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Revision of Radio Allotment and Assignment Policies and Procedures

The FCC has substantially revised the policies and procedures by which it chooses among mutually-exclusive applications for new and major modifications to AM stations, allots FM channels for new stations, and evaluates proposals in either band to change cities of license. Related policy changes involve translator “band-hopping” and a proposal for tribal auction bidding credits.

The changes stem from concern that the FCC’s current policies, which focus largely upon populations to be served, have resulted in an inordinate number of new services in or near large, well-served urban areas, and thus have not succeeded in effecting the mandate of §307(b) of the Communications Act, which requires a “fair, efficient and equitable distribution of radio service.” Thus, the policy modifications are intended to increase service to rural areas and to send closely-matched applications to auction (the selection method favored by Congress) rather than decide between them based upon narrow §307(b) choices.

- The Commission has modified its **AM selection criteria** as follows:
 1. The Commission currently presumes that any station proposing a first local service to a community is not entitled to a §307(b) preference if it will be located within an urbanized area, or will place a daytime principal community signal over 50% or more of an urbanized area. That presumption now will be extended to include a station that *could* be modified to provide such urbanized coverage. That determination will take into account potential rule-compliant minor modifications without changing the proposed antenna configuration or site, and is to reflect spectrum availability as of the close of the applicable filing window. As now, the presumption may be rebutted by a “*Tuck*” showing to demonstrate a smaller, unserved community’s independence from a nearby, well-served urban area. However, the Commission promises more rigorous scrutiny of the *Tuck* factors. It notes that several of the traditional criteria (such as a community having its own newspaper) may no longer retain their former relevance. The Commission further anticipates relying upon additional factors, such as geographical or cultural barriers separating a community from the rest of an urbanized area.
 2. Unless there would be service to white or gray areas or to a community without its own local station, the Commission used to place primary reliance upon raw population differences. Now, the Commission will award a coverage preference only for a third, fourth or fifth reception service to at least 25% of the population in the proposed primary service area – and then only if the proposed community of license has two or fewer local stations.
 3. An applicant that qualifies under neither of the above two approaches can still obtain a dispositive preference by showing that its “service value index” (“SVI”) is at least 30% greater than its closest competitor. (The SVI is calculated by dividing the

population within each pocket of a proposed service area by the number of aural services it receives.)

4. If none of these factors is dispositive, then all mutually-exclusive AM applications would go to auction.
- For **FM allotments** the Commission is adopting the same urbanized area presumption as in AM criterion (1) above. If no preference is warranted under that factor, then the FCC will apply its existing criteria, but with one modification – the factor of raw population totals will receive less weight than the other criteria (which include the number of local transmission services already licensed to each proposed community and the population trends and reception services available in each proposed community and service area).
 - For **proposals to change cities of license**, the Commission first will compare the present and proposed cities under criterion (1) above. In the absence of such a preference, the Commission will consider rationales as to why the change would serve the public interest. Such factors might include service gains, the need for a new transmission service at the new community and population shifts. However, the Commission will bar any modification that would create white or gray area, and will strongly disfavor a net loss of third, fourth or fifth reception service to more than 15% of the current protected contour, the loss of a community's only local station, and removal of a second local station from a community of 7,500 or greater.
 - **FM translator "band-hopping"** refers to filing a commercial translator application in order to avoid waiting for infrequent and congested noncommercial filing windows, and then moving to the noncommercial portion of the FM band in order to benefit from its less restrictive operational rules. This now will be allowed only once a station has operated for two years. A similar requirement will apply to translator moves from a reserved to a commercial FM channel.
 - In order to encourage increased broadcast ownership by and service to Native Americans, the Commission has launched a Second Further Notice of Proposed Rule Making to explore **Tribal bidding credits**. It tentatively rejected a proposal to give Tribes or Tribal entities an additional 25% new bidding credit in auctions for new stations (above the 35% credit already available to new entrants), due to questions as to its ultimate effectiveness. Instead, the Commission proposes that when a commercial FM channel is allotted pursuant to a Tribal Priority (that is, when the predicted coverage of the channel over Tribal Lands meets certain area and population standards), then the only eligible bidders would be Tribes or entities that are majority-owned by Tribes (even if the owners did not participate in the allotment rulemaking). In that way it intends to ensure service to the targeted Native American population, rather than merely extend a preference.

While the intent of these policy revisions is to avoid narrow and sometimes inconsequential distinctions, their net impact may be to limit the circumstances in which licensees may seek facility upgrades to improve the commercial viability of their stations. While the FCC fully

supports the Congressional mandate under §307b) of the Communications Act to spread broadcast facilities throughout the country, that goal increasingly abrades against the economics of the industry. The ultimate resolution of that conflict may lie well into the future.

A copy of the Commission's Report and Order and Further Notice of Proposed Rulemaking in this matter is available on the Commission's website at:

http://www.fcc.gov/Daily_Releases/Daily_Business/2011/db0303/FCC-11-28A1.pdf.

If you have any questions, please contact [Peter Gutmann](#) or one of our other Womble Carlyle [Telecommunications](#) professionals.

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