

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Revitalization of the AM Radio Service) MB Docket No. 13-249
)

To: The Commission

**COMMENTS OF
THE MINORITY MEDIA TELECOMMUNICATIONS COUNCIL**

David Honig, Esq.
President
Joycelyn James, Esq.
Senior Counsel
Nicol Turner-Lee, Ph.D.
Vice President and
Chief Research & Policy Officer
Jacqueline Clary, Esq.
Senior Counsel
Minority Media and Telecommunications
Council
3636 16th Street NW, Suite B-366
Washington, D.C. 20010
(202) 332-0500
dhonig@crosslink.net

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SUMMARY & INTRODUCTION

The Minority Media and Telecommunications Council (“MMTC”) respectfully submits these comments in response to the *Notice of Proposed Rule Making* (“NPRM”) issued October 31, 2013, proposing changes to technical rules for AM radio service that would advance the Commission’s goals of “localism, competition, and diversity in broadcast media.”¹ The Commission presents a number of proposals in this proceeding that create the next steps in what needs to be a greater plan to revitalize the long-term viability of AM radio service. However, as discussed herein, the greatest effort the Commission could make on behalf of AM radio is *to give serious consideration to developing a plan to relocate AM service to TV channels 5 and 6.*

The future of AM radio service is in peril and must be saved to preserve diversity in broadcast ownership and to serve multicultural communities that rely on the service for news and information. It is no secret that minority broadcast ownership is low.² The causes behind this, including but not limited to lack of access to capital and discrimination in advertising sales, are well documented.³ It is in this environment that minority owners on the AM dial are struggling;

¹ See *Revitalization of the AM Radio Service, Notice of Proposed Rule Making*, 28 FCC Rcd 15221 ¶1 (rel Oct. 31, 2013) (“NPRM”).

² Based on calculations of current available data from the FCC, minority broadcast ownership sits at approximately three percent. According to the FCC’s most recently available Form 323 Ownership data from 2011, minorities collectively or individually held ownership interests in only 559 broadcast stations. See *Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report on Ownership of Commercial Broadcast Stations*, 27 FCC Rcd 13814, 13817 ¶7 (rel. Nov.14, 2012) (reporting data from the 2009 and 2011 FCC Form 323 biennial reports) (“2013 Ownership Report”). According to the Commission, there are approximately 16000 full power commercial, LPTV stations (including Class A), and commercial broadcast stations as of December 2013 according to the FCC. See *Broadcast Station Totals as of December 31, 2013, Public Notice* (rel. Jan. 8, 2014).

³ See generally Comments of the Minority Media and Telecommunications Council, *Review of Foreign Ownership Policies for Common Carrier and Aeronautical Radio Licensees under Section 310(b)(4) of the Communications Act of 1934, as Amended*, IB Docket No. 11-133 (Dec. 1, 2011) at pp. 3-6, available at <http://mmtconline.org/lp-pdf/MMTC%20310b4%20Comments%20120111.pdf> (last visited Jan. 20, 2014) (discussing how the number of Spanish language broadcasters has decreased over the past few years due to the lack of capital investment); Steve Waldman, *The Information Needs Of Communities*, FCC (July 2011) at 251, available at http://transition.fcc.gov/osp/inc-report/The_Information_Needs_of_Communities.pdf (last visited Jan. 20, 2014)

first with the financial challenges of broadcast ownership in the digital age, and second, with the challenges of running stations where technical rules do not allow them to make the best use of the licenses they hold.

The survival of minority ownership in broadcasting is closely linked to the ability of AM radio to thrive because over two-thirds of minority broadcast owners are on the AM band. In 2011, the last year for which the FCC released data, racial minorities held majority ownership in 237, or only 6.2 percent of commercial AM stations.⁴ Of the 559 broadcast stations (AM/FM/TV) held by minorities, 409, or almost 73 percent, of them were AM licenses held by Hispanic and other racial minorities, as categorized by the Commission.⁵ Minority ownership in radio, while underrepresented, is actually far higher than in any other FCC-licensed technology.

While many online and satellite-based platforms continue to grow in popularity, radio remains the second most prevalent media source after television.⁶ Approximately half of all listeners still receive news and information from terrestrial radio.⁷ As a major source of news and information for many underrepresented communities, MMTTC asserts in these comments that AM radio needs to thrive. Over the past decade, the FCC has demonstrated its desire to preserve

(discussing how bankruptcies and no-urban/non-Spanish had a negative impact on minority ownership); *See* Comments of the Minority Media and Telecommunications Council, Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, MMTTC Radio Rescue Petition for Rulemaking, RM-11565 (Oct. 23, 2009) at 2 (“Radio Rescue Comments”), available at http://mmtconline.org/lp-pdf/MMTTC_Radio_Rescue_Comments_102309.pdf (last visited Jan. 22, 2014) (discussing difficulties minority-owned broadcasters face in current financial markets).

⁴ *See 2013 Ownership Report*, 27 FCC Rcd at 13817 ¶7.

⁵ *See 2013 Ownership Report*, 27 FCC Rcd at 13824.

⁶ State of the Media 2012, Pew Research Center’s Project for Excellence in Journalism, Key Findings: Audio, at 7, available at http://stateofthemedial.org/files/2012/08/2012_sotm_annual_report.pdf (last visited Jan. 20, 2014) (“State of the Media 2012”).

⁷ *See* State of Media 2012, Audio by the Numbers, available at <http://stateofthemedial.org/2012/audio-how-far-will-digital-go/audio-by-the-numbers/#news-radio> (last visited Jan. 20, 2014).

AM radio service by altering its rules in a piecemeal fashion.⁸ These rule changes help, but MMTC urges the Commission to take a more comprehensive look at AM radio service to provide sustainable, long-term solutions for AM radio licensees.

MMTC proposes that the Commission change the technical rules so that AM service can do more than survive. As mentioned in the Notice, there are “more complex suggested reforms [that] would require additional comment, research, and analysis,”⁹ and offers these additional proposals:

- Migration of AM radio service to TV channels 5 and 6: Using lower UHF channels, post-incentive auction repacking, to share spectrum with AM stations;
- Relaxing restrictions on AM stations relocating near urban areas: Allowing rural AM broadcasters to better serve the audience, while ensuring other local voices remain;
- Conducting tutorials on AM radio engineering rules: Explaining complex radio regulations at Commission headquarters and to diverse broadcasters; and
- Creating a position for a broadcast public engineer to aid in routine engineering matters: Making technical expertise available to clarify procedures.¹⁰

MMTC respectfully requests that the Commission include these proposals in the current proceeding.

⁸ *NPRM* at 15224-25 ¶¶8-9.

⁹ *NPRM* at 15240 ¶45.

¹⁰ *See infra* pp. 18-16.

I. OPEN AN FM TRANSLATOR WINDOW EXCLUSIVELY FOR AM LICENSEES AND PERMITTEES

MMTC supports the Commission’s proposal in the *NPRM* to open the FM translator filing window exclusively for AM licensees and permittees (the “AM-only window”), and urges the Commission to move expeditiously on that matter. MMTC believes that the Commission has the legal authority to create this AM-only window and that the AM-Only window would be in the public interest. However, MMTC believes that the imposition of some of the requirements proposed by the *NPRM* would be overly burdensome for struggling AM stations and that the public interest would be better served by less rigid restrictions.

A. The Commission Has the Legal Authority to Limit the FM Translator Filing Window to AM Licensees and Permittees.

A restriction imposed by the FCC that would limit the AM-only window to AM applicants is consistent with the Supreme Court’s decision in *Ashbacker Radio Co. v. FCC*.¹¹ *Ashbacker* stands for the proposition that when two *bona fide*, similarly-situated applications are mutually exclusive, both are entitled to be considered for grant.¹² However, *Ashbacker* does not require the FCC to treat all applications as mutually exclusive. The United States Court of Appeals for the District of Columbia Circuit has held that Section 309(e) of the Communications Act “does not preclude the FCC from establishing standards to identify qualified applications and excluding those applicants who plainly fail to meet [those] standards.”¹³ In this *NPRM*, the AM-only window is just such a standard and *Ashbacker* presents no bar to excluding other

¹¹ 326 U.S. 327 (1945) (holding that 47 U.S.C. §309(e) establishes a right to hearing when two bona fide applications are mutually exclusive).

¹² *Id.*

¹³ See *Hispanic Information & Telecommunications Network, Inv. v. FCC*, 865 F.2d 1289, 1294 (D.C. Cir. 1993) (upholding the dismissal of “non-local” Instructional Television Fixed Service applications filed during a “local priority period”)

parties from filing during that window. The eligibility requirement proposed is crafted to address the technical and competitive challenges that AM broadcasters face.

B. The AM-Only FM Translator Filing Window is in the Public's Interest.

An AM-only window to file FM translator applications would serve the public interest by helping to maintain the vitality and utility of AM service. As the Commission has rightfully acknowledged, AM radio has faced a steady decline in listenership over the past thirty-five years.¹⁴ Technical limitations and interference have affected the AM band in ways that have not affected AM's competitors. This erosion in AM radio audience impacts minority-owned radio stations the most, as two-thirds of all minority radio station owners are owners of AM stations. Additionally, AM radio is an important and unique source of local and community-based programming for minority communities.

As the Commission noted, allowing "an open window could frustrate [its] goal of providing expeditious relief to AM broadcasters."¹⁵ Allowing for a restricted window for AM licenses would allow AM licensees and permittees to enhance their existing service to the public and avoid interference and technical problems that typically affect AM stations. Because of the fill-in coverage restrictions and other FM translator rules and policies, there is a limited supply of available FM translators for individual AM licensees. Unless the contemplated window is an exclusive AM window, other broadcasters could obstruct a local AM broadcaster from acquiring a translator station. MMTC strongly urges the Commission to enact the proposal in order to improve AM service, and to reject proposals for broader windows that would frustrate the overarching goal of providing expedited relief for AM radio.

¹⁴ *NPRM* at 15223 ¶6 (noting that AM listenership has declined from over 50 percent of all radio listening hours in 1978 to less than 20 percent in the past several years).

¹⁵ *Id.*

C. The Commission Should Not Limit Applicants to One FM Translator Application Per AM Station.

While MMTC generally supports the Commission's proposals in the *NPRM*, MMTC believes the Commission should do away with the requirement that each eligible applicant only be allowed to apply for one FM translator station per AM station. In the *NPRM*, the Commission proposed that each AM broadcast licensee or permittee only be allowed to apply for one FM translator for each AM station during the AM-only window.¹⁶ The Commission tentatively concluded that this requirement is necessary in order to limit the risk that an FM translator owner relocates the translator to an area that does not fill in the AM station's daytime signal contour.¹⁷ However, this limitation is far too rigid to suit the needs of AM licensees and permittees that have large coverage areas and would need more than one FM translator in order to adequately serve AM's primary coverage area.

In the alternative, if the Commission believes that the one translator limit is necessary, MMTC urges the Commission to consider making the rules less rigid in order to accommodate AM stations with large coverage areas. The Commission should allow certain AM stations to apply for more than one FM translator if they are able to make a showing that the second station is necessary to fill in holes in the AM's service area, and therefore in the public interest. The FCC could further require that the FM translators' contours do not overlap with each other, providing duplicate service.

D. The Commission Should Not Require that Authorized FM Translators be Permanently Linked to the Acquiring Primary AM Station.

The Commission should allow FM translator stations that are authorized pursuant to the AM-only window to be assigned or transferred, regardless of whether that assignment or transfer

¹⁶ *Id.* at 15227 ¶14.

¹⁷ *Id.*

is in conjunction with the primary station. The Commission has proposed a rule that would require that any FM translator authorized pursuant to the AM-only window be permanently linked to the primary AM station that acquired the translator. However, as noted above, AM radio has faced a steady decline in listenership and is struggling to maintain its viability. Any restraint on free alienability for AM stations could frustrate the Commission's goal of revitalizing AM radio. MMTC understands the Commission's concern that without such a restriction, AM licensees could buy FM translators for the sole purpose of selling them at a higher price, rather than rebroadcasting the AM signal. However, MMTC believes that concern must be balanced against the needs of failing AM stations to assign or transfer their FM translators to service. The economic reality is that many AM stations may currently be unsellable, while FM translators are selling for record prices.

If the Commission concludes that the limitation on transfers and assignments is nevertheless necessary to ensure that the AM-only window serves its intended purpose, MMTC asks that the Commission allow for a waiver of this rule for failing stations ("Failing Station Waiver"). A Failing Station Waiver would require that any AM licensee or permittee who wishes to assign or transfer the rights to its FM translator, make a sufficient showing that the financial condition of the primary station is poor, and that absent the waiver, the primary AM station would be economically non-viable. Failing Station Waivers would balance the Commission's goal of ensuring that the AM-only window is used for its intended purpose, with the reality that cash-strapped AM stations may need to sell their FM translator station in order to maintain the viability of their primary station.

E. Tell City Waiver

A problem not discussed in the *NPRM* is the fact that there may not be sufficient new spectrum opportunities to create new translators for all the AM stations that could use one,

especially following the proliferation of facilities from the 2003 and low-power FM (“LPFM”) windows. Moreover, even in instances where an existing translator may be available, it is not always presently located where it can meet the technical requirements or provide the best additional service to an AM station. The Commission’s current processing restrictions with respect to the ability to move existing translators, including when trying to provide local nighttime service, make many existing translators unavailable or impractical for a deserving AM station and its audience.

MMTC takes note of the waiver request of Station WTCJ(AM), Tell City, Indiana, requesting to move a translator further than presently allowed under the Media Bureau’s processing guidelines, but still within the WTCJ(AM) 0.025 mV/m interference contour specified in Section 73.37(a) of the Commission’s Rules. This request, dubbed the “Tell City Waiver,” makes tremendous sense and represents a reasoned approach for expanding the availability of existing FM translators by AM stations in need of better or expanded nighttime coverage. MMTC supports the proposal to institutionalize the standard proposed by the Tell City Waiver and encourages the FCC to allow an AM station to search 50 or more miles from its transmitter site, up to the AM station’s 0.025 mV/m interfering contour, as specified in Section 73.37(a) of the Commission’s Rules. The exception should be that the Tell City Waiver would not be available in an LPFM spectrum limited market and the move must be in compliance with other FCC technical rules.

The Tell City Waiver represents a market-based approach to afford an AM station seeking nighttime coverage in its community and the ability to provide additional auxiliary service to its listeners.

II. MODIFY DAYTIME COMMUNITY COVERAGE STANDARDS FOR AM STATIONS

As the Commission noted in the *NPRM*,¹⁸ MMTC proposed a change to the AM station daytime community coverage rule¹⁹ in its 2009 Radio Rescue Petition for Rule Making (“Radio Rescue Petition”).²⁰ While the current rule may have been an appropriate safeguard to foster public service in the nascent stage of U.S. broadcasting development, today it may actually be counterproductive to fostering true community service. In the early days of a developing AM broadcasting industry, it was important to encourage a few AM stations to serve the core community population since that station may have been the only broadcasting source of news and information to the geographic community defined by a political boundary. With the development of FM radio and television, that assumption, of course, became less and less true.

Ironically, the dawning and maturation of the Internet age has upended many of the earlier broadcasting and frequency allocation policy assumptions. Today, most communities have at least several electronic media serving their populations. The competition for audience has significantly altered the marketing strategies of all electronic media. In the contemporary multimedia world, with many sources of news, information and entertainment ranging from radio, television, cable television and satellite readily available to the general population, the very notion of community has been recast from that of a specific geographic area defined by political boundaries to one of specific audiences, interest groups, tastes and demographics within that coverage area.

¹⁸ *NPRM* at 15229 ¶19.

¹⁹ 47 C.F.R. §§73.24(i), 73.315(a).

²⁰ See Review of Technical Policies and Rules Presenting Obstacles to Implementation of Section 307(b) of the Communications Act and to the Promotion of Diversity and Localism, MMTC Radio Rescue Petition for Rulemaking, RM-11565 (Jul. 20, 2009) at 10 (“Radio Rescue Petition”), available at <http://mmtconline.org/lp-pdf/MMTC-Radio-Rescue-Petition-071909-REV.pdf> (last visited Jan. 21, 2014).

This phenomenon was recognized by Dr. Larry F. Darby, in a statement prepared for the FCC Media Ownership Workshop:

As competition for audience increases – as it will continue to do as new applications, technologies, and platforms proliferate – traditional media will be required to adapt. Station owners have some, but limited, options for doing so. These include: cutting costs through productivity increases; cutting inputs like labor; reducing local program production; reducing quality and audience options; and consolidation. Some will create tension with traditional regulatory values and approaches. Stations will, as in the past, respond to market incentives along lines permitted by regulatory constraints.²¹

One of those market incentives is to provide service to an underserved interest group. To allow a station to align itself for service to a particular unserved, or underserved community of interest, the Commission must realize that in an otherwise well-served geographic area, it is more important to facilitate coverage of the demographic community in need of a voice than to assure additional broader coverage defined only by the politically boundaries established for many other reasons. This is particularly so when those broader interests are well served by a wide variety of existing sources.

As documented in the Radio Rescue Petition, minority audiences are vastly underserved by radio broadcasting, but where they are served by minority-owned stations, that service is 43% more likely to be through an AM station than would be true of a non-minority- owned station.²² MMTC is convinced that the daytime coverage rule requires relaxation so that applicants have greater flexibility in siting AM stations in a way that more usefully fulfills the service requirements of the communities of listeners they actually seek to serve. As previously pointed out, that specialized demographic listening group may not have grown geographically in the same direction or density as the community as a whole. What MMTC said five years ago in the

²¹ Prepared Statement of Larry F. Darby, FCC Media Ownership Workshop, Stanford, California (May 21, 2010).

²² Radio Rescue Petition at 4, n.12.

Rescue Petition applies with even greater force today. Changes in community boundaries and population shifts occur as a result of the passage of time and growth in the community. Initial sites that were able to comply with the daytime coverage rule may no longer be compliant as communities annex adjacent areas and change their boundaries.

The resulting political boundaries can have unusual shapes that are impossible to fit within the required daytime coverage contour. This may be particularly true with respect to stations seeking to serve minority groups and is particularly damaging since those groups have often grown to areas outside the core geographic community of license, or in pockets of the larger community. For those stations, a service requirement to the entire geographic community is of little added benefit. In fact, it may force them to re-select niche audiences that no longer reside within the areas mandated by the city coverage rule. Accordingly, as acknowledged in the *NPRM*, continued steadfast adherence to the rule, along with the inherent difficulties of finding suitable tower sites in urban areas, actually harms the public interest by restricting the ability of commercial stations to change their sites and make other improvements that will benefit the public interest and will serve minorities who are in the greatest need of improved AM service.²³

We noted in the Radio Rescue Petition, that many minority-owned broadcast stations seek to provide specialized programming services to their target audiences but are often frustrated from doing so by the restrictions imposed by the Commission's community coverage rule. Further, in some cases the demographic audience seeking to be served may lie at the fringe of the community to which a station is licensed. Incurring the need to establish a separate community to which the license may be reassigned is a burdensome and costly affair that could sap funds otherwise required to provide a substantial service to an otherwise unserved

²³ See Radio Rescue petition at 15.

community of listeners. Also as noted in the Petition, while a waiver might be available, the cost of even that protracted proceeding could divert the funds needed to provide these service enhancements making the whole effort unworkable. Section 307(b) considerations that govern such moves may present barriers to reaching target audiences in urban areas.²⁴

Even without the shift of population or community boundary expansion occasioned by the annexation of outlying areas by the community of license, many communities have drastically changed in composition, size, boundaries and land use making the location of new tower sites for station improvement either extremely difficult, or in some cases actually impossible. Urban areas have been developed or redeveloped and land values have changed so that it is no longer practical to locate arrays or even single AM towers, often requiring extensive ground systems, at locations within an urban area that would provide for 80% coverage of the community from the new site. While the *NPRM* recites the value of principal community coverage as part of the commitment to broadcast localism and fair, efficient, and equitable distribution of radio service,²⁵ MMTC submits that those goals are defeated when maintenance of the rule results in a second, third or fourth service to a relatively disinterested general audience and at the cost of a vital service to a specific and underserved audience. “Local” does not necessarily refer only to geography – but rather to the needs of listeners, wherever they are located.

Therefore, MMTC believes that the Commission has properly proposed a shift in the AM rules providing minimum coverage requirement of 50% of the community of license for the daytime 5 mV/m during the day. While the proposed rule change would apply only to existing stations, MMTC believes the Commission should also apply it to any new applications for AM

²⁴ See discussion *infra* pp. 22-22.

²⁵ *NPRM* at 15230-31 ¶21.

stations. The same principles apply with no less force to a new station seeking to provide service to a small but well-defined minority community. The Radio Rescue Petition explained how minority groups were not allowed into broadcasting until two generations after the industry was born, and when they were able to enter, it was more likely with an AM station.²⁶

While perhaps less desirable in many respects than high powered FM radio stations, it is clear that AM stations have been the vehicle of entry for minorities, whether it is with a recently-purchased station or through an increasingly rare opportunity to apply for a new AM facility. In the latter case, the same considerations regarding community coverage, availability of space for AM transmitting facilities and the cost of legal process involved in obtaining waiver apply with no less force. New stations may have no more flexibility to site stations in a way that would produce full geographic community-wide coverage than existing stations. Indeed, land availability, land-use zoning restrictions and cost may actually apply with even greater force when siting an entirely new AM station where there may have never before been a tower or ground system. The ability of a broadcaster to innovate and provide new service that will sustain the station for an unserved or underserved community matters a great deal.

MMTC believes that new station development in the AM band will occur only when a broadcaster has an innovative idea to serve a previously unserved audience. Technical regulations designed to provide city-wide service to a community already well endowed with broadcasting facilities should not restrict that innovation. Therefore, MMTC proposes that the new coverage requirement of 50% of the community with the 5 mV/m signal should apply to all

²⁶ See Radio Rescue Petition at 4. As recently as about a decade ago, less than 6% of the AM stations were minority-owned, although a minority owned station was 43% more likely to be an AM station than was a non-minority station. *Id.*

new applicants as well whenever a community is already served by five broadcasting facilities of any service licensed to that community.

III. MODIFY NIGHTTIME COMMUNITY COVERAGE STANDARDS FOR EXISTING AM STATIONS

As noted, MMTC proposed in its Radio Rescue Petition that the nighttime coverage requirement for Section 73.24(i) should be deleted.²⁷ For many of the same reasons supporting our request for significant modification of the daytime community coverage requirement, the nighttime coverage rule is an anachronism. In an earlier time, when AM stations were the sole nighttime source of broadcast information to a town, county or larger entire community, a significant nighttime community service requirement may well have made sense. There were fewer burdens in finding a sufficient landsite properly located to provide that service to the same geographic community from the same location. It is well recognized that is no longer the case.

Community economic development, increased cost of land and much more restrictive zoning regulations have, in general, made it far more difficult to find the required site to meet the 80% community coverage requirement, or for that matter, in some cases nearly any nighttime “community of license” nighttime service. Even so, without an arbitrary coverage requirement to a politically created division of land or people, a station can often serve a worthy community of listeners with whatever nighttime coverage it can muster. This is particularly true for minorities, be they African-American, Native American, Spanish American or “any-American.” That is why MMTC has asked that the nighttime coverage requirement be eliminated.

Certainly, a half-way measure such as a reduction to 50% community or population coverage with a 5 mV/m signal would be helpful, even significant, and has precedent with the rule that applies to expanded-band AM stations. However, there is no reason to pick an arbitrary

²⁷ Radio Rescue Petition at 10-14.

stopgap just to appear less drastic. MMTC has further reflected upon this proposal and believes the Commission has not proposed a modification sufficient for the times. First, the very nature of a radio broadcasting “community” has changed. Listener communities are no longer defined solely by geographic proximity, but by community of demographics and interests within the larger geographic area. Second, in such a competitive radio broadcasting environment, it may be assumed that every broadcaster will seek to maximize its coverage, particularly to reach a community of listeners in need of a broadcasting voice. In fact, that goal can be compromised by requiring coverage of a larger, general, geographically-defined community. Third, every broadcaster knows that nighttime is an important period of listener interest, particularly for local coverage, and will seek to maximize nighttime coverage without a government mandate to do so. That proposition is supported by the uncontroverted success of the FM cross-service translator program, allowing AM stations’ access to FM translators, in part to continue the service of daytime or reduced power stations beyond their authorized hours.

The Commission is justified in citing MMTC’s concern that AM stations will find it too expensive and difficult if it becomes necessary to operate two separate sites to comply with the nighttime coverage rule. Moreover, many commenters have already concurred that the concept of community of license for AM stations, whether for new or for modification applications, is no longer relevant. According to FCC statistics, at the conclusion of World War II in 1945, there were 931 AM and 46 FM radio broadcasting stations operating in the entire U.S.²⁸ Compare that to the Commission’s latest count of 4,727 AM and 6,612 FM commercial stations and 4,019 FM

²⁸ See *Broadcast Station Totals as of June 1943 to 1952*, available at <http://transition.fcc.gov/mb/audio/newsite/datafiles/BroadcastStationTotals1943-1952.html> (last visited Jan. 22, 2014). There were also six television stations in operation, for a total of 1,015 broadcast media. *Id.* An Excel spreadsheet with all totals from June 30, 1943 through December 31, 2013 is available at <http://transition.fcc.gov/mb/audio/newsite/datafiles/BroadcastStationTotals.xls> (last visited Jan. 22, 2014). With the addition of television, the number climbs to nearly 20,000 broadcasting services, not counting translators and boosters.

educational stations; 15,358 radio stations, a fifteen-fold increase. A policy designed to assure that over 900 AM radio stations would provide service to the communities across America is no longer applicable to a country with nearly 16,000 radio stations, when many underserved minority communities continue to lack a full-time service directed to their needs. It is time for the Commission to assume that broadcasters will seek to provide service to the markets they can develop and provide nighttime radio service to a listener community most in need of it by dropping the nighttime geographically based coverage requirement entirely.

IV. ELIMINATE THE RATCHET RULE

MMTC supports elimination of the Ratchet Rule. Many AM stations are unable to apply for needed improvements in coverage because the 10% reduction in the signal contribution too often outweighs the benefit in the improvement in coverage. As a result, the project is abandoned. Unless the modification takes place, there is no interference reduction. In the *NPRM*, the Commission recognizes that the “rule may not have achieved its intended goal” since it was adopted in 1991.²⁹ The Commission also recognized in the *NPRM* that approximately 60 percent of the applications governed by the rule ask for a waiver.³⁰ Elimination of this rule is long overdue and is widely supported by other commenters.

Entercom Communications Corp. recently announced that it is donating Station KWOD(AM), Salem, Oregon to MMTC. KWOD is impacted by the ratchet clause as the station enters the 50 percent RSS night limit of Station KBBO(AM) Yakima, Washington.³¹ Should KWOD find it necessary to modify its facility in any way that would require a technical change

²⁹ See *NPRM* at 15233 ¶28; *Expanded Band R&O*, 6 FCC Rcd 6273 (1991).

³⁰ *Id.*

³¹ KBBO is a directional station operating under STA with reduced power due at first to parameters at variance and now in a second STA due to lightning damage.

and a Form 301 application, the station would be required to reduce its interfering sky wave signal by 10 percent which would be a reduction in nighttime power from the current 690 watts to 559 watts. This would reduce the population inside the KWOD nighttime interference free (NIF) contour from 244,687 persons to 240,471 persons a reduction in 4,216 persons. It should be noted that this is a rare case as normally this extensive a power loss would produce a much greater loss in nighttime service.

The current KBBO NIF contour covers 80,617 persons which involves only a portion of Yakima. The resulting NIF contour would cover 85,674 persons. This is an increase of 5,057 persons and this was the intent of the rule as implemented in MM Docket 87-267. As is seen here, the net public interest benefit is only 841 more persons served at a cost of 4,216 existing listeners losing service.

MMTC is in favor of doing away with the Ratchet Clause because it requires stations such as KWOD that enter the 50 percent RSS night limit of one or more stations to reduce power to 81% of the licensed power (a 10% decrease in interfering signal) if they make any technical change requiring a Form 301 application for a construction permit. Should KWOD have to change site due to loss of its site for reasons beyond its control, the result would be a loss of existing service which is not in the public interest.

V. PERMIT WIDER IMPLEMENTATION OF THE MODULATION DEPENDENT CARRIER LEVEL CONTROL TECHNOLOGIES (“MDCL”)

MMTC supports the proposal designed to simplify the Commission’s processes to make use of energy saving MDCL technologies. MMTC’s members are aware of several options offered by a few manufacturers for these types of technologies which control power consumption levels. The FCC states that it has not received any reports of interference from the limited numbers of AM stations currently using these technologies and, as a result, is willing to permit

wider implementation without prior approval as long as the AM station notifies the FCC within 10 days thereafter and the station's transmitter is able to achieve full licensed power at some audio input level. MMTC believes this is a prudent approach that will encourage AM stations to make use of these technologies as they become more widespread and cost saving.

However, as the Commission is undoubtedly aware, the MDCL technology is of limited value to most AM stations because, unless the transmitter is one of the newer models, it may not be compatible with the systems currently available. Of course, buying a new transmitter for this purpose is not worth the return on the investment. Some AM station owners have tried to convert their older transmitters with significant expenditures of funds so that they would become compatible with one of the new MDCL technologies, but these designs have not yet worked, and the cost of the project was not worth the savings. Thus this proposal is of limited overall benefit.

VI. ADDITIONAL PROPOSALS

A. Use of Lower VHF Channels, Including Channels 5 and 6 for AM Stations

The FCC's proposals detailed in the *NPRM* will not have the necessary beneficial impact on AM stations struggling to survive during these economic times. Station values have plummeted, the lending community is unwilling to provide funds to AM stations owners desiring to purchase or improve their facilities, repairs are often more expensive than the stations are worth, and the younger generation is drawn to news and entertainment on new platforms. That is why, out of all of the proposals, by far the most popular is the one in which FM translators are being offered to AM stations. But relying on an FM translator will do nothing to revitalize the AM band. This is nothing more than a step toward migrating the AM programming to the FM band. However, not all AM stations will be able to obtain FM translators especially in urban areas where spectrum availability for this service is scarce and the FM band is already congested.

The better solution for the AM service is to make use of the vacant spectrum in the lower VHF band.

MMTC has supported this concept since 2009 when it filed its Radio Rescue Petition.³² MMTC cited the proposal filed by the Broadcast Maximization Committee (“BMC”) in which it demonstrated that there was room for all AM stations to migrate to the space vacated by analog TV station after the DTV transition.³³ MMTC suggested that an Advisory Committee be created to fulfill the Congressional mandate to promote diversity and localism by properly utilizing this spectrum. Almost six years later, BMC’s proposal remains pending and nearly five years later, MMTC’s suggestions remain in limbo as well. Meanwhile, AM service continues to deteriorate with no other long term solutions on the horizon.

MMTC is aware of the obstacles to the use of Channels 5 and 6. The spectrum is used by a few TV stations and may be used by an unknown number of additional TV stations as a result of the incentive auction and repacking proceeding. However, MMTC has spoken to BMC representatives and they confirm that after conducting additional studies based on current utilization of Channels 5 and 6, these channels can be shared by AM stations. The studies anticipate that a large majority although not all AM stations will want to migrate to Channels 5 and 6. But even if all desire to migrate and if there is a digital TV Channel 6 station operating in the market, then Channel 5 should offer enough space to accommodate all of the AM stations in the market and where there is a digital TV Channel 5 station operating, all AM stations can operate on Channel 6 in that market. MMTC notes that these are not desirable channels for DTV

³² See Radio Rescue Petition at 7-10. As stated then, “now that the DTV transition has taken place, the time has come for the Commission to determine the best use of Channels 5 and 6. This is an especially important proposal due to the breadth of opportunity that is presented by this spectrum for an exodus and, in today’s economic climate, probably saving AM radio while eliminating a great deal of interference among AM stations that choose to remain in the AM band.” *Id.* at 7-8.

³³ Radio Rescue Petition at 8.

use, and Congress has assured TV broadcasters that they will not be involuntarily forced into the lower VHF band. As long as the Commission does not repack TV stations on Channels 5 and 6 in large numbers and in such manner as to preclude availability for AM usage, the shared plan can work. MMTC urges the Commission to give serious consideration to the use of Channels 5 and 6 for AM stations and to avoid these channels in its repacking initiatives.

B. Relax the Restrictions On AM Stations Relocating Near Urbanized Areas

If the Commission does decide to modify its daytime and nighttime community coverage standards, the proposal will have limited value due to the prohibitions set forth in the *Rural Radio* proceeding³⁴ which strictly limit where AM stations outside urbanized areas can relocate. If an AM station proposes to change its community of license, it must show that its proposed daytime principal community contour will not cover an urbanized area and cannot do so in a subsequent move. Otherwise the applicant must provide a compelling showing that its new community is independent under certain prescribed criteria.³⁵ Needless to say, no one has successfully made such a showing and the deterrent effect has caused very few broadcasters to even try to make such a showing.

The problem is that it is difficult enough for an AM licensee to find a suitable site, but it must also avoid encroaching upon urbanized areas. This is difficult to accomplish. The 2010 US Census classifies every population grouping of 50,000 or more as constituting an urbanized area. The definition is so broad that fully 71percent of the total population of the United States lives in urbanized areas according to the U.S. Census.³⁶ The difficulty in avoiding Urbanized Areas is

³⁴ *Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, Second Report and Order*, 26 FCC Rcd 2556 (2011) (“*Rural Radio*”).

³⁵ *Id.* The criteria is known as a *Tuck* showing. See *Faye and Richard Tuck*, 3 FCC Rcd 5374, 5376 (1988).

³⁶ There are a total of 486 urbanized areas according to the 2010 U.S. Census compared to 407 Urbanized Areas in the 2000 U.S. Census.

compounded when the showing must include no available sites in a second step. Considering that the proposed community of license is only being served with a 50 percent signal during the day (and no such requirement at night), it becomes an extremely difficult burden to overcome. The Commission must reconsider this policy if it intends to permit the relaxation of daytime and nighttime community coverage requirements.

Since the Commission is concerned about retaining service to rural areas, a more reasonable standard of service in rural areas would be a showing that there will continue to be at least five aural services in the loss area. The Commission should recognize this standard, otherwise many AM stations will not be able to take advantage of the Commission's proposals when they file to change community of license. By requiring a showing that there are no rule-compliant minor modifications possible in a subsequent application, the Commission is asking the AM licensee if it plans to spend money to construct the station twice when there are few viable AM stations that can afford to construct once!! The standard is unrealistic for AM stations which must contend with the scarcity of available land, escalating costs, environmental factors, daytime/nighttime coverage, the Ratchet Rule and especially the avoidance of encroaching upon an urbanized area.

MMTC urges the Commission to relax the Rural Radio prohibitions on relocating AM stations by simply requiring that the loss area continues to have five aural services. In this way, the Commission can protect adequate service in rural areas and at the same time enable AM stations to survive. Otherwise, the proposals being offered will have little effect in helping to revitalize the AM service.

C. Conduct Tutorials on AM Radio Engineering Rules at Commission Headquarters and Annual Industry Conferences

This proposal would benefit the radio industry, particularly small AM stations and new entrants, by providing the Commission an opportunity to explain complex radio regulations and thus decrease a common entry barrier and promote compliance with the rules. The Commission's AM technical radio frequency rules have gradually evolved over many decades and, as a result, have become increasingly complex over time.

As a result of the complexity of AM radio regulations, it is extremely difficult for AM radio broadcasters to fully understand and comply with the existing radio regulatory regime, a framework that this proceeding proposes to further modify in the public interest. Furthermore, unlike other services, which are more profitable, AM broadcasters must expend substantially more resources per station to remain abreast of, and in compliance with, the Commission's rules. This serves as a further competitive disadvantage and creates substantial barriers for new entrants to the radio broadcast industry. The net result of the complexity of the current AM radio regulatory framework is to reduce the number of independent voices available to the listening public and reduce diversity of radio station ownership.

To help enable AM businesses and nonprofits to compete in the new regulatory environment, the Commission should conduct tutorials on AM radio engineering rules at the Commission's headquarters and at the annual conferences of organizations that represent the interests of broadcasters, and in particular, diverse broadcasters, such as:

- The annual broadcast conference of the National Association of Broadcasters ("NAB"). NAB holds an annual "Radio Show," which is the largest radio convention of its kind and includes sessions targeted toward engineers. The

Commission has been actively involved in the NAB Radio Show in the past, and FCC Commissioners have been featured as NAB Radio Show speakers.³⁷

- The annual conferences of the National Association of Black Owned Broadcasters (“NABOB”). NABOB is the first and largest trade organization representing the interests of African-American owners of radio and television stations across the country. NABOB hosts two annual broadcast management conferences—one in the spring and one in the fall. The conferences focus on critical issues and trends in the broadcast industry that impact the growth of minority broadcast entrepreneurs.
- The Access to Capital and Telecom Policy Conference is held annually by MMTC. This conference is the largest minority media and telecom financial forum in the nation, and attracts entrepreneurs, service providers, bankers, private equity investors, Members of Congress and FCC Commissioners.³⁸

Broad public dissemination and understanding of the existing AM radio rules and any new rules adopted in this proceeding are necessary to achieve their maximum effectiveness in benefiting AM businesses.

Moreover, such outreach is consistent with President Obama’s directive that the federal government during his administration will “disclose information rapidly in forms that the public can readily find and use” and will use “innovative tools, methods, and systems to cooperate ... with nonprofit organizations, businesses, and individuals in the private sector.”³⁹ This proposal is consistent with the Commission’s existing practice of providing outreach to the public by holding workshops and tutorials at the Commission’s Washington D.C. headquarters, as well as

³⁷ The FCC staff also may consider hosting tutorials at some of the NAB’s other annual events including: (i) NAB Futures Summit; (ii) NAB Executive Development Program for Radio Broadcasters; and (iii) NAB Small Market Group Roundtable.

³⁸ For further information about MMTC’s Access to Capital Conference, please visit MMTC’s website, available at <http://www.mmtconline.org/accesstocapital>.

³⁹ Memorandum for Heads of the Executive Departments and Agencies, Transparency and Open Government, 74 Fed. Reg. 4685 (Jan. 26, 2009) (“Transparency Memorandum”). Although the Commission is not an Executive Branch agency, the public interest would nevertheless be served by Commission efforts to comply with the directives set forth in the Transparency Memorandum.

at other locations around the country. By adopting this proposal, the Commission would be making great strides in fulfilling this administrative goal.

D. Create a Broadcast Public Engineering Position to Assist Small Business and Nonprofits with Routine Engineering Matters

This proposal would increase diversity within the broadcast industry by providing a valuable tool for AM broadcasters to help navigate the Commission's complex regulatory system, which would allow increased participation of these entities in broadcasting.

As the radio industry grew, so too did the complexity of the Commission's regulatory system. AM broadcasters do not have the same resources that other broadcasters do and as a result often struggle to maintain the cost of compliance with these complicated rules. The effect of this system is to make it difficult for AM businesses seeking entry into broadcast industry. The Commission should create a new staff resource, a position titled Broadcast Public Engineer, to assist AM broadcasters with routine engineering matters.⁴⁰

The Broadcast Public Engineer should act as the Commission's broadcast ombudsman by conducting public outreach to develop proposals and to generally streamline and clarify certain FCC AM applications and filing procedures, thereby benefiting AM businesses as well as the entire broadcast industry.

The Broadcast Public Engineer should specifically be tasked with the following activities:

⁴⁰ Most Commission applications include one or more engineering exhibits that cannot be completed by station managers or owners but instead require the services of an outside radiofrequency engineer with access to sophisticated engineering software. *See, e.g.*, the engineering portions of the following FCC Forms: (i) Application for Construction Permit for Commercial Broadcast Stations (FCC Form 301); (ii) Application for AM Broadcast Station License (FCC Form 302-AM); (iii) Application for Renewal License for AM Stations (FCC Form 303-S); (iv) Application for Authority to Construct or Make Changes in a FM Translator (FCC Form 349); and (v) Application for an FM Translator Station License (FCC Form 350). Hiring an outside engineering firm can be very costly, especially given the small regulatory budgets available to AM broadcasters.

- Preparing routine technical exhibits, to the extent that it can be done using available software products without field testing;
- Administering an engineering assistance hotline to complete the engineering portions of routine applications.
- Reviewing the FCC Forms and corresponding instructions to recommend modifications or additions for the purpose of clarifying and simplifying completion of the engineering portion of these forms;
- Educating AM owners about the FCC's current radio rules and any changes thereto;
- Developing user guides and brochures providing explanations regarding how to complete the engineering portions of FCC applications that are more detailed than the instructions to the forms; and
- Reviewing the FCC's CDBS database to recommend ways to make the technical information memorialized in the database more easily accessible and comprehensible to the public.

Furthermore, the Broadcast Public Engineer could work with the Media Bureau's engineering staff to identify frequently made engineering errors on broadcast applications and, through public outreach, reduce the incidence of such errors going forward.

The Commission's Broadcast Public Engineer could be part of the Office of Communications and Business Opportunities ("OCBO"). The OCBO "develops, coordinates, evaluates, and recommends to the Commission, policies, programs, and practices that promote participation by small entities, women, and minorities in the communications industry."⁴¹ The Broadcast Public Engineer's responsibilities would be consistent with this mandate.

The addition of the Broadcast Public Engineer position to the other Commission resources for the public ultimately provides significant efficiencies to the Commission by reducing the number of inadequately and inaccurately completed applications filed. Accordingly, the position of Broadcast Public Engineer would not only support the public interest by furthering the mission of the OCBO, to remove barriers to participation by small

⁴¹ 47 CFR 0.101(b) (2).

entities, women, and minorities, but it may also improve the Commission's processing of broadcast applications generally.

CONCLUSION

The Commission's effort to revitalize a service relied upon by the majority of Americans for news and information is a great first step in what needs to be a more inclusive plan to save AM radio service. The proposals presented by the Commission in the *NPRM* will also help preserve diversity in broadcast ownership and serve multicultural communities. Additional proposals presented by MMTC, including the migration of AM radio service to TV channels 5 and 6, relaxing restrictions on AM stations relocating near urban areas, conducting tutorials on AM radio engineering rules, and creating a position of broadcast public engineer to aid in routine engineering matters, should also be considered in this process. The Commission should initiate additional research and analysis and call for additional comments on these proposals as needed.

Respectfully submitted,

David Honig

David Honig, Esq.

President

Joycelyn James, Esq.

Senior Counsel

Nicol Turner-Lee, Ph.D.

Vice President and

Chief Research & Policy Officer

Jacqueline Clary, Esq.

Senior Counsel

Minority Media and Telecommunications
Council

3636 16th Street NW, Suite B-366

Washington, D.C. 20010

(202) 332-0500

dhonig@crosslink.net

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