

FCC 62-1243

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

<p>In the Matter of REVISION OF FM BROADCAST RULES, PARTICULARLY AS TO ALLOCATION AND TECHNICAL STANDARDS PETITION OF FM UNLIMITED, INC. For changes in FM Station Assignment Rules</p>	}	<p>Docket No. 14185 RM-94</p>
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SECOND REPORT, MEMORANDUM OPINION AND ORDER

BY THE COMMISSION: CHAIRMAN MINOW CONCURRING AND ISSUING A STATEMENT.

1. The Commission has before it for consideration: (1) the First Report and Order adopted herein on July 25, 1962 (FCC 62-866); (2) the Further Notice of Proposed Rule Making adopted at the same time (FCC 62-867); and (3) certain petitions for reconsideration of our July action, and comments and reply comments filed in response to the Further Notice. The pleadings herein considered relate primarily to the treatment of existing stations hitherto authorized with facilities greater than those now specified as the maximum for the various parts of the country—a question particularly, though not exclusively, related to Zone I (the Northeast) and Zone I-A (all of California south of the 40th parallel), where the new maximum is 50 kilowatts effective radiated power and coverage equivalent to that obtained by using 50 kw E.R.P. and antenna height of 500 feet above average terrain. The questions we decide here are: (1) whether we should make changes in the definition of the various zones, e.g. abolish Zone I-A and classify all of California as Zone II, or raise the general limit on facilities in Zones I and I-A up to, or closer to, the higher maximum provided for Zone II; (2) whether existing stations previously authorized with facilities greater than the new maxima on power and coverage should be required to reduce facilities to meet the new limits, or at least to some level more consistent therewith; and (3) whether our decision to protect these existing “super-maximum” stations only on the basis of the standard mileage separations (e.g., 150 miles between co-channel Class B assignments), affording protection only to a distance of 40 miles from the station in Zones I and I-A (and 65 miles in Zone II) even where its 1 mv/m contour may lie further out, is correct legally and as a matter of policy. (This situation will seldom occur because the average spacings

will be greater than the minimum and because of the greater facilities employed by these stations, which give a higher desired to undesired signal ratio.) The great bulk of the petitions and comments, as well as several thousand letters which the Commission has received from listeners in California, have opposed reduction in the facilities of existing stations.¹

2. *The question of reclassifying zones:* Two of the petitions for reconsideration (KPEN-KRON and KPFA) asked that California be reclassified as Zone II, like the rest of the United States outside of the Northeast; the same argument was made in some of the comments. These contentions were largely related to the question of possible cutback in existing stations (which would affect nearly all of those commenting parties); but the matter of re-zoning would also of course, be relevant in connection with the making of new assignments, and therefore it is appropriate to discuss it here. A reclassification of this area to include it in Zone II would mean that greater-facility stations would be permitted to operate with up to 100 kw effective radiated power and coverage equivalent to that obtained by use of that power and effective antenna height of 2,000 ft. instead of the Zone I and Zone I-A ceilings of 50 kw power and coverage equivalent to 50 kw and 500 feet effective antenna height. Such stations would be protected out to 65 miles, instead of 40, meaning greater spacings between co-channel stations (180 as compared to 150 miles between co-channel Class B/C Stations).

¹The seven petitions considered here are those filed by Pacific FM, Incorporated and The Chronicle Publishing Company (KPEN and KRON-FM, San Francisco); Cerritos Broadcasting Co. (KNOB, Long Beach, Cal.); Pacifica Foundation (KPFA, Berkeley, Cal.); KMLA Broadcasting Corporation (KMLA, Los Angeles); Gerity Broadcasting Company (WNEM-FM, Bay City, Mich.); WBEN, Inc. (WBEN-FM, Buffalo); and Miami Valley Broadcasting Corporation (WHIO-FM, Dayton). All of these are licensees of stations which would be affected by an over-all reduction, and all oppose it.

Comments considered here include those of the licensees or permittees of the following stations: California: KHOF, KBBJ, KHJ-FM, KFMM, KRHM, KBCA, KFAC-FM, KMPX-FM, KMLA, KBIQ, and KCBH-FM, Los Angeles; KPRC-FM, KBAY-FM, KDPC, KSFJ, KPEN, and KRON-FM, San Francisco; KPFA, Berkeley; KFIW, San Bernardino; KDUO, Riverside; KMUZ, Santa Barbara; KSTN-FM, Stockton; KOGO-FM, San Diego; KUFY, Redwood City; KFBK-FM, Sacramento; KSBW-FM Salinas; KVEC-FM, San Luis Obispo; and KVEN-FM, Ventura; *Florida*: WVCG-FM, Coral Gables; *Illinois*: WFMT, WDFH and WSBC-FM, Chicago; WEAW-FM, Evanston; WTAD-FM, Quincy; and WHBF-FM, Rock Island; *Indiana*: WTTV-FM, Bloomington; WPTH, Ft. Wayne; and WFBM-FM, Indianapolis; *Maryland*: WHFS, Bethesda; WFMD-FM, Frederick; and WJEJ-FM, Hagerstown; *Michigan*: WUOM, Ann Arbor; WNEM-FM, Bay City; WTVB-FM, Coldwater; WDTM, WLDL, WOMC, Detroit; and WOOD-FM and WJEF-FM, Grand Rapids; *New Hampshire*: WMTW-FM, Mt. Washington; *New York*: WBEN-FM, WBUF, and WEBR-FM, Buffalo; WNEF-FM, Binghamton; WHCU-FM, Ithaca; WDDS-FM and WSIR-FM, Syracuse; and WRUN-FM, Utica; *North Carolina*: WRAL-FM, Raleigh; *Ohio*: WERE-FM, Cleveland; WRFD-FM and WVKO-FM, Columbus; WHIO-FM, Dayton; WPFJ-FM, Middletown; and WTOL-FM, Toledo; *Pennsylvania*: WJAC-FM, Johnstown, and WWSW-FM, Pittsburgh; *South Carolina*: WMUU, Greenville; *Tennessee*: WMC-FM, Memphis; *Texas*: KQCE-FM, Houston; *Virginia*: WTAR-FM, Norfolk; WCOD and WRVA-FM, Richmond; WSLC-FM, Roanoke; and WRFL, Winchester; *West Virginia*: WBKW, Beckley; *Wisconsin*: WWCF, Greenfield Township. Other comments considered here are those of ABC, CBS and NBC (each of whom is licensee of one or more "super-maximum" stations); the NAB; Palmer A. Greer, a consulting engineer of Greenville, S.C.; FM Unlimited, Inc.

Of these parties, the only ones supporting reduction in the facilities of existing stations were the licensees of WDFH, Chicago, and the Coldwater (Mich.), Bethesda (Md.) and Greenville (S.C.) stations; Greer; and FM Unlimited, Inc.

It should be emphasized that we are passing here only on those portions of the above-mentioned pleadings which relate to the three questions mentioned in Paragraph 1. Other material therein, and numerous other petitions and comments, will be considered elsewhere in this proceeding. Many of these oppose the basic assignment principles adopted in the First Report, as too restrictive, both as to new assignments and as to increases in existing facilities.

3. Since we herein conclude that existing stations should not be required to cut back in power or height, this question assumes significance only in connection with the spacings and facilities of new assignments, and the degree of protection to be afforded.²

4. It is urged in support of a basic reclassification that there is need for facilities in California greater than those permitted by the new rules in Zone I because of exceptional terrain conditions, and, also, that population conditions are similar to those in Zone II, rather than to the crowded conditions in the Northeast. For example, it is pointed out that California has only two urbanized areas of over 1,000,000 population, and only 11 urbanized areas of more than 50,000, compared to five areas over 1,000,000 and 45 over 50,000 in an equal-sized portion of Zone I (the eastern portion thereof). It is further noted that the urbanized areas, on the average, are farther apart in California than in that portion of Zone I (54 as compared to 25 miles). It is also asserted that much of California has a relatively low density of population.

5. Recognizing this data, and in general the fact that some parts of Zone I-A—notably east of the San Joaquin Valley and in the desert areas east of Los Angeles—are sparsely populated, nevertheless it appears that, over-all, conditions in California make it more appropriate to zone that state like the Northeast, with emphasis on a larger number of assignments rather than relatively wide-area coverage as in Zone II. California is one of the largest states in the Union in population, and has experienced, and may be expected to continue to experience, rapid growth. Between 1950 and 1960 its population increased by more than 5,000,000, much the greatest growth in the nation numerically and fifth in percentage of increase. Perhaps more striking, its *over-all* population density in 1960 was more than 100 per square mile, and it ranked 14th in this respect, exceeded *only* by states all, or most, of which lie in Zone I. Its percentage of urban population (87%) was exceeded only by three of the small, highly populous states of Zone I. In 1950 it ranked first in the nation in number of cities of more than 50,000 persons, and the number of such cities has increased from 20 then to 43 now. From these facts it appears that classification of most of California as Zone I-A, with assignment rules similar to those applied to the Northeast, is appropriate.

6. It also appears that, if Zone II spacings were adopted for this part of California, there would be substantially less chance of making desirable new FM assignments where they are needed—a possibility already limited enough. The staff's work on the proposed Table of Assignments has demonstrated that, if Zone II spacings were adopted, substantially fewer assignments could be made—40% fewer Class B assignments (including no Class B assignment at all in a fairly sizeable community such as Merced) and 27% fewer Class A assignments. In view of the need for making more FM assignments

² Not all persons making this contention necessarily urged adoption of Zone II spacings. KPFA would permit in Zone I-A Zone II maximum facilities with Zone I spacings, while KPEN-KRON would adopt Zone II spacings but permit Class A assignments on second and third adjacent channels as close as 40 miles to Class C stations.

in this populous and growing state, with its many communities, we adhere to our earlier conclusion in this respect. We do not mean to indicate that we here determine that assignment rules should be relaxed, either for this area or generally—a matter which is still before us. But we do conclude that for Zone I-A they should not be further restricted. The matter of protection is discussed below.

7. It was also suggested by a “super-maximum” Richmond station that all of Virginia should be Zone II instead of most of it (including Richmond) being in Zone I. On the basis of population data, there would perhaps be a little more reason for making this change than in the case of California; but the difference is not great. Virginia ranks immediately behind California in terms of population density (100 persons per square mile), and therefore, and in view also of its contiguity to the rest of Zone I, the classification decided on in the First Report (which is the same as in television) is appropriate. Moreover, reclassification would of course further restrict the number of possible new assignments, just as mentioned above in the case of California.

8. *Use of greater facilities in Zones I and I-A:* As part of their argument against reduction, a number of petitioners and commenting parties urged that the general maximum limits on facilities in Zones I and I-A be the same as in Zone II, or at least limits greater than those now applicable in these zones, such as 100 kw and 1,000 feet. This concept must be rejected. If we were to adopt, along with greater maxima, concomitantly greater separations such as those now applicable to Zone II, this would seriously cripple the making of new assignments, as already noted. As to use of greater facilities at the shorter Zone I separations (urged by KPFA, WNEM-TV and others), if all stations were able to operate with maximum facilities this might not be an undesirable approach (as with the Class IV AM stations). But, as has been frequently noted, many existing stations in Zones I and I-A cannot go up under our rules (in many cases the same would be true under any rules, where stations have been “squeezed in”). To permit new assignments to operate with these far greater facilities would create serious imbalances, both because of excessive interference to existing stations with relatively low signal levels, and because of competitive inequality. Therefore we adhere in this respect to our earlier decision.³

9. *Treatment of existing “super-maximum” facilities:* A wide variety of arguments were advanced against requiring existing stations to reduce facilities, at least to anything approaching the new maxima for Zones I and I-A. It was argued, for example, that there would be tremendous loss of service now much relied on by listeners. For example, cutting back the 1 mv/m contours of some Los Angeles and San Francisco stations to the equivalent of 50 kw and 500 ft., or to a radius of 33 miles, would mean a reduction of the population within such contours of from half a million to over a million persons.

³ In view of our decision herein not to move toward cutback of existing stations, we need not consider various proposals concerning special treatment for stations located just inside Zone I but having much of their service areas in Zone II.

Substantial losses would similarly be incurred by stations in Zones I and II. Some of the stations, notably "good music", religious, and non-commercial, stressed the uniqueness of the service which would thus be lost. A number of the pleadings purported to show "white areas" which would result; since these were generally based on the absence of any other signal of 1 mv/m or greater intensity, they cannot be accepted as such (since 50 uv/m is regarded as adequate for rural service); but it does appear that substantial areas and populations would be reduced to one or no reliable signals, for the present. It appears that in some cases there would be an adverse effect on use of the station's signal for pickup and rebroadcast by other stations, and on multiplex reception at distant points.

10. It was pointed out that most of the stations which might be required to cut back would no longer be able to comply with the rules concerning coverage of the city of assignment with a 70 dbu (3.16 mv/m) signal. For example, the Los Angeles stations on Mt. Wilson, which operates with nearly 3,000 ft. effective antenna height, would be cut back to less than one kilowatt in power and would fall many miles short of covering the entire city with a signal of that intensity, or of covering the Los Angeles-Long Beach urbanized area with a signal of 1 mv/m (60 dbu) or better.⁴ The same would be true of the Chicago urbanized area. The terrain problems involved were emphasized, particularly as to California; it was asserted that the extremely rough terrain in the Los Angeles and San Francisco areas, as well as elsewhere, would make operation with such low power extremely unsatisfactory. Economic arguments were also advanced. It was urged that the tremendous loss in coverage involved, if it did not deal a death blow to the stations required to cut back, would at least badly cripple them so as to force them to reduce the quality of their programming. It was pointed out that, while cutback might in some cases make FM stations more nearly equal to each other, it would have an extremely deleterious effect on FM as a medium competing for the advertising dollar, particularly vis-a-vis AM stations with their much greater coverage (in terms of set circulation, if not of territorial coverage).⁵ In general it was asserted that this move would be highly unfair, both to FM as a medium which, after years of struggle, is beginning to get on its feet, and, in particular, to individual FM pioneers who often spent large sums—for example in building on mountain-top sites—and up to now have lost money. Other arguments urged were the importance of continued power and coverage for stereo and the developing FM auto radio service.

11. We advanced as the other reason for considering possible cutbacks the fact that reduction of the signal levels of existing stations might permit new assignments to operate more effectively. Some of

⁴ Because of the great extent of the city of Los Angeles, a station operating with 50 kw and 500 ft. antenna height in the exact center of the city could not comply.

⁵ One San Francisco station suggested that competitively equal facilities would probably be a good idea as such, but opposed cutback in that area, where, it was alleged, present power is needed for adequate coverage. An example of the AM-FM problem is Chicago, where, even with facilities substantially greater than the Zone I maximum, an FM station includes within its 1 mv/m contour only a fraction of the area and population lying within the 2 mv/m contours of the four Chicago I-A clear channel AM stations. Yet, this station alleges, it must charge rates comparable to theirs if it is to keep its amount of commercial activity at a reasonably low level consonant with its cultural programming.

the commenting parties suggested that the same principle could also sometimes work in favor of other existing stations (those with lesser facilities), permitting them to operate with more freedom from interference problems. It was urged, in opposition to reduction, that: (1) since we have decided to make new assignments on the basis of standard separations, the same number of new assignments can be made in any event (even though they would have less coverage); (2) in areas where "super-maximum" stations are involved (such as Los Angeles, San Francisco, and crowded portions of Zone I) few new assignments can be made and few of these would be at minimum spacings, so that the gain in service from these would be small; and (3) even if we make provision for new assignments, as in a Table, these may never develop into actual operations because of sparse population or lack of interest in FM—in which case we would have caused disruption of existing service for no reason. It was also suggested that the service from the new stations might not equal in quality that which had been lost because of reduction.

12. The six comments supporting the idea of reduction, most of which were brief and general, did so largely on the basis of increased competitive equality and the alleged unfairness of "grandfathering" stations with super-maximum facilities. Only one of those referred to a specific competitive situation, Chicago, where one station referred to the difficulty of competing with another having more than 100 kw E.R.P. (However, it appears from the showing that the station commenting draws a substantial share of the Chicago audience, and is received in communities at a considerable distance from that city, such as Urbana, Elkhart, and Logansport).⁶ Two parties mentioned benefit to their operations from cutback of "super-maximum" stations on adjacent channels in other cities.

13. Obviously, not all of the arguments against reduction mentioned above apply in all situations. Nevertheless, we are persuaded, on the basis of the showings made, that taking steps looking toward any over-all reduction in facilities, or steps at this time in any particular case, would be unwise. In reaching this conclusion, we have taken into account the losses in valuable service which would often be involved, the deleterious effect on FM as a competing medium even where conditions between FM stations would be rendered more equal, and the small gains which, it appears, could result even if all of the new assignments contemplated should become actual operating stations. Upon the limited showing made by the few parties supporting reduction, we would not be justified in taking such action, either for reasons of competition or benefit to the operation of possible new or other existing stations.⁷ We do not say that we will never, in the

⁶This station also advocated one change which would tend to create, rather than remove, a competitive inequality—the making of "several" Class C assignments at Chicago. The making of some Class C assignments in Zone I (and Class B assignments in Zone II) was also urged in some pleadings not covered herein, and is a question we do not decide at this time.

⁷The possible benefit to other existing stations through reduction in interference was mentioned by stations in Coldwater, Michigan, and Bethesda, Maryland (referring to adjacent-channel stations at Detroit and Richmond, respectively, operating with more than 50 kw power). In neither case does it appear that the improvement in the service of the commenting stations could justify the loss in the service of the other stations which would be involved—a loss which would occur of course in all directions.

future, consider taking steps looking toward reduction of some existing stations in particular cases; but any such action would be based on careful consideration in a specific proceeding of all of the pertinent factors (balancing gains against losses).

14. *Protection of existing "super-maximum" facilities against interference:* We also emphasize that our decision to preserve existing service against loss from reduction in facilities does not mean that we will preserve it against whatever interference may result from new assignments made in accordance with the rules now obtaining. This is particularly applicable in the case of Class B stations operating with facilities such that their 1 mv/m contours lie more than 40 miles from their transmitters. As one party (ABC) pointed out, any restriction on existing service resulting from *interference* is a different matter from loss of service caused through reduction in power and/or antenna height. It occurs only when and if the new assignment is made at such proximity that interference will result (which may not be true in a substantial number of cases), it occurs only in one direction or area in contrast to over-all loss, and it can often be overcome, if the listener desires, by a better receiver or directional antenna.⁸ In our First Report and Order we decided that interference to these "super-maximum" stations, cause by new assignments made in accordance with the new spacings adopted, should not be allowed to restrict the making of the new assignments. We adhere to that position. The value of making such new assignments as these rules permit, and giving them reasonable facilities and service areas to permit adequate development and good service to their communities and areas, outweighs any interference which may be caused.

15. The foregoing disposes of the petitions of KMLA, Los Angeles, and WBEN-FM, Buffalo. These parties urge that our First Report and Order constitutes an illegal modification of their licenses (these stations operate with E.R.P. of 58 and 110 kw respectively, and antenna heights a.a.t. of 1,190 and 1,350 feet, respectively). Similar contentions were made in comments filed by certain other Zone I stations having facilities such that their 1 mv/m contours lie farther than 40 miles from their transmitters. If objectionable interference is caused to these stations' service from new assignments made in accordance with our rules and in the light of our objectives (and this is far from certain, or even likely),⁹ the benefit from the needed new service will outweigh the small loss which would be caused. Any renewal of license of KMLA and the other California stations will of course be subject to the rules now obtaining; their current licenses

⁸ Unless new assignments are made at or very near the minimum spacings, the extent of interference to be expected to any existing station will be quite small. For example, if a co-channel Class B assignment is made as much as 158 miles away from an existing station operating with the equivalent of 100 kw E.R.P. and 2,000 feet antenna height a.a.t., even if the new station operates with maximum facilities (50 kw and 500 ft. a.a.t.) its signal as a distance 65 miles from the existing station would just barely exceed 1/10 of that station's signal.

⁹ The staff's present study shows KMLA's channel used for a new assignment only at a place more than 175 miles from Los Angeles, and no new adjacent channel assignments any closer to minimum spacings. In the case of WBEN-FM, it is indicated that new assignments would be even further from minimum spacings.

will have expired, and they have no right to a hearing as to any interference resulting from an assignment made in accordance with the rules in effect at the time of renewal.¹⁰

16. In view of the foregoing, *It is ordered*, that the petitions for reconsideration, and the requests contained in the comments and reply comments, mentioned in Footnote 1 hereof, *Are granted*, to the extent they are consistent with the decision reached herein; and *Are denied*, to the extent they are inconsistent with this decision; and

It is further ordered, that the further rule-making proceeding contained in paragraph 7 of the Further Notice of Proposed Rule Making adopted herein July 25, 1962 (FCC 62-867) *Is terminated*.

FEDERAL COMMUNICATIONS COMMISSION,
BEN F. WAPLE, *Acting Secretary*.

CONCURRING STATEMENT OF CHAIRMAN MINOW

I concur in the Commission's order. But I emphasize that I do not consider the protection which the adopted rules grant to the service of "super-maximum" facilities to be inflexible. In those few cases where the licensee of such a facility can show that, although interference caused by a proposed new assignment would fall beyond the area in which his service is protected by the rules, substantial numbers of listeners to whom his program service is unique and irreplaceable would lose that service, I would seriously consider rejection of the new assignment. *Cf.*, *Patchogue Broadcasting Co., Inc.*, 32 F.C.C. 896, 903 (1962) (dissenting opinion).

¹⁰ See *Transcontinent Television Corp. v. FCC*, 308 F.2d 339; 23 Pike & Fischer, R.R. 2064.

KMLA and WBEN-FM also claim that our First Report and Order is illegal in that it changed their facilities by "downgrading" them, with respect to possible interference resulting from changed standards, and putting them in a class where increase would be impossible, all of which is, allegedly, in conflict with our July 1961 statement that we did not propose to "change any existing facilities". This contention is without merit. The July 1961 statement clearly meant no changes in the *physical facilities* of existing stations. The whole area of possible separations and limitations on facilities was raised in the 1961 Notice; in our 1962 Report we adopted spacings in some ways shorter, but in other respects greater, than those proposed in the 1961 Notice.