

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

MM Docket No. 89-46

In the Matter of
Policies to Encourage
Interference Reduction Between
AM Broadcast Stations

REPORT AND ORDER
(Proceeding Terminated)

Adopted: April 12, 1990;

Released: July 18, 1990

By the Commission:

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding, 4 FCC Rcd 2430 (1989). That *Notice* looked toward the development of formal procedures for AM licensees to reduce interstation interference through agreements among stations, and considered related changes in our AM processing rules that may facilitate such procedures. In the *Notice*, we requested comment concerning the existing policy of "grandfathering" deleted AM facilities, the Commission rule of proscribing contingent applications, the requirement that a major change in AM facilities be subject to competing applications, and the establishment of a "local service floor." Thirteen parties filed comments and/or reply comments.¹ After careful consideration and review of these comments, we are adopting the proposals presented in the *Notice*.

BACKGROUND

2. The *Notice* in this proceeding is an outgrowth of both the Mass Media Bureau's *Report on the Status of the AM Broadcast Rules*, released April 3, 1986, and the subsequent *Notice of Inquiry*, 2 FCC Rcd 5014 (1987), addressing the technical, legal, and policy issues pertaining to AM broadcasting.² In response to the *Notice of Inquiry*, commenters have emphasized the need to improve the overall quality of the AM service. In order to address these concerns, we have initiated four different dockets.³ Today we are adopting a *Notice of Proposed Rule Making* in MM Docket No. 87-267, through which we intend to refine and integrate the proposals made in these earlier dockets into a master plan for achieving a significantly improved AM broadcast service. As an integral part of that master plan, we now remove regulatory barriers that prevent or discourage individual AM stations from lessening the amount of interstation interference and improving the quality of service through private agreements. The result of these negotiations between AM stations may be the filing of contingent applications as discussed in paragraphs 5, 6, 7 and 8, *infra*, or one station's deleting or modifying its facilities. In order to provide this opportu-

nity, it is necessary to make certain changes in our AM rules and procedures.⁴ After providing background information, we discuss these changes below.

3. In order to put these proposals into perspective, it is necessary to discuss current AM assignment criteria, which are based on the concept of protected contours.⁵ Under our Rules, AM proposals are examined to determine whether a proscribed interfering contour would overlap the protected service contour of the existing station. The propagation characteristics of the AM signal differ during daytime and nighttime hours. During daytime hours, the extent of the service and interfering contours can be calculated on the basis of frequency, power, and ground conductivity. These contours are referred to as groundwave contours. Sections 73.37(a) and (b) of the Rules set forth the permitted overlap of groundwave contours between protected and interfering stations. Due to ionospheric reflection of AM signals during nighttime hours, AM signals propagate over significantly greater distances at night than during daytime hours. The contour of such nighttime signals is referred to as the skywave contour. In regard to AM nighttime interference criteria, Section 73.182 of the Rules sets forth interference protection criteria based on groundwave and skywave contour protection as well as the class of the protected AM station.

4. The comments we received were unanimous concerning the need to improve the technical quality of the AM service. We received several relevant comments pertaining to the present AM assignment scheme. Both the Association for Broadcasting Engineering Standards ("ABES") and Radio WADO, Inc., referred to our 1964 action in Docket No. 15084 establishing Section 73.37 of the Rules, commonly referred to as the "go-no-go" rules. *AM Station Assignment Standards*, 45 FCC 1515 (1964). The expression "go-no-go" refers to the decision to evaluate proposals on the basis of prohibited contour overlap rather than a subjective weighing of audience gains and losses. In that action we noted the increase in the percentage of AM stations causing or receiving objectionable interference within a prescribed service area during the years 1952 to 1962. Specifically, we stated the following:

The number of new stations causing more than 1% of 'objectionable interference' rose from 2% in 1952 to 21% in 1962. The percentage receiving more than 1% rose from 18% to 36% in the same period. A further study of 60 consecutive "pre-freeze" applications for new stations granted from April 1962, to April 1963, showed that 42% either caused or received some degree of "objectionable interference."

AM Station Assignment Standards, *supra* at 1522. Radio WADO, Inc. made two additional observations. First, Radio WADO observes that the "go-no-go" rules did not end the creation of objectionable AM interference because Section 73.37(b) of the Rules permits interference received under certain situations, and propagation conditions, in some situations, lead to stronger signals and therefore more interference than was predicted. Radio WADO also notes that the "go-no-go" rules did nothing to reduce existing interference in the AM band. The ABES makes a similar observation, noting that in 1964, approximately 4,000 AM stations were in existence, and a significant proportion of these stations were causing or receiving objectionable interference. Of the approximately

974 stations authorized since 1964, ABES correctly notes that many of these were "shoehorned in" with interfering contours closely approaching the protected contours of existing stations.

" GRANDFATHERING " DELETED AM STATIONS

5. When an AM station is deleted, we have, as a matter of policy, maintained the radiofrequency radiation rights for a period of one year for parties wishing to file an application to replace the deleted facility.⁶ In many cases, however, this policy leads to the perpetuation of AM stations' causing or receiving objectionable interference. We concur with Group W that our present policy of maintaining these deleted AM facilities is actually a disincentive to bringing these stations into compliance with current AM assignment standards. Parties filing comments supported our proposal to require applicants for such deleted facilities to comply with the technical requirements in effect at the time that they file their applications. Therefore, we are adopting this new policy that new applicants must meet current technical standards.

CONTINGENT APPLICATIONS

6. Section 73.3517 of the Rules prohibits the acceptance of contingent applications for construction permits proposing either new or modified facilities.⁷ Currently, parties cannot file such applications even though the applications might lead to the improvement in one station's facilities made possible by changes to the facilities of the other station, and a concomitant overall reduction in AM interference. We continue to believe that, as a general matter, accepting such speculative applications contingent on the grant of another application imposes an unwarranted burden on our administrative resources. However, the *Notice* proposed permitting contingent applications leading to an overall reduction in AM interference. For example, one station may conclude an agreement with a nearby station on an adjacent channel whereby the second station reduces its daytime and nighttime power. This would reduce interference caused to the first (and other) stations and could allow the first station to improve its daytime facilities. This proposal envisions two or more applications being filed and granted simultaneously. The comments that we received supported this proposal.

7. We agree with the National Association of Broadcasters ("NAB") that there is a need for a full public interest evaluation of such proposals and while we do not foresee any particular types of abuse, we will be alert for such problems. On the other hand, we disagree with the NAB that such contingent applications should be limited to situations in which one station actually terminates operation, thereby affording "finality" to the process. In addition to terminating operation, AM stations may significantly reduce interference by reducing power, terminating nighttime operation or using a directional antenna. We believe that giving AM stations this additional option for reducing interference is consistent with our goal of improving the quality of the AM radio service. The amended contingent application rule will apply to both deletions and modifications of existing AM stations.⁸ We believe that "finality" will be achieved by the fact that any

subsequent application by the modified station, or a party filing for a deleted facility, will have to comply with the technical rules then in effect.

8. We are amending Section 73.3517 of the Rules to permit contingent applications that would assure a reduction in overall AM interference.⁹ This amendment should provide two incentives for stations to enter into such agreements. Both of these incentives will benefit the station making the payment to the other station. First, as discussed in paragraph 10, *infra*, we are protecting the station improving its facilities from competing applications. This protection will be afforded to both major change applications such as an increase in power, and also to minor changes such as modifying a directional antenna pattern. The second incentive for contingent application arrangements concerns the calculation of the RSS limit.¹⁰ During nighttime hours, an existing station is protected from its transmitter to its RSS contour. The effect of reducing interference toward a station would be to reduce the RSS limit at the old RSS contour, thereby expanding that station's protected service area. As indicated in paragraph 38 of the *Notice*, recalculation of the RSS occurs upon deletion or modification of an AM station contributing to the RSS limit.¹¹ Termination or modification of an AM station's facilities may also reduce the RSS limit of an AM station not a party to the contingent application arrangement. In turn, this reduction in the latter's RSS limit may preclude a station that is party to the arrangement from improving its nighttime operation even if it were willing to pay other stations to allow it to do so. To remedy this potential problem, all associated contingent applications will be granted simultaneously. This will require a station seeking an improvement in nighttime operation to protect only existing RSS contours of all stations not a party to the contingent application arrangement.

COMPETING APPLICATIONS

9. The contingent application procedure discussed above assumes that one station will either delete or modify its facilities in order to permit the other station to improve its area of signal coverage or service quality. This improvement might be achieved through a major or a minor facilities change.¹² Under our current application processing procedures, applications for either type of change are subject to competing applications.¹³ A competing application, or the possibility of a competing application, might discourage parties from initiating such proposals due to the costs of a comparative hearing, or the risk that a competing applicant may prevail in a comparative proceeding. These factors could discourage proposals that would lead to a reduction in AM interference.

10. To reduce this deterrent substantially, the *Notice* proposed that any competing application would have to protect the licensed facilities of the stations participating in the contingent application arrangement even though there might be no conflict with any licensed facility after the arrangement is implemented. In addition, the competing application would be subject to the applicable cut-off date. The commenters all supported this proposal. We are amending Section 73.3571 of the Rules to codify this proposal. We find such action to be in the public interest because it removes a potentially significant deterrent to our efforts to improve the quality of the AM service. It is

clearly within our authority to promulgate rules limiting eligibility to submit a competing application when we determine that such action promotes a specific public interest objective. *U. S. v. Storer Broadcasting Company*, 351 U.S. 192 (1956). Such action, accordingly, does not violate the holding in *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945), which prohibits us from granting one of two mutually exclusive applications for an available frequency filed by two eligible applicants without comparatively considering the two applications. In connection with this, we note that under our amended procedure, the currently licensed facilities of any party to a contingent application arrangement would preclude consideration of any competing application proposal. See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4873 (1989), *recon. pending*.

LOCAL SERVICE FLOOR

11. We emphasize that a significant factor underlying our decision to grant or deny a contingent application arrangement involving deletion or reduction in AM facilities would be whether it satisfies the public interest requirement of a local service floor - a level of broadcast service that must be maintained subsequent to any deletion or reduction in AM facilities. The comments concurred that there was a need to require a minimum level of service. After careful consideration of the comments, we agree with the NAB that we cannot establish a quantifiable service floor that can be uniformly applied with respect to the replacement of deleted facilities or our public interest evaluation of contingent application arrangements. Instead, we will consider the issue of a local service floor on a case-by-case basis. However, the comments were helpful to our efforts to identify some guidelines that could be of value in regard to a local service floor.

12. At the outset, we agree with Great American Television and Radio Company, Inc., ABES and Karl D. Lahm that, consistent with longstanding precedent, we should consider the availability of both AM and FM service in determining whether an area affected by a deletion or a contingent application arrangement has sufficient service, since AM and FM are part of a single aural service. *Anamosa and Iowa City, Iowa*, 60 FCC 2d 1041 (1976). Also, like du Treil, Lundin, and Rackley, Inc., we do not envision our being able to make the public interest finding necessary for the grant of a contingent application arrangement or deletion request if the proposal would create "white" or "gray" areas.¹⁴ In most cases, our public interest evaluation will weigh the amount of AM interference that will be eliminated against the number of AM and FM services remaining available to the areas that will lose service. Our evaluation will also take into account the areas and populations that will gain service as a result of the proposal and the availability of other services to these areas.

13. Both the decision to eliminate the grandfathering of deleted AM facilities and the possibility of contingent application arrangements that would delete such a facility trigger our concern for a community possibly losing its only broadcast service. We do not, however, believe that we must establish an exception to our new policy of not grandfathering deleted AM facilities if the deleted station happens to be a community's only local service. We reach

this conclusion for two reasons. First, in regard to stations close to metropolitan areas, the community losing the facility could very well be receiving primary and city grade service from many other stations. We believe that the availability of two or more primary services coupled with a reduction in AM interference would justify our not permitting a party to restore a deleted AM station that would not comply with current technical requirements. We would also use this guideline in evaluating a contingent application arrangement proposing deletion of a community's only local aural service. Second, in regard to the deletion of an AM station in a more remote area, we believe another AM station could restore local service, albeit with less powerful or directional facilities, and comply with our technical requirements. We believe it extremely unlikely that, in an area where there is no primary or city grade service, lack of available spectrum is the cause. It is far more likely the case that economic factors make it impossible to profitably operate a station. In such situations, there would moreover generally be adequate AM or FM spectrum available for a local aural service at a later date, if demand warrants.

CONCLUSION

14. We continue to believe that it is in the public interest to encourage interstation agreements proposing a reduction in AM interference and to provide a procedural framework that would facilitate such agreements. Based on our consideration of the record in this proceeding and for the reasons set forth above, we conclude that it is appropriate to terminate the current policy of grandfathering deleted AM facilities, to permit contingent applications that result in overall interference reduction, to require that competing applications filed against such contingent applications protect the licensed facilities of those stations participating in the contingent application arrangement, not to establish a specific local service floor that would be applicable to all situations, and to amend Sections 73.1750, 73.3517, and 73.3571 of the Rules as set forth in the attached Appendix B.

FINAL REGULATORY FLEXIBILITY ANALYSIS

15. Pursuant to Regulatory Flexibility Act of 1980, our final analysis is as follows:

I. Need for and Purpose of the Rule

We have concluded that current rules and policies are an unnecessary deterrent to improving the technical quality of the AM band and agreements between AM stations looking toward a reduction in AM interference.

II. Flexibility Issues Raised in the Comments

No regulatory flexibility issues were raised in the comments.

III. Significant Alternatives Considered but Not Adopted

The alternative would be to make no change in current rules and policies. This would not achieve the public interest benefit of facilitating reductions in AM interference.

PAPERWORK REDUCTION ACT STATEMENT

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, and found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

ORDERING CLAUSES

17. Accordingly, IT IS ORDERED, That the amendments to Part 73 of the Commission's Rules and Regulations set forth in Appendix B below ARE ADOPTED. The effective date of these amendments will be established by further Commission action in MM Docket No. 87-267.

18. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

19. Authority for the action taken herein is contained in Sections 4(i) and (j), and 303(r), of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), (j), 303(r).

20. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

APPENDIX A

The following parties submitted comments and or reply comments:

Association for Broadcast Engineering Standards, Inc.

Glenn F. Bircher

Capital Cities/ABC, Inc.

CBS, Inc.

Corporation for Public Broadcasting

du Treil, Lundin & Rackley, Inc.

Great American Television and Radio Company, Inc.

Karl D. Lahm, P.E.

The KICD Stations

Harold Munn Jr. & Associates, Inc.

National Association of Broadcasters

Radio WADO, Inc.

Westinghouse Broadcasting Company, Inc.

APPENDIX B

Part 73 of Title 47 of the CFR is amended as follows:

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. Section 73.1750 is amended to add the following language at the end to read as follows:

§ 73.1750 Discontinuance of operation

***If a licensee surrenders its license pursuant to an interference reduction arrangement, and its surrender is contingent upon the grant of another application, the licensee surrendering the license must identify in its notification the contingencies involved.

3. Section 73.3517 is amended by adding new paragraph (c) to read as follows:

§ 73.3517 Contingent applications

(c) Upon payment of the filing fees prescribed in §1.1111 of this chapter, the Commission will accept two or more applications filed by existing AM licensees for modification of facilities that are contingent upon granting of both, if granting such contingent applications will reduce interference to one or more AM stations or will otherwise increase the area of interference-free service. The applications must state that they are filed pursuant to an interference reduction arrangement and must cross-reference all other contingent applications.

4. Section 73.3571 is amended by adding new paragraph (c)(1) to read as follows:

§ 73.3571 Processing of AM broadcast station applications

(c) ***

(1) In order to grant a major or minor change application made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon a finding that such action will promote the public interest, convenience and necessity.

FOOTNOTES

¹ A list of those parties is contained in Appendix A.

² The 107 AM channels are divided into three groups of channels: clear channels, regional channels and local channels. Four basic classes of stations evolved to operate on these three channel groups. Class I and Class II stations operate on clear channels. Class I stations provide extensive primary

(groundwave) service during the day and night, with skywave service during nighttime hours generally extending out to 750 miles or more from the transmitter. Class II stations protect the Class I station on the channel and provide primary service only, the area of which depends upon station location, power and frequency. Class III stations represent an intermediate category and operate on regional channels, providing service to larger cities and the surrounding rural areas. Class IV stations operate on local channels and provide primary service to a community and the immediately contiguous suburban or rural areas. See 47 C.F.R. §§73.21-37, 73.182. Shortly, there will be ten additional AM channels in the expanded AM band between 1605 and 1705 kHz. Rules governing these stations are being considered in a companion item in MM Docket No. 87-267.

³ See *Improved Methods for Calculating Skywave Field Strength in the AM Broadcast Band*, MM Docket No. 88-508, 3 FCC Rcd 6431 (1988); *Enhanced Nighttime Operation for Class II - S and III - S AM Radio Broadcast Stations*, MM Docket No. 88-509, 3 FCC Rcd 6444 (1988); *Improved Methods for Calculating Groundwave Field Strength in the AM Broadcast Band*, MM Docket No. 88-510, 3 FCC Rcd 6577 (1988); *Review of the Methods for Calculating Nighttime Protection for Stations in the AM Broadcast Service*, MM Docket No. 88-511, 3 FCC Rcd 6448 (1988).

⁴ Group W and duTreil, Lundin & Rackley, Inc. have suggested the issuance of tax certificates pursuant to Section 1071(a) of the Internal Revenue Code, 28 U.S.C. §1071(a), as an additional means of encouraging reductions in AM interference. The use of tax incentives was not proposed in the *Notice*, and is therefore outside the scope of this proceeding. In the *Notice of Proposed Rule Making* we adopt today in MM Docket No. 87-267, however, we propose the use of Section 1071(a) tax certificates in connection with stations turning in their licenses as part of a voluntary agreement to reduce interference, and request comment on the use of tax certificates when stations reduce interference as part of a voluntary agreement.

⁵ Objectionable interference to particular service contours is defined in Sections 73.37 and 73.182 of the Commission's Rules.

⁶ The one year period commences upon release of a *Public Notice* announcing the deletion of the facility. Parties may file applications for the deleted facility after release of the *Public Notice*.

⁷ Section 73.3517 of the Rules does permit a modification application by a proposed assignee or transferee in connection with an assignment or transfer application.

⁸ We emphasize that after deletion of an AM station, a third party may file an application, in accordance with current AM technical requirements, proposing, in substantial part, reestablishment of the deleted AM station.

⁹ The NAB has suggested a waiver approach to contingent applications based on AM interference reduction. In view of the benefits that would flow from such applications, we believe that a general rule would better serve the public interest. A rule gives certainty and would be preferred over an *ad hoc* case by case approach, especially where a processing rule is involved.

¹⁰ The RSS limit is derived by calculating the effect of skywave interference from other nighttime AM stations on the potential service area of the AM station. See Section 73.182 of the Rules. In a separate action today in MM Docket No. 87-267, the Commission is proposing that the RSS method for calculating interference be replaced by a single signal method.

¹¹ This recalculation will occur upon either release of a *Public Notice* announcing the deletion of the AM station, or, in the case of modified facilities of a station contributing to another station's RSS limit, upon licensing of those modified facilities.

¹² It is also conceivable that a station could benefit by having its RSS limit decreased, which would not require the filing of an application.

¹³ Section 73.3571(c) of the Rules provides for a cut-off list for major change applications. For minor change applications, we will consider any mutually exclusive application filed prior to acceptance and grant of the earlier-filed minor change application.

¹⁴ A "white" area is an area that receives no full-time aural service. A "gray" area receives one full-time aural service.