antenna systems. Thus, there is little justification for applying procedures that were never intended for use beyond the initial pattern conversion project and will not achieve an improved AM service. Augmentation is not a process that was conceived to permit unjustified pattern relaxation routinely. It is to be a last resort after all other design and adjustment techniques have failed, serving in effect as a pattern "blow-out patch", which should be used only in rare cases where there is an unforeseen standard pattern shortcoming. Therefore, we deny petitioners' request; the text of Section 73.152 will remain as stated in the *Report and Order*.

67. *Class B Power Restrictions Imposed by NARBA.* LSC and dLR raise concerns about limitations placed on Class B (formerly Class III) stations wishing to increase power above 5 kW but restricted by North American Regional Broadcasting Agreement (NARBA) requirements pertaining to this country, the Bahamas Islands and the Dominican Republic. These limitations prohibit power levels beyond 5 kW on the former Class III frequencies. Petitioners argue that Class B stations that may otherwise qualify for power increases will be precluded from increasing power by Section 73.1650, which requires consideration of all binding international agreements, including NARBA. They urge the Commission to consider these situations on a case by case basis.

68. The Commission has been working with the Dominican Republic and the Bahamas for a substantial time in an effort to replace the NARBA requirements. Further discussions are to be held in the months ahead. Until an agreement can be reached terminating the NARBA, we will use the Note to Section 73.21(b) as a guideline. If a situation warrants, we will consider grant of an application which falls in this category, on a case by case basis, subject to appropriate conditions, in accordance with the provisions of Section 73.23(b).

69. *Night Power for Class D Stations.* In response to the AFCCE petition, we clarify that the calculation of permissible night power for Class D stations specified in section

<sup>12</sup> 84 FCC Rcd 796 (1981).

73.99(f)(7) will employ a 25% exclusion, since such stations can be classified as "low" interferers. The rule will be corrected to read as follows:

"(7) For protection purposes, the nighttime 25% RSS limit will be used in the determination of maximum permissible power."

#### VIII. ADMINISTRATIVE MATTERS

70. *Processing Procedures.* The *Report and Order* stated that, upon lifting of the freeze on AM applications, new applications must comply with the new technical standards. Applications currently on file that have been "cut-off" were not required to amend. All others were given sixty days from the effective date of the *Report and Order* to file amendments to satisfy the requirements of the revised rules.

71. In a petition for reconsideration, Romar Communications, Inc. notes that it filed an application for a new AM station in Lansing, N.Y. before the AM freeze went into effect. That application was returned as defective and Romar subsequently (after the freeze took effect) refiled an amended application and a request for acceptance *nunc pro tunc*. The latter was opposed and remains pending. The application has not, therefore, been "cut off." Romar argues that, because it would not be able to amend its refiled application in a satisfactory manner, it would be inequitable to apply the new rules to that application, which was originally filed to meet old technical standards. Petitioner asks that the *Report and Order* be revised so that the new technical standards will not apply to applications with a status similar to its Lansing application.

72. We deny Romar's request. We continue to believe that the necessity for definitive processing line procedures requires that the new technical rules be applied in the manner specified in the *Report and Order*.

73. For the sake of clarification, we repeat here the corrections and clarifications that were made to the *Report and Order* released on October 25, 1991 prior to its publication in the Federal Register on December 12, 1991.<sup>13</sup>

In the note which follows Section 73.25 (b) the value of  $\underline{4}$  microV/m was erroneously specified, it has been corrected to read  $\underline{5}$  microV/m.

To footnote 1 which follows the Table at the end of Section 73.182 (q), the following sentence was added to clarify what had been an ambiguous meaning of the applicability of the footnote:

"This note does not apply to Class C stations; or to the protection of Class A stations which are normally protected on a single signal non-RSS basis."

The value used in Section 73.185 (d) for the upper bracket angle was corrected to read "16.6 degrees" and not "16.3 degrees" as had been stated in the *Report*.

The instructions preceding the revisions made to Section 73.190 were corrected to indicate that new Figures 7 and 8 were being included.

To clarify the use of the pertinent formula 73.190 (b) Note (3) was corrected to read:

In equation (7),  $k = -1$  for west to east paths (i.e.,  $br > bt$ ), otherwise  $k = 1$ .

Section 90.242 (a) was corrected to reflect the determinations made in the *Report* to read:

The frequencies 530 through 1700 kHz in 10 kHz increments may be assigned to the Local Government Radio Service for the operation of Travelers Information Stations subject to the following conditions and limitations.

The *Report and Order* was corrected in Paragraph 216 to show that the lifting of the freeze on AM applications will pertain to not only major change applications but to all types of modification applications; accordingly, the word "major" was stricken from the text of the second sentence of Paragraph 216.

74. The only other changes made to the version of the *Report* that appeared in the Federal Register involved the Ordering Clauses (Par. Nos. 220, 221 and 222 of the *Report*). These corrections were effected to indicate that, in addition to Part 73, 47 CFR Part 2 and Part 90 had been amended; and also to indicate the effective dates of the amended rules, application forms, and the removal of the application filing freeze.

#### IX. REGULATORY FLEXIBILITY ACT

75. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the *Report and Order* detailing (i) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. The petitions for reconsideration have triggered no substantive changes to the earlier decision and consequently to that final analysis.

#### X. ORDERING CLAUSES

76. Accordingly, IT IS ORDERED that the petitions for reconsideration filed in this proceeding ARE GRANTED to the extent indicated herein and are otherwise DENIED.

77. IT IS FURTHER ORDERED that pursuant to authority contained in Sections 4 (i), 301, 303(b), (f), (g), (i), and (j), 307(d), 308(a), 310, 312, 313, 314 and 331(b) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4(i) 301, 303(b), (f), (g), (i), and (j), 307(d), 308(a), 310, 312, 313, 314 and 331(b), Part 73 of the Commission's rules and regulations, 47 CFR Part 73, IS AMENDED as set forth in the attached Appendix B. The rules will go into effect 30 days after publication of this *Memorandum Opinion and Order* in the Federal Register.

78. For further information, contact Larry Olson, (202) 254-3394, Policy and Rules Division, Mass Media Bureau.

<sup>13</sup> 56 FR 239.

## FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy  
Secretary

## APPENDIX A

## AM PETITIONS FOR RECONSIDERATION

- 1) COHEN, DIPPELL AND EVERIST, P.C. (CDE)
- 2) R. MORGAN BURROW, JR.
- 3) JEFFREY N. EUSTIS
- 4) DENNIS JACKSON (RADIO STATION WREF)
- 5) THE OKLAHOMA DEPARTMENT OF TRANSPORTATION
- 6) RADIO ELIZABETH, INC. (RADIO STATION WJDM, ELIZABETH, NJ)
- 7) POLNET BROADCASTING COMPANY, LTD. (RADIO STATION WKTA, EVANSTON IL)
- 8) ROMAR COMMUNICATIONS, INC.
- 9) THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE (NAACP)
- 10) NATIONAL ASSOCIATION OF BROADCASTERS (NAB)
- 11) ASSOCIATION OF FEDERAL COMMUNICATIONS CONSULTING ENGINEERS (AFCCCE)
- 12) THE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA)
- 13) BURKHARDT MONITORING SERVICE
- 14) LAHM, SUFFA & CAVELL, INC. (LSC)
- 15) BUCKLEY BROADCASTING CORPORATION OF CALIFORNIA, INC. (BUCKLEY)
- 16) LARRY S. TSCHIRHART
- 17) DUTREIL, LUNDIN & RACKLEY, INC. (dLR)
- 18) THE MARYLAND DEPARTMENT OF TRANSPORTATION (MDOT)
- 19) THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS (AASHTO)
- 20) EDWARD SCHOBER, P.E.
- 21) JOHN R. FURR late filed
- 22) ILLINOIS DEPARTMENT OF TRANSPORTATION late filed

## APPENDIX B

## COMMENTS FILED IN RESPONSE TO THE PETITIONS FOR RECONSIDERATION

- 1) DUTREIL, LUNDIN AND RACKLEY, INC (dLR)

- 2) ELECTRONICS INDUSTRY ASSOCIATION (EIA)
- 3) NATIONAL ASSOC. OF BROADCASTERS (NAB)
- 4) RADIO AIDS, INC
- 5) LOUIS A. WILLIAMS, JR.
- 6) GEORGE BRADSHAW, SCAN COMMUNICATIONS
- 7) HEIMERL & ASSOCIATES
- 8) COX ENTERPRISES, INC
- 9) NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA)
- 10) RADIO TEN CORPORATION, RADIO STATION WCMX
- 11) COMMERCIAL RADIO MONITORING COMPANY (CRMC)
- 12) JEFFREY N. EUSTIS
- 13) DELTA ELECTRONICS, INC.
- 14) RADIO STATION WBZK-AM late filed
- 15) DAVID W. SCHMIDT late filed

CONCURRING STATEMENT OF  
COMMISSIONER ANDREW C. BARRETT

## RE: Review of Technical Assignment Criteria for the AM Broadcast

At the time of our Report and Order in this proceeding, I concurred in this item because of its failure to adequately address my concerns regarding the impact on small radio station businesses, including those who are minority owned.<sup>1</sup> I felt the decision was inequitable then with respect to these entities. I continue to believe that is the case in this subsequent order. It is not surprising to me that the Commission finds equitable reasons, as a matter of law or policy, to modify our prior Order and allow certain entities priority status in the expanded band where: 1. AM daytime-only stations in communities of more than 100,000 and within a Class I station primary service area seek to provide full-time, 24-hour service<sup>2</sup>; and 2. Travelers Information Stations seek to operate on a primary status within the AM expanded band<sup>3</sup>. The Order finds that such actions are likely to have a deminimis impact on our goal of reducing interference. It also acknowledges that other public interest concerns can be considered beyond interference reduction with respect to expanded band allotments. Thus, I am surprised that this Order selectively carves out these concerns while rejecting others with similar merit. Our decision to deny opportunities for Class C licensees to migrate to the expanded band is inequitable. Our decision to reject some type of priority allocation for all AM daytime only stations and minority-owned AM stations<sup>4</sup> in a portion of the expanded band also continues to be inequitable. I believe that arguments on reconsideration justify granting these various entities equal priority in the reallocation of at least a portion of the AM expanded band. To selectively support public interest concerns for certain entities in the expanded band, yet reject small business and

minority ownership concerns despite statistical evidence that supports more equitable treatment, is an arbitrary exercise in regulatory linedrawing. Thus, I concur.

#### FOOTNOTES

<sup>1</sup> See, Concurring Statement of Commissioner Andrew C. Barrett, Report and Order, Sept. 26, 1991.

<sup>2</sup> See Order at 12.

<sup>3</sup> See Order at 16.

<sup>4</sup> An NTIA study during the past year shows that minority ownership statistics in broadcasting continue to be abysmal. Our efforts to address minority ownership issues in the context of the revised radio rules also have not yielded significant improvements in minority ownership. If anything, small broadcasters, including most minorities, appear to be struggling to compete with the consolidation among larger group owners. Thus, in the context of trends over the last decade, minority ownership in broadcasting is continuing to decline, not improve.

Concurring Statement of  
Commissioner Andrew C. Barrett

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