

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

In the Matter of

Reclassification of Class B  
and C FM Broadcast Stations  
Which Do Not Meet Certain  
Minimum Antenna Height and/or  
Power Requirements.

**ORDER**

Adopted: November 20, 1986 ; Released: December 9, 1986

By the Commission:

1. The National Association of Broadcasters (NAB) on August 26, 1986, filed with the Commission, a petition for rule making and petition for emergency relief. Specifically, NAB requested that the Commission craft a *Notice of Proposed Rule Making* to review its decision in Docket 80-90 (48 Fed. Reg. 29486; published June 27, 1983) that would cause reclassification of FM broadcast stations on March 2, 1987, according to the station's actual facilities (power and antenna height) on that date.

**BACKGROUND**

2. The Commission, in Docket 80-90, created three new classes of FM broadcast stations. This action resulted from a desire to improve spectrum occupancy by reducing specified mileage separations between those stations operating at less than the maximum permitted facilities. Prior to Docket 80-90, stations were separated by mileages that protected the maximum available facilities for the class of station even if such stations were actually operating at considerably reduced levels. Interference protection distances in these cases were therefore larger than required. This had the effect of precluding additional stations from being authorized in unserved or underserved areas, even though the existing stations chose not to serve such areas or were prevented from ever doing so by height restrictions or other problems.

3. In addition to creating new classes of stations with mileage separations commensurate with facilities, the Commission added 696 new FM allotments to the Table of Allotments (FCC Rules and Regulations, Section 73.202). The new allotments were added to communities in which a channel was technically feasible and in which a need for service had been established. To ease final disposition of the Docket 80-90 allotments, the Commission instituted a freeze on accepting petitions for new allotments that were not direct counterproposals to the 696 allotments. This action permitted settling all Docket 80-90 proposals and counterproposals before granting of any other allotment requests that could conflict with the timely conclusion of Docket 80-90.

4. The Commission granted existing stations, not operating at full facilities, a three year period (beginning with the effective date of the *Report and Order* ) in which either to upgrade facilities or to accept a reclassification appropriate to the facilities actually being used. In addition,

upon reconsideration (97 FCC 2d 279 (1984)) of Docket 80-90, the Commission granted a 16 kilometer "buffer zone" around those Class C stations having antenna heights of less than 300 meters above average terrain. This had the effect of increasing protection distances by 16 kilometers in all directions around those stations for the transition period.

5. NAB basically argues that with the availability of the 696 allotments from Docket 80-90 and with new allotments added through petitions to amend the Table of Allotments, "over 1,400 possible new facilities" have been created. NAB suggests that those opportunities must then be added to opportunities for new radio stations as a result of future expansion of the AM band. NAB points out that the Commission could even further increase opportunities for new service in its Docket 86-144 (51 Fed. Reg. 15 927; published April 29, 1986). That docket proposes allowing upgrading of facilities on the 20 channels now limited to Class A facilities. NAB also assesses that forced reclassification will result in "unprotected pockets of interference that will destroy service currently enjoyed by many listeners." NAB finally asserts that conflicting regulations have hampered upgrades, especially FAA air hazard limitations. All of these actions, according to NAB, should cause the Commission to reconsider the "balance" between the "burdens on broadcasters" and the "benefits of reclassification."

6. By letter dated October 8, 1986, National Public Radio (NPR) filed in support of the NAB petition. NPR pleads that although the reclassification was intended to affect only stations operating on the commercial channels, it also affects the 20 noncommercial channels. Specifically, Channels 218, 219 and 200 are directly affected by the new first, second, and third adjacent channel mileage separations. In addition, all noncommercial channels are potentially affected by commercial allotments removed by 53 or 54 channels.

**DISCUSSION**

7. We believe NAB failed to present a convincing argument to delay the reclassification of existing stations. In reaching its initial decision to reclassify stations after three years, and again upon reconsideration, the Commission considered all of the issues now being revived by NAB. The primary and overriding public interest goal remains allowing new service in areas now being encumbered by stations which have not built up to their full potentials. We recognize that licensees may have had to overcome obstacles to meet the timetable; but, many licensees have demonstrated the reasonableness of the three year period by having already achieved upgrading. Many others have filed applications and are prepared to construct after those applications are processed. Those that have not upgraded continue to underserve or not serve areas in which they are receiving protection from interference. Three years represents a substantial time period for any licensee to exercise several options. However, even in those "worst case" instances in which a downgrade occurs, licensees will continue to serve the primary audiences they had *chosen* to serve up to the point of the downgrade. Therefore we will not move to amend the three year period.

8. The NAB requests that if the three year rule is not extended, the Commission should consider waivers of the time period for those stations having shown diligence in their attempts to upgrade but which have encountered

11. This order is issued under Section 0.291 of the Commission rules and is effective on its release date. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the rules may be filed within 30 days of the date of public notice of this order. See Section 1.4(b)(2).

#### FEDERAL COMMUNICATIONS COMMISSION

Kevin J. Kelley  
Chief, Mobile Services Division  
Common Carrier Bureau

#### FOOTNOTES

<sup>1</sup> Anderson is an applicant for the non-wireline construction permit in Sarasota, Florida. Anderson was not selected as one of the top-ten ranked applicants in the June 27, 1986 lottery for the market.

<sup>2</sup> Anderson also raises objections to a Genesis settlement agreement it alleges Ryan entered. Ryan responds in its opposition pleading that it is not and never has been a party to the Genesis Agreement. The MCE Cellular Settlement Agreement and a Joint Settlement Agreement, to which Ryan and MCE are parties, were submitted to the Commission by Ryan on July 11, 1986 and were referenced in the *Public Notice* announcing Ryan as tentative selectee. Neither agreement contains the alleged "de facto transfer of control" language Anderson would have us find fatal.

<sup>3</sup> This is not a case of typographical error in one of the pre-lottery specified processing requirements enumerated at n.16 of the cellular lottery *Memorandum Opinion and Order on Further Reconsideration*, 59 Rad. Reg. 2d. (P&F) 407, 410 n.16 (1985). See, e.g., C.J. Communications, Order on Reconsideration, Mimeo No. DA 86-228, released November 19, 1986. In those circumstances, even so-called typographical errors, such as listing the wrong market number on the title page, have resulted in rejection of the application.