

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

In re Petition of

Polnet Communications, Ltd.
licensee of
WKTA(AM), Evanston, Illinois

For Reconsideration of Public Notice
Announcing Interference Improvement
Factors for Stations Proposing to
Migrate to the AM Expanded Band

MEMORANDUM OPINION AND ORDER

Adopted: October 7, 1994; Released: October 13, 1994

By the Commission: Commissioner Barrett issuing a concurring statement.

1. The Commission has before it a petition filed by Polnet Communications, Ltd., licensee of WKTA(AM), Evanston, Illinois ("Polnet"), requesting reconsideration of the December 3, 1993 action of the Chief, AM Branch, acting pursuant to delegated authority, announcing interference improvement factors for stations that have petitioned to migrate to the AM expanded band.¹ Specifically, Polnet contends the staff erroneously interpreted Section 73.35 of the Commission's rules, which sets forth the formula for calculating improvement factors for prospective migrators to the expanded band. See 47 C.F.R. §73.35. Polnet further contends that the asserted error resulted in WKTA(AM) being credited with a lower than warranted improvement factor, adversely affecting WKTA(AM)'s eligibility to migrate to the expanded band.

2. *Background.* In the *AM Improvement Order, supra*, the Commission sought to transform and revitalize the AM broadcast service by adopting revised AM technical criteria, including rules to open ten newly available frequencies in the expanded band to those AM stations that significantly contribute to congestion and interference in the existing band.² In order to strictly manage migration to maximize the interference reduction benefits of each expanded band allotment awarded, the Commission established an order of priority for migration by existing licensees to the expanded band.³ Daytime-only stations located in communities of more than 100,000 and within a Class A station's primary service area receive top priority for slots in the band if they notify the Commission that they seek to provide full-time service.⁴ The next priority goes to full-time licensees who would most reduce interference and congestion by moving to the expanded band. The final priority belongs to other daytime-only stations. For ranking applicants within the respective full-time and daytime priorities, the Commission adopted improvement factors consisting, where applicable, of the sum of two ratios, one for nighttime interference-caused area to nighttime interference-free service area and one for daytime interference-caused area to daytime interference-free service area. See *AM Improvement Order*, 6 FCC Rcd at 6308-6311; see also 47 C.F.R. §73.35. The larger the improvement factor, the greater the improvement in the existing band if the station causing the interference migrates to the expanded band. Pursuant to 47 C.F.R. §73.30, licensees seeking to migrate to the expanded band have filed petitions to migrate, and the subject stations have been ranked according to their improvement factors within each of the three categories of stations eligible to migrate to the expanded band.⁵ Specifically, stations in priority one were ranked 1 to 4, stations in priority two ranked 5 to 332, and stations in priority three ranked 333 to 688.⁶ WKTA(AM), a daytime-only station, received a ranking of 640 based on an interference improvement factor of 0.0099.

3. *Polnet's Contentions.* Polnet requests that the Commission recalculate the improvement factors in view of an asserted error in excluding multiple-station interference areas from the daytime caused-interference areas of prospective migrators. Polnet contends that in calculating the

¹ See *FCC Announces the Interference Improvement Factors for Stations which have Petitioned to Migrate to the Expanded Broadcast Band*, Public Notice (December 3, 1993). The expanded band consists of ten AM broadcast channels allotted by the Commission to the 1605-1705 kHz band. See *In Review of the Technical Assignment Criteria for the AM Broadcast Service*, 6 FCC Rcd 6273 (1991), *recon. granted in part and denied in part*, 8 FCC Rcd 3250 (1993) [hereinafter *AM Improvement Order*]. Polnet filed a petition to migrate to the expanded band on June 30, 1993. WKTA(AM) is a Class D AM station licensed to operate on the frequency 1330 kHz with operating power of 5000 watts daytime and 17 watts nighttime using a directional antenna system during daytime hours only. Petitions requesting reconsideration of final actions taken pursuant to delegated authority may be referred by such authority to the Commission, as in the instant case. See 47 C.F.R. §1.106(a)(1).

² The Commission found that migration to the expanded band would produce a general reduction in interference levels in the existing AM band in furtherance of the goal for existing band stations of full-time operation, competitive technical quality, wide area daytime coverage, and nighttime coverage at least 15% of daytime coverage. See *AM Improvement Order*, 6 FCC Rcd at 6303, n.41.

³ The Commission restricted eligibility for expanded band authorizations to existing AM licensees in order to redress unique technical problems present in the AM service, but noted that its action should not be taken to suggest any generalized Commission policy favoring existing licensees over new entrants in other services where new or expanded opportunities may arise. See *AM Improvement Order*, 6 FCC Rcd at 6276.

⁴ See 8 FCC Rcd at 3255. This priority is based on Section 331(b) of the Communications Act of 1934, as amended, which reflects a legislative determination that enabling such stations to offer full-time local service would be a significant benefit to the public interest. See 47 U.S.C. §331(b); see also *In re Amendment of Section 331 of the Communications Act of 1934 ("Policy Statement")*, 7 FCC Rcd 4905 (1992).

⁵ See *Federal Communications Commission To Open "Filing Window" on AM Expanded Band Applications*, Public Notice (April 15, 1993).

⁶ Daytime-only stations having an improvement factor equal to 0.0 are not eligible to migrate to the expanded band. See *AM Improvement Order*, 6 FCC Rcd at 6311, n.50.

composite degree of service lost by co-channel and adjacent-channel stations as a result of interference caused by a prospective migrator, and, specifically, the amount of interference improvement that would be obtained through migration of that station to the expanded band, the staff improperly excluded from the calculation of interference caused by the prospective migrator those areas in which the migrator is not the exclusive contributor of interference. Polnet maintains that this methodology contravened Section 73.35 of the Commission's rules, and that the asserted error resulted in unrealistically small improvement factors for stations such as WKTA(AM).⁷

4. *Discussion.* The *AM Improvement Order* sought to restore the overall integrity of the AM service by reducing the interference with which AM broadcasters must contend in their primary service area. See *AM Improvement Order*, 6 FCC Rcd at 6276. Consistent therewith, Section 73.35 of the Commission's rules provides, in relevant part, that in calculating the daytime improvement factor of an AM station petitioning to migrate to the expanded band, "the composite amount of service lost by co-channel and adjacent channel stations each taken individually, that are affected by the subject station, excluding the effects of other assignments during each study, will be used as the numerator of the daytime improvement factor. The denominator will consist of the actual daytime service area (0.5 mV/m) less any area lost to interference from other assignments." See 47 C.F.R. §73.35.⁸ Polnet contends that the language of Section 73.35, specifically the phrase "excluding the effect of other assignments," plainly requires that the Commission determine the entire area of interference caused by a prospective migrator to co-channel and first-adjacent stations, excluding the effects of other stations causing interference within that area, and that, accordingly, WKTA(AM)'s interference-caused area, and hence its improvement factor, should be greater.⁹ Thus, Polnet would have us credit WKTA(AM) with reducing interference by migrating, even though the areas in which WKTA(AM) would no longer cause interference would continue to receive interference from other stations.

5. The staff interpreted Section 73.35 correctly. In the *AM Improvement Order*, 6 FCC Rcd at 6310, the Commission adopted a nighttime interference factor along the lines proposed in its earlier *Notice of Proposed Rulemaking*, 5 FCC Rcd 4381 (1990). The Commission also decided to adopt a daytime improvement factor, and stated "... we are adopting the same approach for calculating the daytime improvement factor that we proposed in the *Notice* for the nighttime This method is a logical extension of the

nighttime interference factor." *Id.* In calculating a prospective migrator's nighttime interference improvement factor, Section 73.35 requires consideration of the contribution of all interfering nighttime stations and the migrator is credited only with areas from which it would remove interference and which do not receive interference from other stations. The staff's interpretation of Section 73.35 resulted in a similar manner of calculating the daytime improvement factor, and was fully consistent with maximizing interference reduction, which was one of the primary objectives of the *AM Improvement Order*.¹⁰

6. The phrase "excluding the effect of other assignments," as used in Section 73.35 means that in calculating the total area of interference caused to co-channel and first-adjacent channel stations by a prospective migrator, the part of that area receiving interference from other assignments should be excluded. Expanded band improvement factors are based on two distinct considerations: (a) service area lost by other stations due to interference caused by the present facilities of a prospective migrator, and (b) present service area of the prospective migrator. See 47 C.F.R. §73.35. The Commission's rules define an AM station's primary service area as that area in which the groundwave is not subject to objectionable interference or objectionable fading. See 47 C.F.R. §73.14. Upon completion of the channel change by such a migrator, the service areas of existing band co-channel and adjacent channel stations in which the migrator currently causes objectionable interference would be truly interference-free. In contrast, if the improvement factors were to include areas in which a migrator's co-channel and first-adjacent channel stations receive objectionable interference from stations other than the migrator, the interference reduction benefit of a migrator's proposed migration in a multiple-station interference area would be marginal at best, as the co-channel and first-adjacent channel stations would continue to receive objectionable interference in the relevant area from other assignments. Excluding multiple-station interference areas from a prospective migrator's caused-interference area is also consistent with the prescribed method for calculating the migrator's actual daytime service area ("service-provided"), which excludes any area lost to interference from other assignments. See 47 C.F.R. §73.35. Notably, the service-provided component of the daytime improvement ratio only credits the prospective migrator with that area of interference improvement actually afforded by its proposed migration.

⁷ Polnet asserts that had the Commission included multiple station interference areas in the determination of daytime improvement factors, WKTA(AM)'s improvement factor would increase from 0.0099 to 1.9942 and the station's corresponding ranking would rise from 640 to 361. Polnet concedes, however, that this recalculated ranking assumes the ranking of no other station would change. However, because the rankings of other stations would need to be recalculated if WKTA's petition were granted, WKTA(AM)'s recalculated ranking would depend upon the recalculated rankings of all other prospective migrators.

⁸ The Commission declined to consider the effects of stations operating on second and third-adjacent channels both because the rules regulating second and third-adjacent channel spacings permit such stations to operate close to each other and because such rules are intended to control receiver cross-modulation and inter-modulation problems and do not lend themselves to

accurate determinations of areas of interference. See *AM Improvement Order*, 6 FCC Rcd at 6310, para. 122. The degree of interference used in calculating an improvement factor is obtained from determining the size of the area experiencing the interference and does not specifically take into account the population within the area affected. *Id.* at 6 FCC Rcd at 6316, para. 139.

⁹ See, note 7, *supra*.

¹⁰ The Commission specifically noted that "[m]igration of AM stations from the existing band should reduce interference and congestion in the existing band and should offer a prompt method for establishing service in the expanded band." See *AM Improvement Order*, 6 FCC Rcd at 6302-6303, para. 99.

7. Based on the foregoing, we affirm the staff calculations of interference improvement factors as released on December 3, 1993 action. Accordingly, the petition for reconsideration filed by Polnet Communications IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

**CONCURRING STATEMENT
OF
COMMISSIONER ANDREW C. BARRETT**

In Re: Petition of Polnet Communications, Ltd., licensee of WKTA(AM), Evanston, Illinois for Reconsideration of Public Notice Announcing Interference Improvement Factors for Stations Proposing to Migrate to the AM Expanded Band

Pursuant to today's action, the Commission reaffirms its prior decision regarding interference improvement factors for stations that have petitioned to migrate to the AM expanded band. As a result of my continued misgivings about the decision's potential impact on small radio station businesses, including minority owned stations, I must concur in this decision.¹

While I support the Commission's goal to address the technical problems of AM service, I renew my concern about the inequities of the Commission's extension of priority status, reportedly founded in sound public policy, to certain entities in the expanded band. Meritorious arguments for equitable treatment that were substantiated by statistical evidence and presented by small and minority owned business, have been and continue to be ignored. Today's decision only serves to heighten my concerns about the manner in which the Commission determines the fate of these businesses by exacting arbitrary regulatory treatment. Therefore, as it proceeds with the implementation of the AM expanded band policies, I urge the Commission to revisit its impact on small and minority-owned businesses.

¹See, Concurring Statement of Commissioner Andrew C. Barrett, Report and Order, 6 FCC Rcd 6468 (1991); See also, Concurring Statement of Andrew C. Barrett, Second Report and Order, 8 FCC Rcd 3250 (1993).