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

MM Docket No. 88-526

In the Matter of

Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License — RM-6122

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: November 8, 1990; Released: November 30, 1990

By the Commission: Commissioner Quello issuing a separate statement.

1. The Commission has before it three petitions for reconsideration of the *Report and Order* (*R & O*), 4 FCC Rcd 4870 (1989), which amended Section 1.420 of the Commission's rules to provide a procedure whereby the Commission may modify television and FM authorizations to specify a different community of license in the course of a rule making proceeding.[1] The National Association of Broadcasters ("NAB"), Sinclair TeleCable, Inc. ("Sinclair"), and Harron Communications Corporation ("Harron") filed petitions for reconsideration.[2] Brantley Broadcast Associates ("Brantley") filed reply comments. Word of God Fellowship, Inc. ("Word of God") and Kudzu Broadcasting Partnership ("Kudzu") filed reply comments to the Sinclair and NAB petitions. [3]

2. The *R & O* noted that past Commission policy worked to discourage the filing of proposals to change a station's community of license because, if such a proposal were adopted and the allotment changed, third parties would then have an opportunity to file competing applications for the new allotment. The *R & O* stated that the possibility of such applications being filed, and the attendant risk that the incumbent station would lose *any* authorization to broadcast, acted as powerful disincentives to the filing of such proposals. The Commission observed, however, that changes in a station's community of license would serve the public interest in some circumstances. Therefore, the new rule was designed to remove an unnecessary barrier to the improvement of service by existing licensees and permittees. In order to insure that the new subsection served this purpose, the *R & O* stated the Commission's policy that petitions requesting a change in community of license filed pursuant to Commission rule 1.420(i) would be approved if an allotment to the new community would serve the Commission's allotment priorities and policies[4] better than the allotment in the old community, and if the change would not have the effect of depriving a community of an existing service representing its sole local transmission outlet. We stated that we would determine whether a proposed change would better serve the allotment priorities than the existing allotment by comparing the proposed allotment plan to the existing allotment plan for the communities involved. If adoption of the proposed allotment plan would result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), we would adopt the proposal. Three parties filed petitions for reconsideration in response to the *R & O*. None challenges our core determination that the rule removes an unnecessary and artificial barrier to service improvements. Instead, the parties focus on questions concerning the scope and applicability of the new rule. In a further effort to insure that Section 1.420(i) serves its intended purpose, this *Memorandum Opinion and Order* (*MO & O*) grants reconsideration in some respects, denies it in others, and clarifies the applicability of Section 307(b) of the Communications Act to proceedings to amend the FM and TV Tables of Allotments.

PETITIONS FOR RECONSIDERATION

3. In its petition for reconsideration, NAB first argues that the Commission should indicate in the text of the rule that changes in community of license will be limited to situations furthering the goals stated in Section 307(b) of the Communications Act of 1934, as amended. NAB argues that application of the FM and television allotment priorities as the test of whether a change in community of license should be approved is inadequate to prevent migration of stations to larger urban communities. NAB fears that the flexibility inherent in the fourth FM and fifth television allotment priorities could allow licensees to undermine the goals of Section 307(b) by abandoning rural, less populated, and underserved communities in order to seek enhanced financial opportunity in urban areas. NAB suggests that the Commission require petitioners to demonstrate that a change in community of license would further the Commission's Section 307(b) objectives. NAB also requests that the Commission define "local transmission service" for purposes of the limitation on removing the only local transmission service from the community, claiming that the *R & O* provides limited guidance to parties and the Commission staff. NAB specifically asks if an AM daytime-only service constitutes a local transmission service. Furthermore, NAB fears that the Commission's requirement that a change in community of license will be approved only if the move would not remove a community's sole local broadcast service creates a "service floor" that may lead stations to request moves rather than risk remaining the only local transmission service in a community. NAB believes that it is unrealistic for the Commission to adopt a numerical local service floor that would apply to every community. Instead, NAB suggests that the Commission employ a case-by-case analysis examining the entire range of media services available in a community to determine whether a station should be permitted to change its community of license.[5] Finally, NAB notes that the rule could allow a permittee to change its community of license without providing service to its original community and without any service improvements for either the new or the old community, and suggests that the Commission require a licensee to serve its original community of license for a specified period of time before approving a change.

4. Sinclair objects to the restriction on removal of a community's only local transmission service. Sinclair claims that the *Notice of Proposed Rule Making* in this proceeding did not discuss this restriction, and, therefore, interested parties could not comment on that aspect of the proceeding. With respect to the substance of the restriction, Sinclair maintains that the Commission failed to provide a reasoned basis for adopting this limitation because it has not established a factual basis for its concerns. Sinclair claims there is no similar policy in the AM service, and therefore the restriction creates a double standard with no justification for the restriction in the FM and television services. Sinclair argues that the allotment priorities can be advanced through the provision of a first local service to a significantly larger community regardless of the number of services remaining in the original community of license. Sinclair argues that if the restriction is retained, it should be limited to specific instances in which there may be a legitimate concern regarding removal of local service.

5. Sinclair seeks clarification of the Commission's views of various scenarios that could arise under the limitation. For instance, Sinclair asks what would happen if a community had two FM stations, or an AM and an FM station, and each sought to change its community of license, citing the other station as the remaining service. Sinclair also asks if a television service must remain in a community if a television licensee seeks to move, or if the presence of a radio station is sufficient.

6. Sinclair proposes that, should the Commission retain the limitation on removal of sole local broadcast service, certain changes in community of license should be exempt from the restriction. Sinclair suggests that licensees located within a metropolitan area should be permitted to move within the same metropolitan area or to another metropolitan area, and that licensees located in a rural area should be permitted to move to another rural area, regardless of whether the move would deprive the community of its sole local transmission service. Sinclair argues that this exception would recognize that opportunities may exist for stations, particularly in conjunction with a channel upgrade or other technical improvement, to be licensed to communities that may not have originally been the most desirable locations. Furthermore, Sinclair claims that in metropolitan areas other reception services will remain available to the original community of license.

7. In reply, Brantley agrees with Sinclair that the restriction on removal of sole local transmission service contradicts the Commission's policy of maximum utilization of the spectrum. Brantley argues that NAB's fear of a mass migration of stations from rural to urban communities is unfounded, and that NAB seeks to restrict the Commission from exercising any versatility under this procedure. Brantley claims that NAB fails to consider that minimum distance separation requirements[6] will prevent most stations from relocating their antenna sites to urban areas.

8. Word of God supports Sinclair's petition for reconsideration, claiming that the Commission adopted its restriction on removal of sole local broadcast service without adequate notice and opportunity for comment. Word of God argues that if the sole local broadcast service limitation is retained, the Commission should exempt unbuilt facilities from the limitation. Word of God claims that this exemption is justified because an unbuilt facility cannot be considered to provide existing service to a community. It argues that the Commission should consider in the case of unbuilt facilities whether other channels in the same service area are available to the community, either as allotted but unassigned channels or through a petition for rule making, and the extent to which the community could receive service from the unbuilt facility if it moved. Word of God claims that the Commission should base its evaluation on the totality of service improvements available.

9. Kudzu also supports Sinclair's petition for reconsideration. Kudzu claims that deleting the restriction on removal of sole local transmission service would be consistent with other Commission rules, such as the main studio rule, that are designed to enhance licensee flexibility.

10. In its petition for reconsideration, Harron argues that the Commission should not limit the use of the rule to instances in which a licensee files a rule making petition and a simultaneous request for modification of license. Harron notes that this requirement prohibits use of the procedure by a television licensee seeking to reassign to the community specified in the Television Table of Allotments a channel licensed to another community pursuant to the Commission's former "15 mile" rule.[8] Harron believes that forcing these licensees to file a major change application virtually guarantees that service improvements by that station will not occur. Harron argues that this procedure creates an artificial distinction between two groups of licensees in which the Commission treats a modification of license to specify a community added by an amendment to the Table of Allotments as a minor change, whereas a modification of license to specify the community listed in the Television Table of Allotments is classified as a major change and subject to competing applications. Harron proposes that the Commission amend Section 73.3572(a)(1) of its rules to reclassify as a minor change an application for modification of license in which a licensee seeks to reassign a channel to its allotted community.[9]

DISCUSSION

11. *Section 307 (b).* With respect to NAB's request to state in the text of Commission rule 1.420(i) that the rule can only be used to further the goals of Section 307(b), we believe it is axiomatic that our allotment priorities and policies are and should be applied consistent with and in furtherance of the goals of Section 307(b) of the Act. As we stated in the *R & O*, proposals filed pursuant to the new rule will be examined in light of our longstanding allotment priorities and policies, and must advance the priorities in order to be granted. Although we did not specifically state in the *R & O* that these priorities and policies were adopted and have been applied consistent with and in order to advance the goals of Section 307(b), that proposition is amply evident from the documents adopting and applying the priorities and policies. To insure that our intent is clear, however, we hereby state unequivocally that Section 1.420(i) was adopted to further the Commission's long standing pursuit of the goals underlying Section 307(b) of the Act, and that any changes in the FM and TV Tables of Allotments must be consistent with those goals. Furthermore, we take this opportunity to clarify and expand upon the *R & O*. In doing so, we address the NAB's specific concerns that the

flexibility inherent in the Commission's "residual" allotment priority of "other public interest matters" will lead to results inconsistent with Section 307(b), and that the new procedure could result in the migration of stations from rural to urban areas, contrary to the intent of Section 307(b). Therefore, we do not believe it necessary to specifically incorporate statutory provisions in the rule. Not only is such a reference unnecessary, but including it in only one of the many rules which carry out the objectives of Section 307(b) could lead to confusion and needless quibbling over the objectives of other rules.

12. With respect to the NAB's concern that the "other public interest matters" category of our FM and TV allotment priorities may provide too much flexibility to licensees and permittees seeking changes of community, it appears that the NAB is concerned that if a proposal does not implicate higher priorities such as first reception service or first local service, it will automatically be approved. We wish to dispel any such concern. Consistent with longstanding practice applying these residual categories, if the Commission is presented with conflicting options, such as the option of retaining the existing arrangement of allotments or adopting a new arrangement of allotments, it will adopt the proposal which best discharges the Commission's statutory mandate. Among other factors relevant pursuant to Section 307(b), the Commission considers under these residual categories the location of the proposed allotment with respect to other communities, and the availability of other services in the communities affected by the proposed change. Under these circumstances, it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change.[10]

13. With respect to the NAB's concern that the new procedure will result in the wholesale migration of stations from rural to urban areas, as we indicated in the *R&O*, there are two significant constraints on stations' ability to make such moves. One is the spectrum congestion that characterizes urban areas. The second is the way we apply the Commission's allotment priorities to analyze proposed changes. In those cases in which congestion does not, as a threshold matter, foreclose reallotment of a channel from an underserved rural area to a well-served urban area, application of our allotment criteria should achieve this result. Consistent with precedent, we do not intend to apply the first local service preference of our allotment criteria blindly. We recognize that an inflexible application of that preference, without further analysis, could consistently result in our finding that a reallotment leading to first local service for a suburb of a much larger adjacent metropolitan center justifies removing a local service from a more remote community. We wish to dispel any concern that our new rule would lead to such a result.

14. In the *R & O* we stated that the Commission's policy is to apply the allotment priorities in a flexible manner where circumstances warrant. It has never been Commission policy to adhere rigidly to the concept of localism if the result of that adherence is to undermine the fair, equitable, and efficient distribution of radio service mandated by Section 307(b) of the Communications Act. We have consistently given little or no weight to claimed first local service preferences if, given the facts and circumstances, the grant of a preference would appear to allow an artificial or purely technical manipulation of the Commission's 307(b) related policies.[11] We see no reason to depart now from this policy, and we believe it is fully applicable in proceedings to amend the FM and TV Tables of Allotments.

15. *Absolute Restriction on Removal of Sole Existing Local Transmission Service.* In its petition for reconsideration, Sinclair argues that the *R & O*'s restriction on removal of an existing service representing a community's sole local transmission service was adopted without sufficient notice in contravention of the Administrative Procedure Act. We note, however, that the final rule adopted in a proceeding need not be identical to the proposed rule, but must be a "logical outgrowth" of the rule making proceeding.[12] The notice must "fairly apprise interested persons of the subjects and issues [of the rule making]."[13] The *Notice of Proposed Rule Making* in this proceeding, 3 FCC Rcd 6890 (1988), specifically requested comment on our initial view that we should only use this procedure if the new community of license would serve our allotment priorities and policies. We believe that the restriction on removal of sole local transmission service was sufficiently related to our allotment priorities that it was a "logical outgrowth" of our original proposal.

16. The prohibition on the removal of an existing station representing a community's sole local broadcast service furthers our statutory mandate. Although this prohibition might, as a theoretical matter, appear to elevate the provision of local (i.e. transmission) service to our highest priority, there are virtually no populated areas of the country where our higher allotment priorities, such as first reception service, have not been attained. Therefore, as a practical matter, provision of first local service is the highest of our allotment priorities which remains in any significant degree unsatisfied. Under these circumstances, we believe a prohibition against the removal of local service is warranted, since such an action could result in diminishment rather than enhancement of local service.

17. While we continue to believe that a prohibition on the removal of local service is justified because such changes presumptively disserve the public interest, we also wish to clarify that, in the rare circumstances where removal of a local service might serve the public interest by, for example, providing a first reception service to a significantly sized population, we will entertain requests to waive the prohibition. Allowing waivers of this prohibition should reduce the possibility, noted by the NAB, that a service floor could induce licensees to seek to change their communities of license in order to avoid the possibility that they may be the only remaining service in the community, because the sole licensee in a community may seek such a change under appropriate circumstances. Furthermore, allowing waivers will avoid any inconsistencies in the application of our allotment priorities. First local service constitutes the second most important of the FM and TV allotment priorities, whereas in both services provision of first reception service is considered a higher priority. (In the FM service, provision of second reception service is a priority co-equal in importance to first local service. *See* note 4, *supra.*) However, the *R & O* did not impose a prohibition against the removal of first (or, in the case of FM, second) reception service from an area. Therefore, our actions in the *R & O* could be interpreted as a reordering of the FM and TV allotment priorities by which first local transmission ser-

vice is considered of a higher priority than first reception service. This was not our intention, as we stated in the *R&O* that we would continue to apply the existing allotment criteria and the associated body of precedent to all requests seeking a change in community of license. Allowing waivers precludes any possibility that our action could be construed as a modification of the allotment criteria.

18. Although we believe some waivers may be warranted in order to insure that we fulfill our statutory mandate, we wish to emphasize that a proposal which would reduce the number of communities enjoying local service is presumptively contrary to the public interest. Moreover, the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver. In each instance, the proposal must be viewed in light of our policies and precedent under Section 307(b) of the Communications Act. To take one example, suppose a party sought to reallot a channel from a smaller, underserved, and isolated community to a larger suburban community which has no local transmission service but which receives numerous signals from the adjacent metropolis. If we rigidly applied our allotment priorities, without regard to the fact that the suburban community is located in an urbanized area, we would conclude that an allotment to either the isolated community or the suburban community would serve the same priority of first local service. Because proposals that serve the same priority are analyzed based on which proposal would provide the service to the larger population, the suburban community, with its larger population, might be preferred, and, therefore, a waiver might be warranted. If, however, after examining the factors enumerated in our decision in *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990),[14] we were to conclude that awarding a first local service preference to the proposed allotment in the urban area would appear to condone an artificial and unwarranted manipulation of the Commission's policies, no such preference would be awarded. Instead, the allotment would be considered as simply an additional allotment to the urban area. In such cases, therefore, no waiver to allow the change would be granted. Retention of the sole local service in the rural community would be preferred, since a first local service is generally a higher priority than an additional allotment to a community that already enjoys local service.

19. While we believe waivers of the prohibition on the removal of an existing service representing a community's sole local transmission service may be warranted in limited circumstances, we note that in another respect this prohibition could be construed as unduly permissive. Specifically, to the extent this prohibition implies that we are concerned with disruption of existing service only if the disruption involves a first local transmission service, it was unduly permissive. The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallotting of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.[15] We specifically wish to clarify that replacement of an operating station with a vacant allotment or unconstructed permit, although a factor to be considered in favor of the proposal, does not adequately cure the disruption to "existing service" occasioned by removal of an operating station. From the public's perspective, the potential for service at some unspecified future date is a poor substitute for the signal of an operating station that can be accessed today simply by turning on a TV or radio set. Therefore, in analyzing proposals pursuant to Section 1.420(i), we intend to examine the effect of the proposal on existing service to the public particularly closely.[16]

20. *Relevant Stations for Comparative Analysis.* In response to Sinclair's request, we restate longstanding practice and policy to clarify which are the relevant stations for analyzing a proposal pursuant to Section 1.420(i). Consistent with our treatment of video and audio broadcast services as two distinct services, in a proceeding to change the community of license of a television station, we will not consider the availability of aural services in the community, nor will we consider the availability of video services in a community when examining an FM proposal. Because AM and FM stations are considered to be joint components of a single aural medium,[17] however, in a proceeding to change the community of license of an FM station, we will examine the availability of FM and AM services. Consistent with Commission precedent,[18] we will consider both daytime and full-time AM stations as local aural transmission services. Finally, both commercial and non-commercial stations are relevant to our analysis.[19]

21. *Continued Service to Community.* NAB suggests that the public interest requires that a licensee or permittee provide service to its community of license for a period of time before it requests a change in community. We believe that, in most instances, such a requirement would result in the delay of service improvements that could otherwise follow approval of a change in community of license. However, we do believe that NAB's concern would be warranted if a situation were to arise where a licensee or permittee proposed to change its community of license, and that licensee or permittee had received in a comparative hearing a decisionally significant preference that would not have been granted had the comparative contest been for a station at the new proposed community. Qualitative enhancements for local residence and daytimer preferences, for instance, have a particular nexus with the community of license. In such cases, we will not accept petitions to change community of license before or during the first year of station operation. In order to facilitate processing of cases which might implicate this concern, petitioners who are permittees or have been licensees for less than one year should state in their petitions whether they obtained a construction permit in a comparative hearing, and, if so, whether the petitioner sought the type of preferences with which we are concerned. Further, in order to prevent permittees from undermining this limitation by operating minimal facilities during the first year of station operation, we do not foresee granting construction permit modifications which would substantially lessen technical service to the public from that level proposed and authorized in the original construction permit.

22. *TV " 15 Mile " Rule Stations.* Harron's petition for reconsideration identifies a potential difficulty for a number of television licensees in using new Section 1.420(i). Under the Commission's former "15 mile" rule, an applicant applying for a vacant television allotment could propose as the community of license for that channel any

community within fifteen miles of the community specified in the Television Table of Allotments. If that application was granted, the license for the station was issued for the community specified in the application, but the city listed in the Table of Allotments remained unchanged. In conjunction with BC Docket No. 80-90, the Commission modified the FM Table of Allotments to conform its provisions to the actual usage of channels assigned pursuant to a similar rule for the FM service. *See Public Notice*, 2 FCC Rcd 6180 (1987). However, the Commission never modified the Television Table of Allotments to conform its provisions to the actual usage of channels by licensees. As a result, a television licensee licensed pursuant to the "15 mile" rule that wishes to modify its community of license to specify the community originally listed for the allotment in the TV Table of Allotments cannot seek the change in a rule making proceeding because the change requires no alteration to the allotment specified in our rules. Therefore, we are directing the staff to amend, at the earliest practicable date, the Television Table of Allotments so that the Table accurately reflects the community at which channels assigned under the "15 mile rule" are used. This will ensure that no television licensee is foreclosed from invoking rule making proceedings pursuant to this rule. Until the ministerial task of reissuing the Table is completed, we will allow licensees seeking to modify their assignments to the community listed in the Table to request such a modification by filing a pleading in the nature of a petition for rule making pursuant to Commission rule 1.420(i). The petition would then be examined, like all other petitions, pursuant to the Commission's policies and priorities under Section 307(b) of the Act.

23. *Other Matters*. Sinclair raises two scenarios that could arise under Section 1.420(i) which we believe should be addressed. In the first scenario, two licensees in a community each file a petition for rule making seeking to remove their stations from the community, each citing the other as the remaining local service. In such a situation, we believe the petitions should be treated in the same manner as any set of conflicting allotment petitions. Generally, conflicting petitions are either combined and considered in a *Notice of Proposed Rule Making* or, if filed on or before the applicable "cut-off" date, the later filed petition is treated as a counterproposal to or expression of interest in the earlier petition. In either event, petitions would then be examined pursuant to the Commission's policies and priorities under Section 307(b) of the Act. Second, AM and FM licensees in the same community might request a change in community of license, and the public interest may be best served by the retention of one of the stations in the community. In this situation, we believe the request of the AM licensee should generally be preferred over that of the FM licensee, provided that the AM licensee's request is filed prior to the expiration of the comment period for the *Notice of Proposed Rule Making* proposing the FM licensee's request. This preference reflects our goal of proceeding as rapidly as possible to enhance the quality of AM broadcasting. *See Report and Order* in MM Docket No. 89-46, 5 FCC Rcd 4492 (1990); *Notice of Proposed Rule Making* in MM Docket No. 90-136, 5 FCC Rcd 4381 (1990).

24. Accordingly, IT IS ORDERED, That the petition for reconsideration of the National Association of Broadcasters IS GRANTED to the extent indicated herein, and is in all other respects DENIED.

25. IT IS FURTHER ORDERED, That the petition for reconsideration of Sinclair TeleCable, Inc., IS GRANTED to the extent indicated herein, and is in all other respects DENIED.

26. IT IS FURTHER ORDERED, That the petition for reconsideration of Harron Communications Corporation IS DENIED.

27. IT IS FURTHER ORDERED, That the petition for reconsideration of Tri-Valley Broadcasting Corporation IS DISMISSED.

28. For further information concerning this proceeding, contact Michael Ruger, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

Donna R. Searcy
Secretary

FOOTNOTES

[1] Commission rule 1.420(i) states:

> In the course of the rule making proceeding to amend § 73.202(b) or § 73.606(b), the Commission may modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

[2] Tri-Valley Broadcasting Corporation filed an untimely petition for reconsideration. Accordingly, we will dismiss this petition.

[3] The NAB, WGN of California, Inc., and a group of three licensees of stations in Atlanta, Georgia, filed motions to accept late-filed supplements and supplements. These pleadings underscore NAB's concern that the procedure adopted in the *R & O* allows the migration of stations from rural to urban areas. The NAB, the Atlanta licensees, and WGN point to specific pending cases as examples of how the rule could facilitate migration from rural to urban areas. Although we have reviewed these pleadings, in fairness to the parties to such cases, parties should not be required to litigate the specific facts of their cases in two fora. Accordingly, we do not address those specific cases herein, nor rely on those pleadings. Finally, insofar as we have granted the NAB's petition for reconsideration, further consideration of the supplements is not required.

[4] The FM priorities are (1) first aural service, (2) second aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3). *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982). The television allotment priorities are (1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station, (3) to provide a choice of at least two television services to all parts of the United States, (4) to provide each community with at least two television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *See Sixth Report and Order*, 41 FCC 148, 167 (1952). In some instances, we have applied the television priorities in a more flexible fashion than the FM

priorities due to the recognition that television is a more regional service. *See, e. g., Cleveland Television Corp.*, 91 FCC 2d 1129 (Rev. Bd. 1982), *aff'd* 732 F.2d 962 (D.C. Cir. 1984).

[5] NAB submitted a similar proposal in comments filed in response to the *Notice of Proposed Rule Making* in MM Docket No. 89-46, 4 FCC Rcd 2430 (1989), a proceeding exploring policies to encourage interference reduction between AM broadcast stations. *See* NAB Comments in MM Docket No. 89-46, filed June 7, 1989, at 12.

[6] *See* 47 C.F.R. §§ 73.207, 73.610.

[7] *See* 47 C.F.R. § 73.1125. The main studio rule permits an AM, FM or television licensee to relocate its main studio from one point to another within the principal community contour without specific authorization from the Commission.

[8] The "15-mile" rule, formerly at 47 C.F.R. § 73.607(b) (1982), permitted an applicant for a vacant television allotment to specify as the community of license for that allotment a community within fifteen miles of the community listed in the Television Table of Allotments without requiring the applicant to petition for an amendment to the Table. Commission rule 73.203(b), 47 C.F.R. § 73.203(b) (1982), provided a similar procedure for FM radio applicants. These rules were deleted in *Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy*, 93 FCC 2d 436 (1983), *recon. denied*, 56 RR 2d 835 (1984). As a result, if a licensee seeks to designate as its community of license any community other than the community listed in the Tables of Allotments, the licensee must initiate a rule making proceeding to reallot that channel to the requested community.

[9] Harron proposes that the following italicized language be added to 47 C.F.R. § 73.3572(a)(1):

> (1) * * * A major change for TV broadcast station authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606), *except that a change in community of license to the community specified in the Table of Allotments of a channel presently assigned to an unlisted community pursuant to former § 73.607(b) (the "15-mile" rule), shall not be deemed a major change.* * * *

[10] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

[11] *RKO General (KFRC)*, 5 FCC Rcd 3222 (1990); *Faye & Richard Tuck*, 3 FCC Rcd 5374 (1988); *New South Broadcasting Corp. v. FCC*, 879 F.2d 867 (D.C. Cir. 1989); *Huntington Broadcasting Co. v. FCC*, 192 F.2d 33 (D.C. Cir. 1951). Although we express no opinion at this time concerning the staff's application of these precedents to any specific factual situation, we note that the staff has not hesitated to look beyond a claim of first local service in connection with requests to change community of license.

[12] *See National Black Media Coalition v. FCC*, 791 F.2d 1016, 1022 (2d Cir. 1986).

[13] *Id., quoting Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 547 (D.C. Cir. 1983).

[14] In *RKO (KFRC)*, and in a predecessor case, *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988), we clarified the type of evidence we would consider in determining whether a suburban community should be denied a first local service preference. We rely primarily on three criteria to determine if a preference is unwarranted. First, we examine "signal population coverage," or, in other words, the degree to which the proposed station could provide service not only to the suburban community, but to the adjacent metropolis. Second, we examine the size of the suburban community relative to the adjacent city, its proximity to the city, and whether the suburban community is within the Urbanized Area of the city. Third, we examine the interdependence of the suburban community with the central city, looking at a wide range of evidence concerning work patterns, media services, opinions of suburban residents, community institutions, and community services. *See* 5 FCC Rcd at 3223. If a suburban station could provide service to the metropolis, and if the suburban community is relatively small, is within the Urbanized Area, and exhibits a high degree of interdependence with the metropolis, we are generally disinclined to grant a first local service preference to the suburban community proposal.

[15] *Cf. KTVO, Inc.*, 57 RR 2d 648 (1984).

[16] We do not intend this clarification, however, to in any way alter our definitions of "existing service" as used in other contexts, such as FM and TV allotment proceedings not involving Section 1.420(i), or hearings in connection with applications. In those contexts, we have for some purposes considered vacant allotments or unconstructed permits "existing service." *See, e.g., Third Report and Order (Roanoke Rapids, North Carolina)*, 9 FCC 2d 672 (1967) (allotments); *Santee Cooper Broadcasting Company*, 99 FCC 2d 781 (Rev. Bd. 1984) (construction permits), *recon. denied*, 100 FCC 2d 469 (Rev. Bd. 1985), *mod. on review*, 59 RR 2d 730 (1986).

[17] *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 92 (1982).

[18] *Id.*

[19] *Valley Broadcasters, Inc.*, 5 FCC Rcd 2785 (1990).

SEPARATE STATEMENT OF COMMISSIONER JAMES H. QUELLO

Re: Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, MM Docket No. 88-526.

I dissented from the Commission's 1989 Report & Order in this proceeding because I was convinced that the new rule would encourage some licensees to abandon their assigned communities in favor of larger urban markets. The ensuing round of applications lent some credence to this concern. As a result, I am glad that, by this action, the Commission is taking steps to ensure that changes in a community of license will truly serve our allotment priorities and will not deprive communities of local service.