

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 96-113

In the Matter of)
)
Comments in Response to Reconsideration)
of Implementation of the AM Expanded)
Band and Allotment Plan)

MEMORANDUM OPINION AND ORDER

Adopted: March 15, 1996

Released: March 22, 1996

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

1. In Review of the Technical Assignment Criteria for the AM Broadcast Service, 6 FCC Rcd 6273 (1991), ["*AM Improvement Order*"], recon. granted in part and denied in part, 8 FCC Rcd 3250 (1993) ["*Reconsideration Order*"], the Commission adopted measures to facilitate an overall improvement and revitalization of the AM broadcast band as a whole and to effectuate the necessary development of the spectrum between 1605 and 1705 kHz. This spectrum is referred to as the "Expanded Band." On October 14, 1994, the Mass Media Bureau released a Public Notice (*Public Notice*) which announced an Allotment Plan which set forth the stations that were eligible to apply for authorizations for specific expanded band frequency allotments. Nineteen petitions and an application for review were filed seeking reconsideration of the *Public Notice*. By *Memorandum Opinion and Order*, 10 FCC Rcd 12143 (1995) [*Order*], the Commission partially granted reconsideration and rescinded the *Public Notice*. The Commission also rescinded a December 3, 1993 Public Notice which set forth interference improvement factor rankings of existing AM licensees who had petitioned to migrate to the expanded band.¹ The *Order* set forth the technical procedures that will be used to generate new improvement ranking factors and a revised allotment plan. Interested parties were afforded a thirty day period to comment on the procedures. Four parties filed comments. We discuss these comments herein.

2. Station KKDZ. Kidstar Radio, Inc. is the licensee of Station KKDZ, Seattle, Washington. KKDZ shares time on 1250 kHz with Station KWSU, Pullman, Washington. Pursuant to their share-time agreement, KKDZ operates on 1250 kHz with 5 kW non-directional facilities during the day and operates from local sunset to midnight, when KWSU is operating, with 5 kW directional facilities. It operates in a directional mode during these

¹ Stations were allotted channels based on their calculated improvement factor. See 47 C.F.R. 73.30. The improvement factor is the area of interference caused all other stations divided by the station's interference-free service area. The larger the improvement factor, the greater the reduction in interference in the existing band if the station causing the interference migrates to the expanded band.

nighttime hours to protect KWSU's nondirectional operation. KWSU ceases to operate after midnight. KKDZ, however, elects to operate from midnight until 6:30 A.M. and, during those hours, reverts to its nondirectional operating mode. KKDZ contends that because KWSU is considered an "unlimited" time station, authorized to operate nondirectionally, KKDZ should share that designation since it operates with a nondirectional antenna for part of the night. It argues that the staff erred in basing the nighttime component used in calculating KKDZ's improvement factor on KKDZ's directional nighttime operation rather than on its nondirectional nighttime facility.² KKDZ thus concludes that its interference improvement factor should be higher than that determined by the staff.

3. We find that the staff properly calculated KKDZ's improvement factor based on its status as a nighttime directional facility. From sunset to midnight, KKDZ operates concurrently with KWSU, using a directional antenna system. Under our rules, full-time stations are required to operate for at least two-thirds of the time between 6:00 PM and midnight.³ It is this part of the operation that determines compliance with the minimum operating nighttime schedule. For the purposes of determining improvement to the existing band (the goal of the expanded band proceeding) our focus is on this part of the schedule because there is no requirement for stations to operate beyond midnight. Although some stations, such as KKDZ, elect to do so, our experience is that a significant number of AM stations cease operating at that hour or operate for only a few hours between midnight and local sunrise. We do not maintain records on stations that operate after midnight and thus there is no way to accurately ascertain the interference reduction KKDZ would achieve after midnight. On the other hand, since all full-time stations operate during the 6:00 PM to midnight time frame, we can determine the improvement achieved during these hours if KKDZ were to migrate to the expanded band. Under these circumstances, it is appropriate to use KKDZ's nighttime directional operation, the mode in which it operates between local sunset and midnight, to evaluate the effect of a potential migration of KKDZ to the expanded band. Therefore, we reject KKDZ's argument that its improvement factor should be based upon treating the station as a nondirectional nighttime facility.

4. Stations KHVN and WAOK. GCI Texas II, Inc. ("GCI") is the licensee of Station KHVN, Fort Worth, Texas and GCI Atlanta II, Inc. (also referred to herein as "GCI") is the licensee of Station WAOK, Atlanta, Georgia. Both stations are commonly owned and both stations were identified in the Allotment Plan as eligible to apply for authorizations for specific expanded band frequency allotments. GCI submits its comments as a "protective measure" because of the "slight possibility" that its expanded band allotments could be jeopardized by a revised allotment plan. GCI argues that it complied with all previous

² Improvement factors relate to both nighttime and daytime interference conditions and the ratio used to calculate a station's improvement factor consists of two separate additive components, one for nighttime and one for daytime. See 47 C.F.R. 73.35.

³ The Commission requires all licensees to maintain a minimum operating schedule. See 47 C.F.R. Section 73.1740.

procedures in the AM expanded band proceeding, that it was awarded allotment opportunities, and that "basic fairness" requires that the Commission allow its stations to retain their expanded band allotments and permit them to migrate to the expanded band when such migration is authorized.

5. GCI's future status under a revised allotment plan is undetermined and any claim that it may be adversely affected once a new allotment plan is generated is speculative. Moreover, GCI's ranking and the award of frequency allotments under the rescinded Allotment Plan did not vest in GCI a right to the allotted frequencies. The Allotment Plan was subject to review and, upon that review, the Commission determined that the public interest in revitalizing the AM band required rescinding the plan and generating a new one. GCI's private interests are subordinate to the overall public interest of facilitating an improvement and revitalization of the AM broadcast band as a whole and to effectuate the necessary development of the spectrum between 1605 and 1705 kHz. See *AM Improvement Order and Reconsideration Order, supra*. The regeneration of an allotment plan is a necessary step toward achieving that goal.

6. Station WGNV. The last comments were filed by Sunrise Broadcasting of New York, Inc. (WGNV), licensee of Station WGNV, Newburgh, New York. WGNV contends (a) that the *Order* fails to implement the Commission's prior determination that federal travellers information stations operating on 1610 kHz would only be accorded co-primary status with expanded band stations until the travellers information stations can be moved to other frequencies; (b) that the *Order* is in error in not permitting the use of actual measured data to resolve potential allotment interference between proposed expanded band stations and federal travellers information stations; and (c) that standards proposed in the *Order* fail to protect stations on certain frequencies from second harmonic interference and that using 0.5 mV/m contours for station interference protection are too restrictive. WGNV offers alternative standards.

7. WGNV was excluded from an expanded band allotment for one of three preclusion factors: (1) the United States-Canadian agreement, (2) stations of higher ranking, or (3) interference with federal travellers information stations. As we noted, federal travellers information stations licensed by the National Telecommunications and Information Administration (NTIA) have a co-primary status with the AM expanded band stations. See Section 305(a) of the Communications Act of 1934, as amended and 47 C.F.R. Sections 2.105 and 2.106. This entitles federal travellers information stations, authorized first-in-time, to receive protection from interfering expanded band allotments.⁴

⁴ WGNV argues that the Commission accorded federal travellers information stations co-primary status on a permanent basis "without the slightest indication that this co-primary status is only temporary." WGNV clearly misreads our intention. In footnote 3 of the *Order*, the Commission specifically limited the protection of these stations to an undetermined but limited time. We stated:

We are sensitive to concerns that public reliance on [travellers information stations] requires

8. In the *Order*, the Commission specifically rejected WGNV's suggestion that it should be allotted an expanded band frequency at this time even though its proposal is in conflict with the federal travellers information service. WGNV again proposes that AM stations in conflict with federal travellers information stations should nonetheless be allotted expanded band frequencies and, once such an allotment plan is produced, federal travellers information stations should be required to migrate to other frequencies within two years. WGNV suggests that limiting the co-primary status of federal travellers information stations to a date certain would insure that these stations have only a temporary co-primary status. WGNV's proposal is basically a rehashing of the argument it has already made and we again reject it. Federal travellers information stations will continue on 1610 kHz on a co-primary basis "until they can be reaccommodated in an orderly fashion on an alternate frequency." See *Reconsideration Order*, 8 FCC Rcd at 3257. Once a determination is made as to the appropriateness and timing of this reaccommodation, AM stations that were precluded from receiving an allotment because of conflicts with federal travellers information stations will be afforded an opportunity to migrate to the expanded band.

9. In the *Order*, the Commission also specifically rejected WGNV's suggestion to permit the use of actual measurements to demonstrate lack of interference between the AM expanded band allotment and a federal travellers information station. The Commission intends to use M3 standard data to calculate interference. See *Order* at para. 27 (B) (3) (b). As an alternative, WGNV now proposes to permit licensees to submit measured data in computer-usable form so that it can be included in the Commission's computer run for the revised allotment plan. We again reject WGNV's proposal. From our experience, actual measurements are subject to interpretation and often involve lengthy debate. Thus, use of actual measurements would unavoidably postpone finality in this proceeding until all the issues with all actual measurement submissions could be resolved. Further, to permit actual measurement data as an alternative to theoretical conductivity values would subject some allotments to measured data and others to calculated data and thus possibly prejudice some licensees. Lastly, WGNV had ample opportunity to raise its proposal at the rulemaking stage of this proceeding.⁵ In light of these factors, we have determined that the use of the M3

that such service not be subject to undue disruption. Therefore, in a future proceeding, we will reexamine the status of travelers information stations and explore the feasibility of a primary allocation for [travellers information stations] at 1710 kHz. Federal government [travellers information station] operations will continue on 1610 on a co-primary basis until they can be reaccommodated in an orderly fashion on an alternative frequency.

⁵ We stated:

In calculating the daytime contours, theoretical conductivity values will be used for the purpose of determining the daytime improvement factor. Although it would be possible to use measured conductivity data in connection with the contour calculations for the improvement factor, we conclude that the benefits of this approach would be very minimal. In order to use such data fairly, a complete search of all available data for all stations would be necessary. Even with all

standard data for all licensees would facilitate the timely implementation of the expanded band and best fosters the overall goals of this proceeding. WGNV has not submitted any information or arguments that would warrant a different result.

10. Finally, WGNV argues that the 0.5 mV/m contour is too restrictive for purposes of calculating the service area of harmonically related stations. Section 73.112(s) of the Commission's rules prohibits a station assignment if its frequency is twice that of another station in the same service area. Section 73.182(d) of the Commission's rules defines this service area as the 0.5 mV/m contour. WGNV did not raise the question in the expanded band rulemaking proceeding whether this general service area definition is also appropriate in making expanded band assignments and its attempt to do so here is clearly untimely. In any event, it has failed to demonstrate why the 0.5 mV/m service area should not also apply to the expanded band.

11. Ordering Clauses. Accordingly, IT IS ORDERED that the requests raised in the comments filed in this proceeding ARE DENIED, as set forth above. IT IS FURTHER ORDERED that the June 30, 1993-A database is now closed to further changes and the June 30, 1993-A AM Engineering Database which was placed in the public record and associated with MM Docket 87-267, the Expanded Band rulemaking proceeding, will be used as the official database for further use in the expanded band proceeding.⁶

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William F. Caton
Acting Secretary

measured conductivity values considered, we believe that, with few exceptions, the effect of the measurement data would even out and there would be little overall impact on the ultimate ranking of the prospective migrators. See *AM Improvement Order*, 6 FCC Rcd at para. 123.

⁶. This docket file is available for public inspection in the Public Reference Room (Room 239, 1919 M St., N.W. Washington D.C.) and copies of this material may be obtained from the Commission's duplicating contractor, International Transcription Services, Inc., (202) 857-3800. The database is also available in computer readable form by special order from the U.S. Department of Commerce, National Technical Information Service (NTIS), 5288 Port Royal Road, Springfield, Virginia 22161.

CONCURRING STATEMENT

OF

COMMISSIONER ANDREW C. BARRETT

Re: Comments in Response to Reconsideration of Implementation of
The AM Expanded Band Allotment Plan.

Pursuant to today's action, the Commission denies the comments filed in response to the Commission's Memorandum Opinion and Order, released September 6, 1995.¹ I concur in this action only as a result of my continued misgivings about the potential impact that the Commission's original decision in this area has on small radio station businesses, including minority owned stations.

As I have stated previously, I believe that the arguments for equitable treatment presented by small and minority-owned business concerns have been and continue to be ignored.² Therefore, as the Commission proceeds with the continued implementation of the AM expanded band policies, I once again urge my colleagues to seriously consider the impact that such policies will have on small and minority-owned businesses.

¹ See Reconsideration of Implementation of the AM Expanded Band Allotment Plan, FCC 95-385, released September 6, 1995.

² See Concurring Statement of Commissioner Andrew C. Barrett, Report and Order, 6 FCC Rcd 6468 (1991); Concurring Statement of Andrew C. Barrett, Second Report and Order, 8 FCC Rcd 3250 (1993); Concurring Statement of Commissioner Andrew C. Barrett, Reconsideration of Implementation of the AM Expanded Band Allotment Plan, FCC 95-385, released September 6, 1995.