

**Before the
Federal Communications Commission
Washington, DC 20554**

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

To: The Commission

JOINT REPLY COMMENTS

Radio One, Inc.
Minority Media and Telecommunications
Council
Ace Radio Corporation
Auburn Network, Inc.
Cherry Creek Radio LLC
Chisholm Trail Broadcasting Co.
Communications Technologies, Inc.
Radio K-T, Inc.
Great South Wireless, LLC
Brantley Broadcast Associates, LLC
RAMS
Broadcast One, Inc.
Skytower Communications-E'town, Inc.
Heritage Communications, Inc.
Anderson Associates
Holladay Broadcasting of Louisiana

Alatron Corp., Inc.
Scott Communications, Inc.
Alexander Broadcasting Company, LLC
Jackson Radio, LLC
Main Line Broadcasting, LLC
Radiotechniques Engineering LLC
Signal Ventures LLC
SMAHH Communications, Inc.
Wagon Wheel Broadcasting, LLC
WRNJ, Inc.
Dot Com Plus LLC
Independence Broadcast Services
Provident Broadcasting Company, Inc.
Radio Training Network, Inc.
Sacred Heart University, Inc.
Hancock Broadcasting Corporation

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SUMMARY

The Joint Parties previously demonstrated that the Commission's proposals will actually be harmful to the Commission's purported goals of localism, diversity and Section 307(b) responsibilities. The Commission's proposals are attempts at reintroducing policies that were eliminated more than 25 years ago without any effort to explain, distinguish or even mention the Commission's earlier decision. The effect of these proposals would be borne only by those new entrants, minority broadcasters and other small market broadcasters, who are attempting to provide new service or improve their signals, while all incumbent stations already operating in the larger markets would be relieved from facing new competition.

The overwhelming majority of comments in this proceeding agree with this assessment and strongly oppose the Commission's proposals for a variety of reasons. Some of the commenters state that there is no abuse and the process does not need to be fixed. Others state that the proposals will unfairly impact minorities and small or new entrant broadcasters and amount to protectionism for the entrenched existing broadcasters. Some commenters observe that the Commission has failed to demonstrate that the rural areas are underserved. One party provided a study showing that the larger markets are actually in greater need of service based on the number of stations per person in the top 300 markets. There were some commenters who agreed with the Joint Parties view that the process of spectrum usage is dynamic and with every move, spectrum opens up for new stations or new site alternatives for rural service. Further, by allowing stations to improve their facilities, more opportunities for local service, diversity and Section 307(b) objectives are fulfilled.

The only commenters supporting the Commission's proposals, at least in part, were Prometheus Radio Project and National Federation of Community Broadcasters jointly and

William B. Clay. They believe the Commission is justified in assuming that any commercial licensee who proposes to move into an urbanized area should be treated as if it planned to serve the largest community in that market and that no applications should be granted unless the specified community has either the largest population of any community in the coverage area or the community has at least 10% of the total population of its proposed 60 dBu contour. Clay believes that it is necessary to create “commercial incentives” in order for broadcasters to provide local service. These incentives would require that (1) the specified community must have the largest population of any other community in the coverage area; (2) the main studio must be located within the community of license; and (3) legal IDs shall name only the community of license.

But these parties are entirely wrong about their theories and proposals to solve the problems they perceive. There is no basis to believe that providing “incentives” will have any local service benefits. Rather, by forcing applicants to specify the largest community in their proposed coverage area regardless of the comparative benefits versus other communities in that area, only the larger cities will receive local service at the expense of the smaller communities. The logic in depriving smaller communities of local service even when the applicant wants to provide the service cannot be sustained under any theories of localism, diversity or implementation of Section 307(b).

The fallacy in the arguments of these parties is that radio stations will not provide local programming without regulatory incentives. The fact is that localism is the lifeblood of the broadcaster’s existence. It is what sets them apart from all other forms of delivery services. Broadcasters recognize that without local service they risk losing their audience to other media.

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Radio One, Inc.; Minority Media and Telecommunications Council; Ace Radio Corporation; Auburn Network, Inc.; Skytower Communications-E'town, Inc.; Heritage Communications, Inc.; Cherry Creek Radio LLC; Chisholm Trail Broadcasting Co.; Communications Technologies, Inc.; Radio K-T, Inc.; Great South Wireless, LLC; Brantley Broadcast Associates, LLC; RAMS; Broadcast One, Inc.; Alatron Corp., Inc.; Main Line Broadcasting, LLC; Scott Communications, Inc.; Alexander Broadcasting Company, LLC; Anderson Associates; Jackson Radio, LLC; Radiotechniques Engineering LLC; Signal Ventures LLC; SMAHH Communications, Inc.; Wagon Wheel Broadcasting, LLC; WRNJ, Inc.; Dot Com Plus LLC; Independence Broadcast Services; Provident Broadcasting Company, Inc.; Radio Training Network, Inc.; Sacred Heart University, Inc.; Holladay Broadcasting of Louisiana; and Hancock Broadcasting Corporation ("Joint Parties"), by their counsel, hereby submit Reply Comments in the above captioned proceeding. The Comments filed in this proceeding were overwhelmingly opposed to the proposals set forth in the *NPRM* as they relate to the elimination of the first local service preference for communities located within an Urbanized Area, and to the higher priority to be accorded to reception service over new local service. The only Comments in support of the *NPRM* with regard to these issues were submitted by William B. Clay and

jointly by Prometheus Radio Project and National Federation of Community Broadcasters. The Joint Parties will respond to these Comments.

I. SUMMARY OF COMMENTS OPPOSING THE NPRM

1. In its Comments, the Joint Parties demonstrated that the Commission's proposals will actually be harmful to the goals of diversity, local service to unserved communities, and to the Commission's statutory mandate under Section 307(b) of the Communications Act of 1934, as amended. The Joint Parties pointed to the Commission's action 25 years ago when it eliminated all of its policies which attempted to presume that an applicant intended to serve an urbanized area rather than its community of license.¹ The Commission based this action on its statutory responsibility under Section 307(b) stating that "the subject policies were no longer essential to our implementation of Sec. 307(b) and that they had, in fact, circumvented our Sec. 307(b) goals. Instead of promoting new or expanded service, we found that these policies had imposed unwarranted costs on the public and the parties involved in licensing new or expanded service. Moreover, a review of hearing proceedings demonstrated that these policies appear to have provided incumbent stations with a means to delay competition."² For the last 25 years, the Commission has consistently adhered to these beliefs and refused to question the intent of applicants. However, without any attempt to distinguish, explain or even mention this landmark decision in its *NPRM*, the Commission now seeks to justify the reintroduction of these discredited policies in the name of localism. The Joint Parties question how it could be that in the worst economic climate most owners have ever faced, the Commission proposes to reinstate

¹ *Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy* ("Suburban Community"), 93 FCC 2d 436 (1983); *Memorandum Opinion and Order ("MO&O")* recons denied, 56 RR 2d 835 (1984).

² *MO&O* at paragraph 3.

these repudiated policies which will eliminate future opportunities to provide local service to new communities and to reach target audiences with specialized programming. The Joint Parties believe that only by allowing stations to improve their facilities will the Commission actually advance localism and diversity.

2. The overwhelming majority of comments filed in this proceeding strongly oppose the Commission's proposals to modify Priorities 3 and 4 and limit moves of existing stations from smaller communities. These include minority broadcasters,³ noncommercial educational broadcasters,⁴ small market broadcasters,⁵ large market broadcasters,⁶ engineering firms,⁷ and law firms.⁸ The comments emphasize that the Commission's proposals will hurt minority, small, and new entrant broadcasters rather than help them. The *Bustos Comments*, for example, state that "[t]his NPRM will dramatically limit future broadcast entrepreneurial opportunities in the places where minority population concentration is greatest. By restricting new competition, these rules also serve to entrench the market dominance enjoyed by the large group broadcasters. We believe this is inconsistent with the best efforts of the FCC to foster diversity and entry opportunity for others. These proposed rules also deny the reality that most Americans live in urban areas."⁹ The *Mullaney Comments* state that "it is only now that most under represented

³ See, e.g., Comments of Amador S. Bustos and Bustos Media Holdings, LLC ("*Bustos Comments*").

⁴ See, e.g., Comments of Educational Media Foundation ("*EMF Comments*").

⁵ See, e.g., Comments of Munbilla Broadcasting Services, LLC ("*Munbilla Comments*"); Comments of Miller Communications, Inc., et al ("*Miller Comments*").

⁶ See, e.g., Comments of Cox Radio, Inc.

⁷ See, e.g., Comments of Carl T. Jones Corporation ("*Carl T. Jones Comments*"); Comments of Mullaney Engineering, Inc. ("*Mullaney Comments*"); Comments of Robert A. Lynch and Romar Communications Inc. ("*Romar Comments*"); Comments of Vir James, PC ("*Vir James Comments*"); Comments of Hatfield & Dawson Consulting Engineers, LLC ("*Hatfield & Dawson Comments*").

⁸ See, e.g., Comments of Booth, Freret, Imlay & Tepper PC ("*BFIT Comments*").

⁹ See *Bustos Comments* at p. 1.

(minority) groups are able to effectively compete for what new spectrum is still available, these newly proposed rules will only make it more difficult for them to compete in the market place.”¹⁰

3. The *EMF Comments* note that “if the Commission were to adopt its proposals in this proceeding, many opportunities for increased service to the public could be foreclosed with little real public interest benefit...[T]hese opportunities which could be foreclosed are ones which present the best opportunities for minority and noncommercial groups, and other new entrants into broadcasting, to acquire stations and initiate service to larger radio markets. Were the Commission to adopt the proposals set forth in this proposal, there would be little meaningful service to small communities that would be preserved that is not already protected under existing FCC rules or which could not easily be replicated. At the same time, the principal result of the proposals could be to freeze the competitive landscape in larger markets, potentially locking out new entrants. Clearly, the FCC does not want to take a position so antithetical to its goals of increasing diversity in the broadcast marketplace.”¹¹

4. Many comments also question the need for these changes based on the Commission’s unsupported presumptions that stations are migrating to urban areas to the detriment of rural areas. The *Carl T. Jones Comments*, for example, state that “[t]he idea that stations are migrating away from smaller communities has gained such momentum recently, it is now accepted as fact. CTJC has seen neither studies nor documentation of a mass exodus of radio stations from rural to urban areas. As stated above, radio is a mature service and Rules and policies have [sic] been in place for many years to ‘help restrict the migration of stations!’”¹² The

¹⁰ See *Mullaney Comments* at p. 1.

¹¹ See *EMF Comments* at p. 1.

¹² See *Carl T. Jones Comments* at p. 6. The *Carl T. Jones Comments* (at Tables 1 and 2) demonstrate that based on the number of stations per person in each of the top 300 markets, there is a correlation in which the larger the market, the greater the need for additional service in almost every instance. In addition, the *Carl T. Jones Comments* (at p. 2-3) point out the absurdity of treating a Class A station that proposes to move into a portion of a large

Cox Comments note that “many broadcasters view underserved rural areas as opportunities. Often a station can be more profitable as the leading station in a rural area than as one of dozens of stations in a hypercompetitive larger market.”¹³

5. The *Vir James Comments* note that “a premise of the Notice in this proceeding is that there is some ongoing manipulation of the AM rules by applicants for new and modified AM stations that allegedly causes a flight to urbanized areas from rural areas, and allegedly leaves the rural areas underserved or unserved. VJPC would suggest that this is a gross oversimplification, and an overstatement. Construction of a new AM station nearly always requires more land and towers than an FM station and is significantly more complex to construct than an FM station with similar coverage therefore the applicant who is willing to commit this greater effort should not be penalized for wishing to serve his chosen community. The real problems and issues raised in this Notice situation can be managed without adopting most of the proposals in the Notice.”¹⁴

6. As the *Vir James Comments* suggest many AM stations have been on the air between 50 and 80 years. The dynamics of population distribution during the last century has been characterized by a movement from rural to suburban areas. In order to serve this population it is necessary to relocate the transmitter for these AM stations. However, because the night signal of AM radio stations often only reaches a tiny portion of the daytime signal area, and the Commission’s rules require coverage of the principal community with a very intense nighttime

Urbanized Area (“UA”) as serving the central city and the UA. For example, the Chicago UA contains 5,545 sq. kms. but a Class A station only covers 825 sq. kms. or 14% of the UA with a city grade contour. But under the Commission’s proposal, the Class A station would be deemed to serve the entire UA. The *Hatfield & Dawson Comments* at p. 3 also discuss this misconception.

¹³ See *Cox Comments* at p. 5. As an example, Cox notes that its Station WXKT(FM) recently received approval to change its community of license and move from the larger Athens, Georgia market to a smaller but underserved market near Gainesville, Georgia.

¹⁴ See *Vir James Comments* at p. 6.

interference free (NIF) signal, which, in many instances, only extends a few kilometers from the transmitter site, it is often necessary for AM stations to change their principal community to cover the relocated population.

7. For both AM and FM stations, it is necessary to provide very strong signals to penetrate tall buildings and provide service to urban centers. Many stations serving minority and specialty audiences are small stations which may be located at the edge of the market. In order to improve service, it is often necessary to move to existing towers, as it is very difficult to acquire local permits for new towers of any height in many communities. The towers that meet the technical requirements to protect other stations often do not provide principal community signals to the original community. The only possible method of improving the signal for many stations is to move to an existing tower. The fact that a minority or specialty programmed station seeks to move closer to the urban center certainly does not represent an "abuse" of the Commission's rules, but compliance with the spirit and goals of the Communications Act, as the service of the urban center is a critical component of any commercial station's ability to generate income with which it pays for the programming service. *See also BFIT Comments.*

8. The numerous small market broadcasters represented in the *Miller Comments* state that "the NPRM is based upon the unsupported premise that more radio stations are needed in smaller communities and rural areas....the NPRM, however, fails to cite any support for this foundational premise for the proposed rule changes. There is a complete lack of any statistics, data, evidence, or even reasoning in the NPRM to allow the public to comment upon the foundational premise for the significant proposed rule changes. The proposed rule changes will

have significant ramifications to the public and its regulates. The rule change should be based upon more than a wholly unsupported premise.¹⁵

9. The *BFIT Comments* state that “the worst of the Commission's proposals in the Notice is the elimination of a Priority 3 preference where a proposed new station would "or could" place a principal community signal over the majority of an urbanized area. Not only is this an irrebuttable presumption – many facilities "could" theoretically be modified to put a 5 mV/m signal over parts of an urbanized area – but it locks out new applicants for exurban or suburban communities that have clear independence from the urbanized area. It should be noted that metropolitan areas have large minority populations which remain underserved. These populations provide opportunities for new minority station owners and to broaden participation in the broadcast industry.”¹⁶

10. The *Munbilla Comments* “strongly disagrees with the fundamental assumption on which the NPRM rests; that the system of preferences used for making allotments and assignments is broken, or in need of repair or modification” and “respectfully submits that the Commission's concerns are unfounded and misguided. First of all, the Commission provides no specifics to justify alteration of the existing system, which has served well for the last twenty-seven years. Reasoned decision-making must be grounded in a factual record.”¹⁷ *Munbilla* also provides a good example of how the Commission’s proposals will unfairly and arbitrarily penalize independent communities merely because of their proximity to urbanized areas.¹⁸ On

¹⁵ *Miller Comments* at p. 2.

¹⁶ *BFIT Comments* at p. 4.

¹⁷ *See Munbilla Comments* at p. 6.

¹⁸ *Id.* at p. 8. *Munbilla* notes that the Washington DC Urbanized Area includes Fairfax, Virginia and Columbia, Maryland both of which are independent communities. Under the Commission’s proposal, however, these communities would not be entitled to a first local service preference merely because they are located in the Washington DC Urbanized Area.

this same point, the *Romar Comments* note the real life experience of the commentor in demonstrating that a community in the Scranton urbanized area was independent.¹⁹

11. Commenters also note that the move of a station to an urbanized area usually creates vacant spectrum that is often filled by other stations. For example, the *Cox Comments* state that “on the rare occasion when spacing rules allow a full-power station to relocate to an urban area, the move immediately creates a vacancy in the spectrum for an opportunistic radio station owner to fill. Often relocation of a full-power station leads to a cascading series of changes by other radio stations as they quickly take advantage of new availabilities in spectrum. In short, the market ensures that radio stations will continue to provide service to underserved rural areas.”²⁰

12. One of the themes frequently addressed in the Comments is the need for the Commission to maintain some flexibility due to the difficulties in locating transmitter sites and the resulting limitations on covering both existing and prospective communities of license. This flexibility also is needed in the context of considering whether a 3rd, 4th or 5th aural service will be maintained. In this regard, the Joint Parties emphatically disagreed with the notion that reception service under current Priority 4 should be elevated above local service (Priority 3) in any circumstances. There seems to be an inherent inconsistency between the Commission’s

¹⁹ See *Romar Comments* at p. 4 (“In many cases, an Urbanized Area can harbor a “community within a community.” This commenter draws upon its own experience with regard to its (former) application for a new AM station at Archbald, PA, located within the Scranton, PA Urbanized Area. In October 2005, the undersigned, Romar’s president, performed an exhaustive examination of Archbald, PA, walked the borough’s streets to inventory businesses, conferred with community leaders and gain insights into the community’s attributes and degree of independence from the remainder of the Scranton UA. He summarized his findings in an amendment to the pending application later that month and followed with a requested “Tuck” analysis the following July. Whereas many broadcast applicants employ a “Google Search” or its equivalent to document community attributes, the undersigned actually traveled to Archbald and gained a flavor of the community and its people. What he found was a small city (or large village) that maintained its independence from Scranton, cherished that independence, and even felt a little angry that it would be seen as only a Scranton appendage. Essentially, Archbald was a part of the Scranton UA by coincidence, not intent.”)

²⁰ See *Cox Comments* at p. 5.

focus on providing local service and the value to be placed on the numbers of reception services at the expense of a first local service. This inconsistency is especially apparent where the Commission states that it proposes to eliminate all Priority 4 comparisons for AM applicants in the auction context, including city of license change proposals,²¹ while, at the same time, elevating this same reception services factor, the “underserved listeners” priority, to outweigh the provision of a first local service (Priority 3) in all non auction contexts.²² The *NPRM* proposes to change the emphasis and relative importance of reception services involved in order to preserve “rural service” but without recognizing the impact on local service. The overriding message becomes that the Commission is less interested in localism. Yet the Commission is offering this proposal as a way to advance localism. The Joint Parties urge the Commission to clarify and reconcile these conflicting initiatives.

III. SUMMARY OF COMMENTS SUPPORTING THE NPRM

13. The only commenters supporting the Commission’s proposals, at least in part, were Prometheus Radio Project and National Federation of Community Broadcasters jointly (“Prometheus/NFCB”) and William B. Clay (“Clay”).²³ They believe the Commission is justified in assuming that any commercial licensee who proposes to move into an urbanized area should be treated as if it planned to serve the largest community in that market and that no applications should be granted unless the specified community has either the largest population of any community in the coverage area or the community has at least 10% of the total population of its proposed 60 dBu contour. They favor using this standard for every city of license change

²¹ *NPRM* at para. 10.

²² *Id* at para. 13.

²³ In addition, Joint Comments of Native Public Media and The National Congress of American Indians briefly express support for the Commission’s proposal stating that these efforts would help poorly served areas retain service.

application rather than just those that specify communities within an Urbanized Area. Prometheus/NFCB cite past abuses by licensees who state they will provide service to a new community of license but the real intent is to serve the larger urban area. They claim that these moves harm diversity and localism. They also assert that the new streamlined procedures make it easier to “exploit the process”.²⁴ Prometheus/NFCB and Clay claim that stations moving into urbanized areas do not locate their main studios within the community of license. Prometheus/NFCB asserts that LPFM stations operating in urban areas are particularly vulnerable to being taken off the air when full power stations are permitted to move into these areas.

14. Prometheus/NFCB are concerned that whenever a full service station changes its community of license, it could cause the removal of a LPFM station. To further ensure that the full service station proposal is justified, they would have the Commission impose requirements that (1) there be at least eight (8) hours of locally produced programming per day and (2) the main studio be located within the community of license. Thereafter, licensees should not be permitted to make technical changes that lessen coverage to their community of license and in no event should a station be permitted to deprive a community of its only local service or create white or grey areas.

15. Prometheus/NFCB recognize that the Commission’s mandate under Section 307(b) has been achieved because the vast majority of the country receives radio service. They cite to other statutory priorities such as providing radio service to “all the people of the United States, without discrimination on the basis of race, color, national origin or sex, a rapid efficient nation-wide, and world-wide and radio communication service with adequate facilities at

²⁴ Prometheus/NFCB Comments at p. 6.

reasonable charges for the purpose of the national defense, for the purpose of promoting safety of life and property through the use of wire and radio communication...”²⁵ In light of the “other competing statutory mandates and the changes in service and technology presently impacting commercial and noncommercial radio broadcasting,²⁶ Prometheus/NFCB call upon the FCC to undertake a comprehensive proceeding to address Section 307(b).²⁷

16. Clay believes that it is necessary to create “commercial incentives” in order for broadcasters to provide local service. These incentives would require that (1) the specified community must have the largest population of any other community in the coverage area, and, if not, the proposal should be denied; (2) the main studio must be located within the community of license²⁸; and (3) legal IDs shall name only the community of license. Clay argues that there is no rational connection between the showings made by an applicant for a first local service preference and the service that is provided to that community. Clay believes that without the incentives there are no reasons for a broadcaster to provide any programming for the community of license. Clay contends that the Commission’s proposal does not go far enough and that stations can still change city of license and serve larger areas without the incentives that Clay would impose. In this regard, Clay states, “[w]e suggest that any request to change an FM facility’s community of license that makes recourse to a local service preference of any degree

²⁵ 47 USC § 151

²⁶ Prometheus/NFCB Comments at p. 21.

²⁷ Prometheus/NFCB believe that NCE stations are not immune to these perceived abuses and a separate proceeding should be initiated to address the Section 307(b) policies that apply to the NCE service. They note that the community of license is not a comparative factor in selecting between conflicting applications and applicants simply try to maximize the number of people served in order to receive a preference whether or not it makes sense for their proposed educational programming.

²⁸ Clay indicates that he performed a telephone survey of 140 community of license changes granted after the Commission changed its rules effective January 19, 2007. According to his study, 121 stations responded and none of the stations actually have their main studio location within their community of license.

(first, second, fifth, etc) be presumed to provide local service to the community or UA having the greatest number of residents covered by the proposed facility.”²⁹ In addition, Clay asserts that “if a radio station provides ‘local transmission service’ to any community, it has a greater economic incentive to serve the community having the largest number of covered listeners.”³⁰ Clay concludes by saying that his proposals will yield substantial public benefits.

IV. DISCUSSION

17. Clay and Prometheus/NFCB are entirely wrong about their theories and proposals to solve the problems they perceive. There is no basis to conclude that providing the incentives that Clay and Prometheus/NFCB recommend will have any local service benefits. Rather, by forcing applicants to specify the largest community in their proposed coverage area regardless of the comparative benefits versus other communities in that area, only the larger cities will receive local service at the expense of the smaller communities. The logic in depriving smaller communities of local service even when the applicant wants to provide the service cannot be sustained under any theories of localism, diversity or implementation of Section 307(b). Section 307(b) is expressly based on the “demand” for a specified community and it is the applicant, not the Commission that chooses the community. Under the Clay and Prometheus/NFCB theory, even if there is space in the spectrum for a first local service to a community, that service would not be granted because the community is not the largest in the proposed coverage area and therefore not the community that Clay and Prometheus/NFCB believe will be the focus of the station’s programming.

18. The incentives advocated by Clay and Prometheus/NFCB are founded upon the belief that applicants are abusing the process by specifying a particular community and then

²⁹ *Id* at 20. Although this quote uses the term “we”, there is no indication who Clay is referring to besides himself.

³⁰ *Id* at 21.

ignoring that community's local programming needs. The Joint Parties strongly disagree with that assessment. The large majority of broadcasters are committed to local service, spending the time and exerting the effort that it takes to establish relationships with community leaders and businesses, and concerned for the welfare of the community and its residents. But this commitment is not limited only to the residents of the community but to all of the station's listeners. A sampling of statements offered by a few of the licensees participating here are provided in Exhibit 1. Thus, the solution to the problems and so-called abuses perceived by Clay and Prometheus/NFCB and by the Commission, is not to assume in advance that a particular applicant will not provide local service.³¹ Rather, the Commission should make a determination consistent with First Amendment limitations as to how well the station is serving its community after there has been a period of service and then decide to the extent permitted under existing law what the appropriate remedy should be.

19. The fallacy in the arguments of Clay and Prometheus/NFCB is that radio stations will not provide local programming without regulatory incentives. The fact is that localism is the lifeblood of the broadcaster's existence. It is what sets them apart from all other forms of delivery services. Broadcasters recognize that without local service they risk losing their audience to other media. The Joint Parties are, unlike Clay and Prometheus/NFCB, experienced commercial broadcasters and they are in a much better position to know what type of service their primary audiences want. Furthermore, even if these "commercial incentives" had any merit, it would be extremely unfair and of very limited value to have the incentives that Clay and Prometheus/NFCB espouse imposed only on those relatively few stations that file sometime in

³¹ There were several other commenters that addressed this issue and none of them believed the process is being abused. In fact, they stated that the system is not broken and does not need to be fixed. If the Commission believes that the system needs improvement, there are certain steps like imposing fees or updating the Tuck factors which should be considered. See *BFIT Comments* at p.4; *Munbilla Comments* at pp. 3-4.

the future to change community of license while the vast majority of stations already operating in the urban areas would continue to program without these “incentives”. These incumbent stations would not necessarily have studios within their community of license and may or may not be identifying their stations with the community of license only. Furthermore, these stations would not necessarily be licensed to serve the largest community within their coverage area. As Clay and Prometheus/NFCB know, the Commission’s rules allow stations to locate their main studio within their principal community contour and allow station IDs to include other communities. The stations surveyed by Clay and Prometheus/NFCB comply with the main studio rule. Thus, it is disingenuous to describe these practices as abuses.

20. The fact is that Clay’s and Prometheus/NFCB’s ideas are no different than those which were completely discredited 25 years ago by the Commission.³² The Joint Parties have noted that this entire proceeding is a veiled attempt to reinstate the failed and ill-advised policies of the 1970s which, in the Commission’s view, had undermined Section 307(b) and “were relics of an earlier age when there was a paucity of local transmission services.”³³ But the Commission failed to recognize this historical context and therefore made no attempt to explain how circumstances today justify a return to these policies particularly when there has been an increase in the number of stations across the country by nearly 300%. If anything, this proliferation of service makes it necessary to preserve the remaining spectrum space to allow minorities and new entrants to provide diversity in urban areas rather than to place hurdles in their way.

21. The issues that have been discussed by Clay and Prometheus/NFCB are more appropriately considered in other pending proceedings such as *Broadcast Localism*³⁴ where the

³² See *Suburban Community*, *supra* at note 2.

³³ *Id* at ¶12.

³⁴ *Report on Broadcast Localism and Notice of Proposed Rule Making*, 23 FCC Red 1324 (2008)

Commission is considering “new ways...to ensure that broadcasters serve their communities....”³⁵ In addition, the location of the main studio is an issue that has been raised in that proceeding. The concerns expressed by Prometheus/NFCB on behalf of LPFM stations are more appropriate and relevant to the pending proceedings in *Creation of a Low Power Radio Service*.³⁶ In reality, these commenters have other goals in mind and, as such, their participation in this rule making is self serving. They ignore the past history of Commission attempts to regulate suburban community service. They ignore the impact that these proposals will have on new entrants, small broadcasters and minorities. They fail to recognize that the only real beneficiaries of these misguided proposals would be the incumbent broadcasters who have established their position in the market and would avoid new competition.

22. It is worth repeating that it would be extremely unfair to subject only those new entrants, minority broadcasters and other small market broadcasters, who are attempting to provide new service or improve their signals, to these new proposals while all incumbent stations already operating in the larger markets would be relieved from facing new competition. What is the rationale for their disparate treatment? What objectives would be accomplished by such policies? Unfortunately, the Commission’s desire to preserve rural service and the incentives espoused by Clay and Prometheus/NFCB are ideas that may have been practical and worthy of consideration in the 1960s and 1970s but, in today’s climate, these proposals can only harm diversity, localism and the Commission’s Section 307(b) mandate.

³⁵ *Id* at ¶69.

³⁶ MM Docket No 99-25, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 22 FCC Rcd 21912 (2007).

Respectfully submitted,

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August 11, 2009

EXHIBIT 1

Here is a sampling of comments from some of the parties in this Joint filing —

“I started in broadcasting in 1965 and I have always made sure that whatever the residents of the cities and towns that I served needed, I provided - everything from local events, fund raisers for sick people, house reconstruction, little boys baseball, football, basketball, etc. and, most importantly, emergency information during severe weather! Without these services a radio station can not survive in the world of broadcasting! This is true now more than it ever used to be with all the competition that we have. We need the FCC to understand that in order to keep our stations on the air, it is sometimes necessary to relocate and provide community service to more populated areas.”

Jackson Radio, LLC

"I have been in radio since 1976 not counting time as GM of my college radio station. My goal has always been to own my own radio station. I have achieved that goal, not as the recipient of public money, an investment fund, handout or other fringe benefit but as a result of long, hard (frequently unpaid) hours and personal financial risk. WLKN serves its city of license by always reaching out to our local organizations to make sure they know we are here to serve them. WLKN's office/public file/studio is actually located in its city of license. We do the same for the greater coverage area which includes 2 counties and part of a third. Our public file is FULL of cases where local organizations asked for, and got, our assistance. It also shows cases of our support for families after tragic events such as tornados and house/farm fires. WLKN voluntarily added Amber Alert capability to its EAS receiver as soon as the plan was available in Wisconsin. Going back farther, upon our purchase of WLKN (formerly WKTT) we immediately opted in to the state EAS plan, moving from a non-participating to "participating" station status. In any given week WLKN provides local news, weather and other information directly attributable to our city of license as well as to the rest of our coverage area. With the support of revenue from advertisers under our entire Class A coverage area we can better serve our city of license. In effect, whether or not WLKN is located in its city of license obviously has no bearing on what we do to serve the valued community we are licensed to."

Radio K-T, Inc.

“As a thirty year broadcaster, my stations have served every community in our primary coverage area in many respects. Whether it is local sports, public service announcements, local festival participation, high school dances, weather coverage, news coverage or financial donations. Radio can not serve only its city of license, radio must serve all in its primary coverage area or risk low listenership which means low revenue. The very idea that radio should be loyal only to its city of license is not in the spirit of the FCC community service mantra. We should serve all who can hear us and depend on us.“

Holladay Broadcasting of Louisiana

“I have been in the radio business since 1982 when I became part owner of two stations in Enid, OK. I now own six stations. Over time I have moved three signals in order to cover a larger market and build equity. In each case I replaced the signal I moved with another signal first in order to create a home for the current local programming. I suspect that most owners moving signals have done this also because it makes economic sense. Why would someone give up revenue on profitable local programming if they could avoid it? Conversely, why would the FCC want to lock a signal to a market that can't make a profit?

The three stations I own in a small market have a demonstrated commitment to serving the needs and interests of the local residents. These stations carry a significant amount of local news, weather, and sports. For example, each station carries seven local newscasts per day and two local weathercasts per hour, twenty four hours per day. We also do live coverage of special events such as elections. We take weather very seriously. I am the Chairman of the local Emergency Alert System for a six county region and we interrupt programming when severe weather threatens. We do things like sound a non obtrusive tone every 30 seconds over regular programming when severe weather is close by in order to alert our listeners to stay tuned for a report and to let people know that we are watching out for them. Our stations are the source for finding out about school closings. We live in tornado alley and everyone here knows to stock their storm shelters with a battery operated radio so that they can find out from our stations when it is safe.

Our stations carry a daily talk show where we do interviews with our local and national representatives, such as U.S. Senator Jim Inhofe and U.S. Congressman Frank Lucas. We do interviews with representatives from local nonprofits such as the Red Cross, March of Dimes, and Oklahoma Blood Institute. We do countless free advertising, fundraisers, and remotes for charity. Our stations carry live broadcasts of a substantial amount of local sports including high school football, basketball, and baseball. There are many times when we have three, three-man broadcast teams traveling to different local games at the same time. We do a weekly local sports show and we do daily local sports reports.

Some critics would say that because we don't use local DJ's to play the music twenty four hours a day that we aren't local. I strongly disagree and say that we are taking our meager resources and putting them into what truly makes a station important and local to the community, namely local news, local weather, and local sports. Telling us to use local DJ's is like telling a TV station to be local by creating their own show to compete with Jay Leno. Our satellite delivered DJ's provide much better entertainment than we could otherwise afford.”

Chisholm Trail Broadcasting Co.

I have been in the radio business as a local family broadcaster for over 35 years serving the same communities of license. There is no way our stations could have survived in this competitive world without serving our communities. We broadcast local events, news, sports, weather forecasts, weather alerts (we are the only stations in our local area with a generator to stay on the air) and fundraising for the needy and the list goes on and on. This is what sets us apart from satellite radio, ipods, the web, and other sources for which we now compete for listeners. Local radio can respond faster to a community need than any other medium. If it were not for our

community involvement, it certainly would show by lack of interest and support in our programming from the community. Under the current rules, we have been able to expand our coverage area by an increase in power that has let us reach more communities. And of course we have provided service to other communities as well because of that coverage. In return, the communities respond by telling advertisers what station they listen to. And the revenue generated by the advertisers supports the services that the stations provide to their community. To think that a community should be denied service because the proposed stations coverage could reach into an urban area or bigger market makes no sense. It could hinder the ability for a station to survive. Some stations could end up in such a small market that they could not generate enough financial support to stay on the air. The result would be a complete failure of community service and a waste of radio spectrum.

Scott Communications, Inc.

Alexander Broadcasting Company, LLC

I am owner of Skytower Communications and Stations WQXE, WGGC and WULF. I have spent my entire working life, about 48 years, operating stations in rural areas. I am a past Director and past President of the Kentucky Broadcasters Association. My company is family owned and operated with my wife and son actively involved in our small market radio stations. We have experienced two upgrades of one station and a change in city of license of another station. I want to go on record in support of the notion that rural stations should have freedom to upgrade, move transmitting location, change cities of license and locate main studios when it makes sense to the culture of the rural area. The State of Kentucky is primarily a rural state and, thus, serves as an excellent example because it demonstrates the way small rural cities work together and are involved with other nearby cities in an effort to bring about a stronger economy and a better way of life for its residents. In Kentucky, there are Area Development Districts made up of several counties and there is a community college system that serves wide geographical areas of the State. There are many programs that draw small cities together for the common good of an area. An outstanding case in point is Fort Knox, Kentucky. One of my stations, WQXE, is licensed to Elizabethtown, the county seat of government for Hardin County, Kentucky. The cities of Radcliff, Vine Grove and Muldraugh are also in Hardin County as is Fort Knox, Kentucky. Under the Base Realignment And Closure Act, Fort Knox will soon become the home of the entire Recruiting Command for the U. S. Army. People from Alexandria, Virginia, St. Louis, Missouri, Washington, D.C. and Baltimore, Maryland will be moving to the area. The location of the Recruiting Command in Fort Knox will mean thousands of jobs and a great boost for the region. Every city and every county within the economic and cultural sphere of influence of Fort Knox has a vested interest in the success of this major US Army Command. Cities all over the region, particularly the cities located in Hardin County and all the surrounding counties are working together to provide assistance and support in any way they can. This illustrates perfectly that, in rural America, small cities have to be concerned about and focused on the common good of all of the cities in the region. If stations are required to serve just their cities of license, then the bigger picture will be sacrificed and the public will surely lose. The very spirit of public service will be thwarted by rules with too narrow a focus. Additionally, the sense of ownership communities have in local radio stations would be damaged. It would seem "elitist" and "arrogant" to the residents of Radcliff, Vine Grove, Muldraugh and Fort Knox, if WQXE suddenly programmed the Station to only the residents of

its community of license, Elizabethtown, in mind since the people, the government and the elected officials of these other cities think that WQXE also serves them and they consider WQXE their station too. We have, over the years, included these other communities in our Station Identification. We should be able to continue to recognize our sister cities. To change this practice would be an insult to the working relationship WQXE has with all of the nearby cities. To summarize, it is important for the FCC to understand that rural American radio is not and should not be confined to serving listeners only within the circle of coverage. Listeners exist past the city limits and the county lines and the reach of the signal carries with it the opportunity to serve the greater culture made up of smaller pockets of people with the same needs as those people who live in the city of license. This is not a time to limit ideas or possibilities (or broadcasters), but rather a time to be creative and provide options. Please do not make it difficult or impossible to move tower locations or change cities of license of FM stations. Instead consider providing more freedom to rural radio stations to increase power, change transmitter sites, change cities of license, locate main studios in order to better serve the needs of listeners. A decision to require stations to locate within their cities of license would be devastating to broadcasters economically. More importantly, however, it would destroy the sense of community that rural America is working toward.

Skytower Communications-E'town, Inc. ("Skytower")

Heritage Communications, Inc.

Skytower provided this unsolicited email--

Comments - Hi, no need to write back. I just had to write you a compliment before I leave town this weekend. I've been on temporary assignment from Indiana at Fort Knox this summer (I'm normally news director at Indiana Public Radio and teach at Ball State up north). Your station is what good, local radio is all about. You have great personalities, music mix, news and information. I will miss your station when I leave. Thanks for being there.

CERTIFICATE OF SERVICE

I, Randy L. Pannell, do hereby certify that I have on this 11th day of August, 2009, caused to be mailed by first-class mail, postage prepaid, copies of the foregoing "Joint Reply Comments" to the following:

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_____/s/
Randy L. Pannell