Dual City Identification
Station Identification

Section 73.1201(b)(2) of the Commission's Rules amended to permit a broadcast licensee to mention any additional community in its official station identification, provided only that the station's community of license is named first. Section 73.1201(b)(3) of the Rules concerning promotional identifications by broadcasters deleted in its entirety as being unnecessary.
–*Multi-City Identification*
BC Docket No. 82–374

FCC 83–487

BEFORE THE

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C. 20554

In the Matter of	
Amendment of Section 73.1201(b)(2) of the Commission's Rules—Additional City Identification.	BC Docket No. 82–374

REPORT AND ORDER
(PROCEEDING TERMINATED)

(Adopted: October 19, 1983; Released: November 1, 1983)

BY THE COMMISSION: COMMISSIONER QUELLO ABSENT.

Background

1. On July 1, 1982, we adopted a *Notice of Proposed Rule Making* in this proceeding proposing the alteration of our rule concerning multi-city identification by broadcasters.[1] Under Section 73.1201(b)(2) of the Commission's Rules, a licensee must identify itself with its community of license. If it wishes to mention other communities in its official identification, it must request such authority from the Commission in an informal application. Such requests are routinely granted provided that the additional communities are located within the requesting station's principal-city signal contour. The Commission also has considered factors in addition to signal coverage, including "mutuality" (*i.e.*, whether the opposing station would be eligible for additional city identification) and the viability of the requesting and opposing stations, in deciding additional city identification cases.

[1] FCC 82–305, released July 23, 1982, 47 Fed. Reg. 32957, published July 30, 1982.

2. The *Notice* in this proceeding proposed two alternative changes in the substance and procedure for obtaining authority for multi-city identification. The first option was to retain the coverage requirement but to permit licensees to certify to the Commission that they meet the coverage standard. This would eliminate the application procedure and would permit the licensee to commence multi-city identification without further Commission action or review. Under this approach, signal coverage alone would govern eligibility and consideration of such non-technical factors as mutuality and viability would be eliminated. The second option was to eliminate both the application procedure and the coverage requirement, thus permitting licensees to identify by their community of license followed by any other community or communities that they selected, irrespective of their signal coverage of such additional communities. Comments were received with respect to both of these proposals. Other alternatives also were suggested by commenting parties.

Comment Summary

3. *Certification.* Comments supporting the certification option stress the speed, efficiency, and cost effectiveness of such a procedure. It is asserted that the current rule contains a specific guideline governing authorization of multi-city identification and that most multi-city applications are routinely granted. Thus, it is contended that the application procedure is completely unnecessary. Indeed, at least one commenter suggests that the Commission's approach in station identification matters has largely been one of certification already. Puerto Rico Broadcasting, Inc. (PRBI), however, recommends that the Commission utilize actual coverage, rather than predicted coverage, as the standard should the certification procedure be adopted. It contends that actual coverage has been utilized for this purpose in the past.[2] It also contends that the use of actual coverage would conserve Commission resources by eliminating most instances in which authorization for multi-city identification is sought and granted but is subsequently challenged on actual coverage grounds.[3] Under PRBI's proposal, waivers could still be sought in cases where there is no actual encompassment, but where other factors would support multi-city identification authorization.

4. Those opposed to the certification proposal argue that the current application process is neither costly nor burdensome given

[2] PRBI cites *Ponce Television Corp.*, 88 FCC 2d 1081 (1982), where the Commission withdrew multi-city identification authorization because terrain factors resulted in a large portion of the added community being shadowed. Predicted coverage had indicated that the entire community was encompassed by the applicant's city-grade contour.

[3] These would be cases similar to *Ponce Television Corp., supra,* in which actual coverage is not provided although it is predicted.

that only about 100 such applications are filed each year and that most of these are routinely granted. Accordingly, it is asserted that any administrative economies that might result from elimination of the application process would be outweighed by the consequences of such action—the disregard of public interest considerations which in the past warranted denial of multi-city identification permission irrespective of coverage. In any case, Channel Nine of Orlando (Channel Nine) asserts that administrative convenience does not provide a basis for abandoning prior policy.[4] Telemundo, Inc., argues that confusion to the public could result from a certification procedure. Specifically, it is alleged that the procedure could increase the likelihood of a station commencing multi-city identification and shortly thereafter changing its method of station identification. Such a change would be required where, for example, the Commission rescinds the certification based on new information indicating a lack of requisite coverage of the added community.

5. *Elimination of the Coverage Requirement.* Several commenters express support for the second option—the elimination of the coverage requirement as well as any application or authorization procedure. These commenters express the view that the decision to implement multi-city identification is a business decision which should be made by the broadcasters who run the risks inherent in making such decisions. Both the existing rule and a certification procedure, it is asserted, unjustifiably interfere with the play of free market forces without providing any countervailing benefit to the public. This option would permit broadcasters to function more effectively by allowing them to respond to the demands and incentives of the marketplace and would eliminate unnecessary administrative procedures, thereby conserving Commission resources. Adequate protection against abuse exists, these commenters assert, given the Commission's policies requiring licensees to deal candidly and truthfully with the public and prohibiting the use of inaccurate, misleading or exaggerated coverage maps or audience claims. Furthermore, stations would continue to owe their primary service obligation to their community of license without regard to their mode of official station identification. Moreover, the argument continues, should a licensee utilize a method of identification that was deceptive or misleading it could face civil penalties. The National Radio Broadcasters Association (NRBA) argues that neither advertisers nor the public needs the Commission to protect them from false coverage claims. Advertisers do not purchase air time based upon a station's official identification announcement. Rather, they rely on professional specialized market surveys and audience ratings studies. The public, NRBA asserts, can test

[4] In support of its position, Channel Nine relies on *New Castle County Airport Commission* v. *C.A.B.*, 371 F.2d 733 (D.C. Cir. 1966).

coverage claims by merely turning on the radio. In no case, it concludes, should the Commission be in the business of protecting advertisers who are well able to protect themselves with the use of ordinary diligence.

6. A number of commenters strongly oppose eliminating the current requirements. They contend that permitting stations to identify by any community (in addition to their community of license) would distort, not mirror, the marketplace because identification would not accurately reflect reality. The coverage requirement is said to act as a limiting factor so that unreasonable city identification claims cannot be made and so that unnecessary confusion in the audience's mind as to the market area from which a given station originates can be minimized. Elimination of the coverage requirement is seen by the National Association of Broadcasters (NAB) as indicating a Commission movement away from the policy of encouraging local service. Channel Nine suggests that elimination of the coverage requirement would undermine public and advertiser reliance on the integrity of station identification claims. Channel Nine also believes that this option would constitute an abandonment of the Commission's longstanding policy against false and deceptive practices by licensees. Market forces will not prevent such practices, according to Telemundo, because stations will utilize any means "that may afford any shred of credibility" to their attempts "to enlarge upon their status or stature as competitors."

7. Commenters also question whether this option would result in any savings to the Commission or the public in general. Channel Nine argues that administrative savings would not result because the abandonment of the coverage requirement would likely generate numerous complaints and proceedings. By contrast, retention of the coverage requirement, which provides a known and rational basis on which to judge the reasonableness of multi-city identifications, would avoid such disputes. PRBI contends that there also would be no savings to the public because it is less costly to enforce the existing straightforward rule than it would be to pursue the substantial civil litigation that would result from adoption of the proposed "market" approach. Telemundo believes that the abandonment of the coverage requirement also would mislead the public and would result in audience guides, newspaper listings and rate and data service information becoming confused and inconsistent as the standard for multi-city identification and the meaning of such identification would no longer be certain. Finally, it is asserted that any change in the current rule is unnecessary because stations currently may identify with communities in their lesser coverage areas in station promotional announcements, so long as they give their official identification as required.

8. *Alternative Proposals.* A number of commenters submitted

alternative proposals or made suggestions for modification of our own proposals. Telemundo, for instance, suggests that the Commission adopt a notification procedure instead of a certification procedure. Under this proposal, a licensee desiring to add a community to its official identification would notify all licensees and permittees with broadcast facilities licensed to communities within 15 miles of the city to be added. These licensees would have 30 days in which to file objections with the party making the notification. That party then would submit the notification and the responses to the Commission for approval or denial of multi-city identification authorization. If no objections were received in response to the notification, the licensee could commence multi-city identification 5 days after the 30 day objection period had passed. Thus, the Commission would be relieved of receiving and processing applications in the vast majority of cases that are uncontested.

9. A group of joint commenters proposed that the Commission retain the coverage requirement for radio but permit all television stations in a given market to identify with all other communities that comprise that market as defined by Arbitron's Area of Dominant Influence. According to the joint commenters, this approach would recognize that television is a wide area or regional type of service in which stations from different communities are typically perceived by advertisers, advertising agencies, other television stations and the public as serving a single market. It is argued that this makes the city-grade coverage requirement unnecessary for television.

10. Several commenters that generally support the certification option ask that it be supplemented by a post-certification review process through which pertinent objections to any certification could be presented and considered by the Commission on a case-by-case basis. Examples of such pertinent objections, in these commenters' view, would be a subsequent showing that definitively disputes "the essential facts" on which the certification was based, a showing of lack of actual or predicted coverage, extrinsic evidence that the certification is part of a de facto reallocation attempt, or a demonstration that error or misrepresentation was involved. Absent such review, NAB sees the certification option as another "step in an unlawful FCC trend toward neglecting the allocations and service needs of small communities and giving less concern to the statutory mandate of Section 307(b) of the Communications Act." Specifically, NAB fears that by eliminating consideration of factors other than signal coverage, the Commission will be opening the door to de facto reallocation of facilities contrary to Section 307(b) and longstanding Commission policy. Finally, a number of commenters suggest that, regardless of the coverage standard adopted in conjunction with a certification process, a waiver procedure should be made available for stations that do not meet the required coverage criteria but

whose unique market or coverage circumstances might nevertheless warrant authorization for multi-city identification.

Discussion

11. *Elimination of the Coverage Requirement.* Having reviewed the record in this proceeding, we are convinced that the signal coverage requirement imposed by Section 73.1201(b)(2) of the Rules in connection with additional city identification by broadcasters is unwarranted. Accordingly, we are amending this provision to permit a broadcaster to include in its official station identification the name of any community or communities that it selects, irrespective of the level of signal coverage provided to such communities. Neither application nor notice to the Commission in connection with changes in a station's mode of identification pursuant to this amendment will be required.

12. Our decision to eliminate the coverage requirement is motivated by several considerations. First, we perceive no legitimate regulatory need for the restriction. To the extent that the current rule is intended to protect advertisers from possibly being misled as to the coverage of a station, it unnecessarily and inappropriately involves the Commission in the economic relationship between a broadcaster and its advertisers. As we recently stated in our *Policy Statement and Order* ("Elimination of Unnecessary Broadcast Regulation"),[5] advertisers are neither required to nor likely to rely on station claims in determining coverage. Rather, they typically utilize readily available and sophisticated market survey data to ascertain the extent and demographic composition of a given station's audience. In any event, we found, advertisers have recourse to private legal remedies should they be defrauded by false coverage claims or representations. These considerations led us to eliminate our former policies concerning misleading coverage claims and distortion of audience ratings by broadcast licensees. It is even less likely, in our view, that advertisers will be misled by a station's official identification, regardless of what communities a licensee might choose to include in its announcement.

13. We also do not believe that eliminating the coverage requirement will pose any appreciable risk of harm to the public. In this regard, we note that a station will still be required to name its community of license first among the communities listed in its official station identification, thus providing a means of determining the station's location. Furthermore, contrary to some commenters' speculative contention that unreasonable station identifications will occur if the coverage requirement is deleted, we think that market forces and common sense will prevent stations from identifying with communities which they do not serve or have any connection with.

[5] FCC 83-339, released August 2, 1983, 94 FCC 2d 619.

In any event, even were a licensee to identify with a community which it does not serve, we can see no serious harm that would warrant Commission intervention. Those listeners or viewers routinely receiving the station are likely to be familiar with its general location, and those not receiving the signal cannot be misled by such an identification.[6]

14. We also disagree with NAB's contention that elimination of the coverage requirement will result in a movement away from the policy of encouraging local service. As we have stated in past cases and in the *Notice*, the inclusion of additional communities in a station's official identification does not alter the station's location or its obligation to provide satisfactory service to its community of license. *See, e.g., WTSP-TV, Inc.*, 48 RR 2d 1289 (1981). Consequently, if a station fails to meet its primary service obligation to its community of license, the matter would be considered in connection with the station's application for renewal of its license. Neither the substance nor procedure of this approach is affected by the changes we are adopting here. Additionally, NAB's argument that elimination of the coverage requirement will open the door to de facto reallocation of facilities in unpersuasive in view of our recent action in BC Docket No. 82–320[7]. In that proceeding, we abolished the de facto reallocation policy, concluding that reliance on our various licensing rules[8] would achieve the intended objectives of the policy while avoiding the unintended and unwanted results which the policy had engendered. *A fortiori*, retention of our existing identification rule, itself encumbered by unwanted effects, cannot be justified on the grounds that it is essential to prevent de facto reallocations.

15. In contrast to our conclusion that no substantial public interest purpose is served by retaining the coverage requirement, we find that adverse effects may result from its retention. Specifically, we are concerned that the current rule unnecessarily interferes with market forces, possibly skewing competitive relationships to the detriment of the public. Many stations, for example, provide service to communities beyond their principal-city coverage contour and

[6] To the extent, of course, that a licensee's use of inaccurate additional city identification results in judicial or agency findings of a violation of law, we will continue to consider such findings. *See Violation of Laws of USA by Station Applicants*, 42 FCC 2d 399 (1951). However, the relevance of these situations to licensee character evaluation, and indeed the more general question of whether the Commission should continue to consider even adverse findings where, as here, the activities are primarily business-related rather than broadcast-related, will be resolved in the pending proceedings in Gen. Docket No. 81–500, Policy Regarding Character Qualifications in Broadcast Licensing, 87 FCC 2d 836, 848 (1981).

[7] *Report and Order* in BC Docket No. 82–320, FCC 83–81 (released March 14, 1983), 53 RR 2d 681, 48 Fed. Reg. 12094, published March 23, 1983.

[8] These rules require a licensee to provide city-grade service to its community of license, to locate and maintain its main studio within its community of license and to provide programming responsive to the needs of its community of license.

often generate significant advertising revenues in these areas. Yet, under current restraints, these stations cannot reflect this marketplace relationship in their official station identification.[9] To the extent that this situation artificially protects some stations from competition, it removes what may be a healthy competitive incentive for the protected station to improve its service to the public.[10]

16. Further, the existing rule imposes burdens on the Commission and its licensees, both in terms of the application process now specified and in terms of the substantial efforts and resources consumed in contested cases in this area.[11] Given our finding that no significant public interest purpose underlies the current requirement, these burdens are simply not justified.

17. We are also eliminating consideration of several non-technical factors that previously could have precluded multiple city identification. Concerns such as "mutuality" and the viability of the requesting station are plainly moot in view of our decision to eliminate the coverage requirement and to permit stations to identify with any additional communities which they select. Furthermore, we find that entertaining objections to additional city identification based upon the viability of the opposing station, as in *Sudbrink Broadcasting, Inc. of Florida*v. *F.C.C.*, 509 F. 2d 418, (D.C. Cir. 1974), is no longer advisable. As we noted earlier, we see no legitimate reason to expend Commission resources to protect stations from the competition caused by additional stations identifying with a particular community. In most cases, these stations will be serving the community in question and the added competition may well inure to the benefit of the public.

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[9] *Thomas Radio Co.*, 51 RR 2d 1151 (1982), *aff'd*, *Thomas Radio Co.* v. *F.C.C.*, Case No. 82–1828 (D.C. Cir., decided August 30, 1983), exemplifies this untoward result. In that case, station WOAY(AM), Oak Hill, West Virginia, requested and was denied permission to identify as Oak Hill-Beckley, West Virginia, because the station failed to place a city-grade signal over all of Beckley. In particular, the station did not place a 25 mV/m signal over the business areas of Beckley, although it placed the requisite 5 mV/m signal over the residential areas of the community and provided at least that level of service to the business district as well. Moreover, WOAY apparently was deriving about half of its advertising revenues from Beckley merchants. On appeal, the court affirmed our decision to deny WOAY's request, basing its affirmance on the limited scope of judicial review permitted in such cases. However, the court also questioned the soundness of the Commission's reasoning, stating that "the FCC's order . . . demonstrates very little practicality, and we are, therefore, encouraged by the agency's assurance to us that it is undertaking a reformulation of its policies on dual-city identification." Slip op. at 8.

[10] We acknowledge that the competitive impact of a particular mode of station identification is uncertain and may well be rather small in terms of generating advertiser or audience support. This very uncertainty, however, is at once what disturbs us about intervening regulatorily in this area and reinforces our conclusion that the marketplace mechanism is best suited to deal with the matter.

[11] *See, e.g.*, *Thomas Radio Co.*, *supra*, n.8, slip op. at 8.

18. *Certification.* Our decision to eliminate the coverage requirement altogether clearly renders consideration of the certification option raised in the *Notice*, and the variants of this approach suggested in the comments, unnecessary. Moreover, we do not believe that any form of notification to or prior review by the Commission should be required in connection with stations commencing or terminating multiple city identification. We discern no regulatory need for such procedures and conclude, therefore, that the burdens which they would impose on the Commission and its licensees are unwarranted.

19. *Additional Matters.* Our action permitting stations to identify with any community or communities that they wish vitiates the purpose of Section 73.1201(b)(3) of the Rules. That section provides tht a licensee shall not in its identification announcements, promotional announcements or in any other broadcast matter, attempt to lead its audience into believing that the station has been authorized to identify officially with communities other than those approved by the Commission pursuant to Section 73.1201(b)(1) and (2) of the Rules. Because such approval is no longer required, this constraint is now academic. Accordingly, we are deleting Section 73.1201(b)(3) of the rules in its entirety. We wish to emphasize, however, that this action is ministerial in nature and in no way implies our approval of station identifications designed to confuse the public as to a station's community of license. On the contrary, Section 73.1201(b)(2) continues to require that a station's community of license be listed first among the communities named in its official station identification.

20. In sum, we believe that our action eliminating the coverage requirement in connection with multiple city identification by broadcasters will relieve appreciable burdens on both licensees and the Commission. Moreover, this action will also promote a more competitive broadcast environment, thereby ultimately benefitting the industry and the public.

Final Regulatory Flexibility Analysis

I. *Need for and Purpose of the Rule.*

21. The purpose of the instant amendment of Section 73.1201(b) of the Commission's Rules is to eliminate unnecessary substantive and procedural requirements that currently must be satisfied before broadcast licensees may include additional communities in their official station identifications. Specifically, this amendment eliminates the requirement that a station place a city-grade signal over any additional communities with which it wishes to identify. Such a restriction was found to serve no legitimate regulatory purpose, yet it often prevented stations from identifying with communities which the stations served and from which the stations derived appreciable advertising revenues. Furthermore, the subject amendment deletes

the current application, review and approval process which imposed unwarranted burdens on broadcast licensees and the Commission's staff. Finally, the amended rule eliminates consideration of various non-technical factors that previously could have precluded multiple-city identification.

II. *Flexibility Issues Raised in the Comments.*

22. The most significant flexibility related issue raised in the comments was support for the option adopted in this *Report and Order*, which eliminates both the coverage requirement and the existing application, review and approval process. Some commenters felt, however, that the coverage rule should be retained, while the application procedure should be replaced by a less burdensome alternative, such as the certification option proposed in the *Notice*.

III. *Significant Alternatives Considered but Not Adopted.*

23. Two significant alternatives were considered. The first was the alternative mentioned immediately above, under which a station could include additional communities in its official identification upon certifying that its principal-city signal contour encompassed these communities. The second alternative, which was first proposed in the comments, was to adopt a notification procedure as fully described in paragraph 8, *supra*. These alternatives were both rejected because they were premised upon retention of a coverage requirement that we found to serve no viable regulatory purpose.

24. Accordingly, IT IS ORDERED, that Section 73.1201(b) of the Commission's Rules, 47 C.F.R. § 73.1201(b), IS AMENDED, as set forth in the attached Appendix, effective December 8, 1983.

25. Authority for this action is contained in Sections 4(i), 303(g) and 303(r) of the Communications Act of 1934, as amended.

26. For further information on this proceeding, contact Andrew J. Rhodes, Mass Media Burea, (202) 632–7792.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO, *Secretary*

APPENDIX

47 C.F.R. § 73.1201 is amended by revising subparagraph (b)(2), and removing subparagraphs (b)(2)(i), (b)(3) and the Note preceding paragraph (c), to read as follows:

§ 73.1201 Station identification

* * * * *

(b) * * *

(1) * * *

(2) A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.

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