Dual City Identification
Station Identification

Petition for partial reconsideration of *Report and Order*, 95 FCC 2d 1253, denied. Petitioner has not set forth sufficient grounds for conditioning multi-city station identification on compliance with a signal coverage requirement.
—*Station Identification*
BC Docket No. 82-374

FCC 84-339

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 —	BC Docket No. 82-374
Additional City Identification	

MEMORANDUM OPINION AND ORDER

Adopted: July 12, 1984; Released: July 27, 1984

BY THE COMMISSION: COMMISSIONER RIVERA ABSENT.

Background

1. The Commission has before it a petition for partial reconsideration of our *Report and Order* in this proceeding,[1] filed by the National Association of Broadcasters ("NAB"). No oppositions or reply comments were filed in response to NAB's petition.

2. In our *Order*, we modified the substantive and procedural requirements for obtaining authority for multi-city identification by AM, FM, and television stations as set forth in Section 73.1201(b)(2) of the Commission's Rules. Specifically, our action authorized licensees to include in their official station identifications the names of any additional communities, provided only that the community to which a station is licensed is named first. In making this rule change, we eliminated the substantive requirement that a station place a principal-city signal over the additional

[1] FCC 83-487, 48 Fed. Reg. 51304 (November 8, 1983), 54 R.R. 2d 1343 (1983).

community in question.[2] We also abolished the procedural requirement that a broadcaster file an application requesting authority to identify with additional communities. In addition, we provided that a licensee need not notify the Commission of changes in its manner of identification. Finally, our action eliminated Commission consideration of several non-technical factors that previously could have precluded multiple city identification[3] and terminated Commission adjudication of contested multi-city identification cases.

NAB's Petition

3. NAB's petition for reconsideration is principally directed to that aspect of our decision which eliminated signal coverage as a consideration in additional city identification matters. NAB contends that our action in this regard was unjustified and that some minimum coverage criterion should be reinstated. While in its original comments in this proceeding NAB supported retention of the former city-grade coverage requirement, along with a liberal waiver procedure, it now urges adoption of another signal coverage standard, albeit, a less onerous one.[4]

4. In support of its position, NAB contends that retaining a reduced signal coverage requirement is necessary to prevent confusion to both the public and advertisers, caused by the combined effect of our actions in this docket and in the related call sign proceeding.[5] Specifically, NAB argues that, as a result of the Commission's action in this proceeding, there is no limitation on the ability of broadcasters to identify with any other community, causing listeners and advertisers to place greater

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[2] Pursuant to Sections 73.188(b)(1) and 73.315(a) of the Commission's Rules, the minimum principal-city signal levels are 5.0 mV/m for AM stations and 3.16 mV/m for FM stations. For television stations, the principal-city signal levels are 5.0 mV/m for channels 2-6, 7.0 mV/m for channels 7-13, and 10.0 mV/m for channels 14-69. Section 73.685(a) of the Rules.

[3] These non-technical factors included "mutuality" (*i.e.*, whether an opposing station would be eligible for additional city identification) and the viability of the requesting and opposing stations.

[4] NAB suggests that, as a minimum requirement, the Commission should use the 0.5 mV/m contour for AM stations and the 1.0 mV/m contour for FM stations, which were the accepted service areas used in connection with the former policy concerning inaccurate coverage maps and promotional material. As an alternative, NAB requests consideration of a 2.0 mV/m contour for AM and 2.0 or 1.5 mV/m level for FM stations as more appropriate "core area" measures for multi-city identification purposes. For television stations, NAB believes that a reasonable coverage standard would be the Grade A contour or the presence of a station in an Area of Dominant Influence (ADI) or Designated Market Area (DMA). With respect to the latter, if a station were located within an ADI or DMA, NAB believes that it should be permitted to identify with any community included within that ADI or DMA.

[5] *Report and Order* in MM Docket No. 83-373, 48 Fed. Reg. 57133 (December 28, 1983), 54 R.R. 2d 1493 (1983), *recon. denied* FCC 84-299, Mimeo No. 34718 (adopted June 27, 1984).

reliance upon a station's call letters as a means of distinguishing among stations. However, NAB believes that the Commission's recent *Report and Order* in MM Docket No. 83-373 jeopardizes such reliance because it eliminates Commission adjudication of claims that the use of certain call letters would be confusing with those already assigned to other stations in a given area. As a result, NAB asserts, stations may now utilize substantially similar call letters as well as the same cities in their official station identifications, and that the net effect of this combination is to "create a confusing rather than just a competitive environment that will not be conducive to the efficient operation of market forces."[6]

5. NAB also contends that elimination of the coverage requirement represents an unwarranted abdication of Commission allocation responsibilities under Section 307(b) of the Communications Act of 1934, as amended, in that it fosters *de facto* reallocation of broadcast facilities. NAB notes that it raised this argument in its initial pleadings in this proceeding and that the Commission rejected the argument on the basis of its recent abolition of the *de facto* reallocation policy.[7] NAB now argues that the Commission's reliance in eliminating the coverage requirement on its earlier action deleting the *de facto* reallocation policy was premature because that action is currently before the courts on appeal and is not yet final.[8]

6. Additionally, NAB urges the Commission to provide a forum for the resolution of complaints alleging noncompliance with the proposed signal coverage requirement. Moreover, NAB contends that, in the event the Court of Appeals overturns the Commission's decision eliminating the *de facto* reallocation policy, the Commission should consider multi-city identification practices as relevant evidence in resolving *de facto* reallocation allegations.

Discussion

7. After consideration of NAB's petition, we conclude that modification of our *Order* in this proceeding is not warranted. We are not persuaded that our new additional city identification rules, even when considered in light of our action in the call sign proceeding, pose any significant risk of confusion to either advertisers or the public. In this regard, NAB has submitted nothing beyond its assertions to demonstate that our elimination of the coverage requirement would, on balance, exacerbate the confusion which it alleges will result from our call sign decision. Indeed, it appears that the greater freedom in selecting

[6] NAB Petition at 4.

[7] *Report and Order* in BC Docket No. 82-320, 93 FCC 2d 436 (1983), *recon. denied* FCC 84-335, Mimeo No. 34759 (adopted July 12, 1984).

[8] *Channel 287, Inc. v. FCC*, No. 83-1520 (D.C. Cir., filed May 13, 1983).

communities for inclusion in a station's official identification which our initial action affords might as easily function to better distinguish stations with similar sounding call letters as it would to aggravate the similarity. In any event, even assuming that there may be instances where the possibility of confusion is heightened, we do not believe these situations will occur with such frequency or will threaten such harm as to justify Commission intervention.[9]

8. First, as we indicated in our *Order*, advertisers are not likely to be confused because they need not rely on a station's official identification in determining the coverage of a station. On the contrary, sophisticated market survey data are readily available to aid advertisers in determining the extent and composition of a station's audience. NAB has not presented any evidence to refute this point or to show how advertisers would be confused.

9. Second, although the Commission will no longer adjudicate disputes involving the use of similar sounding call letters, such issues may nevertheless be litigated in local courts. Additionally, even if stations with similar sounding call letters have the same official identifications, it would not necessarily cause public confusion. Stations frequently use promotional identifications to maintain a unique station identity.[10] These promotional identifications may be used in lieu of call letters except during times when an official station identification is required. Furthermore, the public can often easily distinguish among stations with similar call letters because they use different entertainment formats and frequencies. Finally, the continuing obligation under Section 73.1201(b)(2) of the Commission's Rules to list a station's community of license before additional communities in an official identification will reduce the liklihood of public confusion where stations with similar call letters have different communities of license.

10. With respect to the contention that elimination of the coverage requirement was premature given the pending appeal of our decision deleting the *de facto* reallocation policy, we find NAB's argument misplaced. Once an agency has determined in a rule making proceeding that a policy should be eliminated, it need not continue to apply that policy pending judicial review. *Washington Association for Television and*

[9] As we recently noted in denying petitions for reconsideration in the call sign proceeding, only about 1 percent of all call letter requests generate objections that are ultimately sustained. *Memorandum Opinion and Order* in MM Docket No. 83-373, *supra* n.5, at para. 7.

[10] For example, FM broadcast station WRQX, Washington, D.C., refers to itself promotionally as "Q107."

Children v. FCC, 665 F.2d 1264 (D.C. Cir. 1981).[11] It follows that our reliance on the *de facto* reallocation decision in rejecting NAB's allocations arguments opposing elimination of the signal coverage requirement was neither premature nor improper. Accordingly, we shall not withdraw our action in this proceeding pending the completion of judicial review in the *de facto* reallocation proceeding.[12]

11. We continue to believe that broadcasters should have the discretion to include additional communities in their official station identifications irrespective of the level of coverage over such communities. To a large extent, the rule was originally designed to protect advertisers from misleading coverage claims. However, we determined that protection of advertisers is not an appropriate regulatory concern inasmuch as advertisers are able to protect themselves and have recourse to private legal remedies if they are damaged by a misrepresentation.[13] Furthermore, we can perceive no appreciable risk of harm to the public by eliminating the coverage requirement. On the contrary, station identifications will most likely reflect the actual markets that stations intend to serve or from which they derive advertising revenue. Additionally, elimination of the coverage requirement has made it possible for us to terminate Commission adjudication of multi-city identification matters, thereby reducing application burdens on broadcast stations and administrative burdens on the Commission.

12. Accordingly, IT IS ORDERED, That the Petition for Partial Reconsideration filed by the National Association of Broadcasters IS DENIED.

13. Authority for this action is contained in Sections 4(i), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended.

14. For further information concerning this proceeding, contact Andrew J. Rhodes, Mass Media Bureau, (202) 632-7792.

FEDERAL COMMUNICATIONS COMMISSION

WILLIAM J. TRICARICO, *Secretary*

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[11] Specifically, the court stated that "[t]o hold that a repealed policy must be applied pending judicial review would tie an agency's hands for the frequently long periods during which appeals await disposition in the courts." *Id.* at 1268-69.

[12] If the court were to reverse the Commission's decision in the *de facto* reallocation proceeding and if the Commission were to decide subsequently to retain a *de facto* reallocation policy, the Commission could consider at that time whether multi-city identifications should be relevant to *de facto* reallocation determinations. However, at this time, such a determination is too speculative to warrant any further action in this proceeding.

[13] *See also Policy Statement and Order* ("Elimination of Unnecessary Broadcast Regulation"), FCC 83-339, 48 Fed. Reg. 36254 (August 10, 1983), 54 R.R. 2d 705 (1983).