

Channel, Assignment  
Educational, Reservation of Frequencies

Where choice must be made, public interest favors proposal to provide first noncommercial educational service to sizeable area and population over proposed first local FM service to small community.

BC

FCC 80-314

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of

Modification of FM Broadcast Station Rules  
to Increase the Availability of Commercial FM  
Broadcast Assignments.

BC Docket No.  
80-90  
RM-2587  
RM-3226  
RM-3367

MEMORANDUM OPINION AND ORDER

(Adopted: May 29, 1980; Released: June 10, 1980)

BY THE COMMISSION: COMMISSIONER FOGARTY DISSENTING AND  
ISSUING A STATEMENT; COMMISSIONER JONES DISSENTING.

1. The Commission has before it a "Petition for Reconsideration and Further Notice of Proposed Rule Making" concerning the *Notice of Proposed Rule Making*, 45 Fed. Reg. 17602, released March 14, 1980, which proposes changes in the FM allocation rules to permit additional channel assignments. The reconsideration request has been filed by the National Telecommunications and Information Administration ("NTIA"), a petitioner in this proceeding, seeking a reversal of the Commission's refusal to propose the use of directional antennas in connection with the assignment of FM channels.<sup>1</sup>

2. NTIA states that the Commission's decision to dismiss the

<sup>1</sup> Several other proposals initially advanced by NTIA including terrain shielding, nine classes of station, co-location, and reduced channel spacing are not included in this petition.

directional antenna proposal was in error because directional antenna usage is now permitted for other purposes<sup>2</sup> and the Commission is in a position to analyze the performance of this device and take steps to implement further usage. It asserts that we should now consider the concept by issuing a Further Notice of Proposed Rule Making. NTIA argues that by adopting standards for directional antennas, the promotion of minority ownership can be advanced at an earlier date. NTIA has discussed at length the merits of employing directional antennas. We have not evaluated these assertions at this stage because we find that the petition for reconsideration is not properly before us.

3. Pursuant to Sections 1.106(c), 1.407, 1.425 and 1.429(a) of the Commission's Rules, a petition for reconsideration is not properly before us until a final action has been taken. Here, the *Notice of Proposed Rule Making* merely proposes an action upon which comments from the public are solicited. While the *Notice* postponed consideration of the directional antenna issue until a later date, the issue was not dismissed nor denied. The reasons given for this non-action were to permit a focus of attention on items which can provide more immediate benefits particularly since the expenditure of staff time at this stage for the directional antenna issue would be substantial. Thus, the topic of directional antenna use was not discussed for consideration by the Commission, and cannot now be subject to reconsideration. We shall therefore reiterate that the issue of directional antennas has not been dismissed in connection with this proceeding and will be considered in a future proceeding.

4. Accordingly, the "Petition for Reconsideration and Further Notice of Proposed Rule Making" filed by the National Telecommunications and Information Administration IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION,  
WILLIAM J. TRICARICO, *Secretary*.

DISSENTING STATEMENT OF COMMISSIONER JOSEPH R. FOGARTY

IN RE: NTIA PETITION FOR RECONSIDERATION OF NOTICE OF  
PROPOSED RULEMAKING IN BC DOCKET No. 80-90.

On March 14, 1980, the Commission issued a Notice of Proposed Rulemaking looking toward changes in the FM allocation rules to permit additional FM channel assignments. In doing so, the Commission stated that several other proposals offered by the National Telecommunications and Information Administration (NTIA) would be treated in a later proceeding because those ideas required more study and would delay immediate benefits of the matters which were proposed. NTIA has filed a petition for reconsideration of this aspect

<sup>2</sup>The use of directional antennas has been approved to permit super-powered grandfathered stations to increase power and to encourage the location of transmitters on antenna farms. See Section 73.316(c) of the Commission's Rules.

of the decision, urging that postponing consideration of its proposal on the use of directional antennas by minority applicants is arbitrary and that a further notice of proposed rulemaking should issue to include and solicit comment on this proposal. On the merits, I agree and would grant NTIA's petition *sua sponte*.

NTIA's essential argument is that the Commission's stated reason for postponing consideration of its proposal—i.e., lack of information on the performance of directional antennas—ignores the fact that the Commission has been authorizing directional antennas to permit the short-spacing of FM stations for over 15 years and thus should have an adequate record on which to determine the technical concerns surrounding their use. In this connection, NTIA submits:

The Commission permits such short-spacing if it is intended to accomplish policy goals which it feels are beneficial. The technical standards for directional antennas have been carefully established by the Commission, and there is sufficient operating experience that uncertainties in this area are minimal. The only question to be decided is whether the Commission considers the promotion of minority ownership to be as important as either permitting existing grandfathered stations to increase their power or facilitating antenna farm location.\*

I believe that these arguments are worthy of consideration sooner rather than later, and I would therefore grant reconsideration for the purpose of including NTIA's proposal in the recently-instituted rulemaking proceeding.

For these reasons, I dissent.

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\* Petition for Reconsideration at 5.