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May 27, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Petition to Protect New Jersey Listeners From FM Translator and LPFM Interference

Dear Ms. Dortch:

On behalf of New Jersey Broadcasters Association, enclosed for filing are an original and four copies of a Petition for Rulemaking seeking amendments to Sections 73.807 and 74.1204(a) of the Commission's rules. Five additional bound copies of the Petition are enclosed for delivery to the Commissioners. Please acknowledge receipt of this filing by providing a date-stamped copy of this letter.

Any questions regarding this filing should be directed to this office.

Respectfully submitted,

John F. Garziglia

cc: Mr. Robert E. McAllan
Mr. Philip H. Roberts

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	RM-_____
Amendment of Sections 74.1204(a)	)	
And 73.807 of the Commission's Rules	)	
	)	

PETITION FOR RULEMAKING

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Executive Summary

In this Petition for Rulemaking, New Jersey Broadcasters Association ("NJBA"), proposes amendments to Sections 73.807 and 74.1204(a) of the Commission's rules to remedy a severely inequitable allotment of full power commercial FM stations to the state of New Jersey.

Section 307(b) of the Communications Act requires the Commission to distribute "licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." The Petition examines comparative data from neighboring states to conclude that commercial FM licenses have been unfairly, inefficiently, and inequitably distributed to New Jersey. Large population centers of the state do not have even one local FM station. Eighteen of the 46 commercial band stations allocated to the state have transmitter sites in the Atlantic/Cape May region — the least populous area of the state. The remaining 28 stations cover a population of about 7.5 million, far out of line with allocations in neighboring states.

Many New Jersey stations are underpowered Class A stations or disadvantaged Class B stations. More than one-half of New Jersey stations cover only two-thirds or less of the area they would have covered had they been built as maximum facilities at the center — rather than the periphery —of populated areas. Eleven of these stations cover only one-third or less of what they would achieve as maximum class stations.

The Petition traces the history of Commission policies that have brought the New Jersey FM broadcast environment to this critical juncture. Among other things, the allotment of a disproportionate number of higher power stations to neighboring New York and Pennsylvania left the New Jersey landscaped dominated by underpowered Class A stations that are inadequately protected from interference. Many New Jersey Class B stations are severely short-

spaced or pushed to the Atlantic Ocean by their higher powered counterparts in neighboring states.

NJBA proposes the prohibition of LP10 stations and translators in New Jersey with effective radiated power of less than 100 watts, because they do not contribute to spectrum efficiency. An LP10 station operating at maximum facilities has a service area of 12.36 square miles, with an interference contour ranging from 126.26 square miles with respect to Class A stations, to 244.69 square miles with respect to Class B stations. In other words, for a service area of a mere 12.36 square miles, an LP10 carves out an area of interference that is almost 2000% larger with respect to Class B stations. In New Jersey, this would result in cannibalization of the already limited existing FM service.

In assessing the need to protect New Jersey stations from additional interference, the Commission should take into account that the FM listening audience no longer consists of static listeners, sitting at home, receiving signals from a fixed antenna. A mobile audience will not tolerate fluctuating signals as they drive into squalls of interference. Increased interference will result in the abandonment of FM by its audience, in favor of clear reception from satellite, CDs and MP3s.

Despite technical infirmities, New Jersey stations reach audiences far beyond their predicted coverage contours. The influx of hundreds of applications for LPFM and translator stations, however, will introduce intolerable levels of interference. The Petition presents an engineering study with sample maps demonstrating how severely the interference invasion will encroach on New Jersey FM stations. In view of the paucity of FM stations in New Jersey, the added interference will strip FM stations from the dials of the New Jersey audience, without substituted coverage.

NJBA proposes the Commission amend the rules to require FM translator and LP100 watt stations applying to operate in New Jersey to provide protection to the 44 dBu (50,50) contour as the protected contour for full power, commercial FM broadcast facilities licensed to New Jersey communities (with maximum permitted facilities assumed for each station), with a 20 dB desired to undesired ("D/U") ratio for the second adjacent channel. There is considerable support for adoption of this standard. The most compelling data are from actual listenership reports that demonstrate audience well *beyond* the 44 dBu contour. These reports are supplemented and confirmed by laboratory studies.

In order to protect the New Jersey listening audience from losing reception to the comparatively few stations allotted to New Jersey, NJBA proposes the following amendments to the Commission's rules: (1) amend the rules to require FM translator and Low Power FM 100 watt ("LPFM") stations applying to operate in New Jersey to provide protection to the 44 dBu (50,50) contour as the protected contour for full power, commercial FM broadcast facilities licensed to New Jersey communities (with maximum permitted facilities assumed for each station), (2) adopt the use of the 20 dB desired to undesired ("D/U") ratio for the second adjacent channel, (3) prohibit the grant of future licenses to translator stations in New Jersey with effective radiated power of less than 100 watts, and (4) prohibit the grant of LP10 licenses to any community in New Jersey.

On April 15, 2004, the Commission issued a *Further Notice of Proposed Rule Making* seeking comment on what rule changes and amendments are necessary due to the advent of digital audio broadcasting ("DAB"). Among other things, the Commission will revisit Section 73.313 of the Commission's rules to determine whether predictions of field coverage should

continue to be made without regard to interference. The grant of new LPFM and translator applications would be tantamount to a premature decision on the future of DAB in New Jersey.

New Jersey FM broadcasting is at a crossroads. The Commission must end the trend of years of inattention and neglect by curtailing a flood of new translator and LPFM stations that would result in the eventual demise of local New Jersey FM stations. NJBA requests an immediate freeze on the acceptance for filing and grant of any further applications for construction permits or licenses for LPFM or translator stations in the state of New Jersey pending the outcome of this rulemaking proceeding and the DAB enquiry.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	RM-_____
Amendment of Sections 74.1204(a)	)	
And 73.807 of the Commission's Rules	)	
	)	

To: The Commission

PETITION FOR RULEMAKING

New Jersey Broadcasters Association ("NJBA"), by counsel, hereby submits its Petition for Rulemaking seeking an amendment to Sections 73.807 and 74.1204(a) of the Commission's rules. Historical Commission policies have disadvantaged the citizens and commercial broadcasters of New Jersey — contrary to the requirements of Section 307(b) of the Communications Act. To prevent further deterioration to the New Jersey FM band broadcast environment, NJBA proposes that the Commission (1) amend the rules to require FM translator and Low Power FM 100 watt ("LPFM") stations applying to operate in New Jersey to provide protection to the 44 dBu (50,50) contour as the protected contour for full power, commercial FM broadcast facilities licensed to New Jersey communities (with maximum permitted facilities assumed for each station pursuant to 73.211(b)(3) of the Commission's rules), (2) adopt the use of the 20 dB desired to undesired ("D/U") ratio for the second adjacent channel, (3) prohibit the grant of future licenses to translator stations in New Jersey with effective radiated power of less than 100 watts (hereinafter referred to as "LP Translators"), and (4) prohibit the grant of LP10 licenses to any community in New Jersey. NJBA requests an immediate freeze on the acceptance

for filing and grant of any further applications for construction permits or licenses for LPFM or translator stations in the state of New Jersey pending the outcome of this rulemaking proceeding.[1]

INTRODUCTION

1. Good cause exists for the initiation of this proposed proceeding. Implementation of the proposal will remedy historical Commission policies that have relegated most of New Jersey's FM broadcasters to second-class status, with underpowered facilities and inadequate interference protection. NJBA appreciates that delineating a protected contour involves the balancing of competing interests. The objective of increasing the number of stations and translators can be achieved by limiting the protected contour. Alternatively, the objective of expanding service area is satisfied by increasing the protected contour and minimizing interference. Since the solution of increasing power for New Jersey stations is not currently feasible, the Commission must act to minimize interference to New Jersey FM stations. Unless interference is minimized, many in the New Jersey FM listening audience will lose service from stations upon which they currently rely. For most, this service will not be replaced by service from translators and LPFM stations. Instead, it will be permanently lost to interference. NJBA's proposal will ensure that the goals of Section 307(b) of the Communications Act are met while at the same time providing for enhanced and expanded service and spectrum efficiency. The public interest will be well served by adoption of this proposal. The following is shown in support thereof:

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[1] As discussed below in paragraphs 57 *et seq.*, deference to the outcome of the Commission's recently initiated enquiry into what rule changes and amendments are necessary due to the advent of digital audio broadcasting forms an independent basis for a freeze on the acceptance for filing and grant of further applications for construction permits or licenses for LPFM or translator stations in New Jersey.

I. STATIONS IN NEW JERSEY ARE NOT EQUITABLY DISTRIBUTED IN ACCORDANCE WITH SECTION 307(b) OF THE COMMUNICATIONS ACT

2. Section 307(b) of the Communications Act requires that the Commission distribute "licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same."[2] A review of the current situation reveals that FM broadcast stations were unfairly, inefficiently and inequitably distributed to the state of New Jersey. For reference, we will refer to this condition in the rest of this petition as the "New Jersey Anomaly."[3]

A. New Jersey is Disproportionately Dependent Upon Service From Disadvantaged Class B and Underpowered Class A Stations

3. New Jersey is a study in contrast. On the one hand, the state is a small one — 46th in land area, comprised of 7,790 square miles.[4] On the other, the state is heavily populated, with approximately 8.2 million people, making it the most densely populated state in the nation.[5] New Jersey is dominated by two major out-of-state radio markets — New York to the north and

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[2] The Commission adopted its FM table so as "to allow the Commission to meet its obligation under Section 307(b) of the Communications Act to provide a 'fair, efficient and equitable distribution of radio service' to the various states and the communities within them." *Revision of FM Assignment Policies and Procedures, Second Report & Order*, 90 FCC 2d 88, para. 3 (1982).

[3] It will become clear in the course of this Petition that "Anomaly" is the most benign characterization that can be applied to the condition of New Jersey FM broadcasting. Whether described as an anomaly, a crisis, or in more colorful terms, the condition of New Jersey broadcasting speaks for itself. NJBA has spurned more descriptive language because it does not believe the grave situation facing the New Jersey FM listening audience was deliberately imposed by the Commission. Nonetheless, after years of inattention and neglect, appropriate action must be taken to prevent New Jersey FM stations from being swamped by interference.

[4] *Smart Growth: A Tale of Two States New Jersey & Maryland*, Martin A. Bierbaum, Ph.D., J.D. New Jersey Department of Community Affairs, May, 2001.

[5] *Id. See also* New Jersey State Data Center 2000 Census Publication, New Jersey Population Trends 1790-2000, August 2001 (available at http://www.wnjpin.net/OneStopCareerCenter/LaborMarketInformation/lmi25/pub/NJSDC-P3.pdf) (1,134.4 population per sq. mile as compared to 330.3 for the northeast in general and 79.6 for the United States as a whole).

Philadelphia to the west (the number 1 and 4 markets, respectively) — both of which are centered outside of its borders and "whose markets nearly touch somewhere in Central Jersey."[6]

4. New Jersey is comprised of 747 census-designated places, but has only 46 commercial band FM allotments. Of those 46 commercial allotments, 27 are Class A facilities. Thus, almost 60% of the commercial FM allotments to New Jersey are Class A facilities. New Jersey, then, is overwhelmingly, and, in comparison to other states, disproportionately, dependent upon the service provided by the smallest class of FM service. Only a mere 18.5% of these are 6 kW stations operating at or near maximum facilities.[7]

5. Exhibit 1 is a table of commercial FM stations allotted to the northeastern states in Zone I.[8] Comparative data are presented as the number of stations per one million of population. The results dramatically demonstrate how severely New Jersey has been shortchanged in the allotment of FM stations. New Jersey has only 5.47 FM stations per one million of population. Its counterparts in Zone I have from 176% to 322% more stations per person than New Jersey. Applying the most conservative interpretation of these data, New Jersey has only slightly more than one-half the stations it might be expected to have, had it been treated in the same manner as, for example, Massachusetts.

6. Of particular note in Exhibit 1 are the adjacent states of New York and Pennsylvania. New York has 241% more stations per person than New Jersey and Pennsylvania

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[6] *Id.*

[7] Only seven of the 27 New Jersey commercial band Class A FM stations are authorized to operate at 6 kW (WVLT, Vineland; WTKU, Ocean City; WCZT, Villas; WBBO, Ocean Acres; WWZY, Long Branch; WWYY, Belvidere; and WSNJ-FM, which was recently re-allotted from Channel 299B, Bridgeton, to Channel 300A, Pennsauken). However, WBBO and WWZY are directional, and WWZY loses a substantial portion of its signal over water, leaving only five Class A stations operating at or near maximum facilities.

[8] With the exception of New York, states that are only partially located on Zone I were excluded from the study. The Zone I central states of Indiana and Illinois were also excluded.

has an astonishing 322% advantage. As discussed below, one of the reasons for the extraordinary imbalance between New Jersey and its counterparts is the presence of high-powered stations in New York and Pennsylvania that preclude the allotment of stations — particularly higher powered stations that would be typically allotted to large metropolitan communities — to neighboring New Jersey. Also notable is the fact that the geographically small states of Delaware and Rhode Island also have significant advantages over New Jersey of more than 200%, thus demonstrating that the New Jersey Anomaly is not a function of size. Instead, it is the inevitable result of historical policies that have disadvantaged the citizens and commercial broadcasters of New Jersey — contrary to the requirements of Section 307(b) of the Communications Act. New Jersey has been treated as an afterthought in the allotment process.

7. The comparative state study in Exhibit 1 tells only part of the story of how FM stations have been misallocated to New Jersey. Not only has New Jersey received a disproportionately low number of FM allotments in comparison with its neighbor states, but almost 40% of those stations are allotted to the least populous region of the state. Exhibit 2 is a map plotting the transmitter sites of the 18 stations located in Atlantic and Cape May Counties.[9] These 18 stations are located in two counties with an aggregate population of 354,878 (Cape May: 102,326; Atlantic: 252,552), representing only 4.2% of the state's population. With a few exceptions, these stations are at or near the ocean shore, so they cannot be expected to cover more populous, neighboring counties. Moreover, 5 of the 14 New Jersey Class B stations — a class that was created to cover large metropolitan areas —are located in this geographic area. The task of serving the more populous regions of the state falls to just 28 FM stations. This

[9] WBHX is located on Long Beach Island at the southeastern most end of neighboring Ocean County, six miles from the border of Atlantic County.

corresponds to a ratio of roughly 3.47 stations per one million of population in the rest of the state. By no reasonable standard can this lopsided scheme be deemed to satisfy the "fair, efficient, and equitable distribution" required by Section 307(b).

8. Exhibit 3 analyzes the coverage areas of the commercial band allotments as a percentage of maximum class facilities. This analysis reveals the degree to which New Jersey FM radio stations, particularly Class A stations, operate at less than maximum class facilities. Twenty of the 27 Class A stations operate with a coverage area that is less than 85% of the maximum for the class (2,516 sq km), and five of the 14 Class B stations operate with less than 85% maximum class service area (13,314 sq km). These handicaps are only marginally offset by the fact that the five B1s operate with greater than 85% of maximum class coverage areas (6,277 sq km).[10] The average coverage area for all stations is a low 81% of maximum class and 75% for Class A stations.

9. As disturbing as these data are, the actual situation in New Jersey is even worse. Because the Commission has allowed high-powered stations in the neighboring states of Pennsylvania and New Jersey to dominate the broadcast landscape in New Jersey, many stations have been driven to the water's edge. Column 5 of Exhibit 3 shows what portion of each station's primary service contour lies over the ocean. The net effect of the coverage losses attributable to both short-spacing and loss of signal over water is computed in the last column of Exhibit 3. Twenty-five of the 46 stations allotted to New Jersey lose more than one-third of their signals over the ocean. In other words, more than one-half of New Jersey stations are covering two-thirds or less of the area they would have covered had they been built as maximum facilities

[10] One of the B1 stations, WCAA, is physically located in New York City.

at the center — rather than the periphery —of populated areas. Eleven of these stations cover only one-third or less of what they would achieve as maximum class stations.

10. In contrast to their cross-river brethren, New Jersey's FM broadcasting stations focus on New Jersey, consistently furnishing a high degree of local news, traffic, weather, public service, journalism and discussion on topics germane to New Jersey. New Jersey broadcasters have been accomplishing this task relying largely on underpowered Class A and disadvantaged Class B radio stations.

11. Today, New Jersey's underpowered Class A stations with "protected contours" of a mere 15 miles are attempting to serve millions of people in broad geographic areas such as Monmouth-Ocean (a market in excess of 1.1 million, with boundaries 65 miles long and 30 miles wide) and Middlesex-Somerset-Union (a market in excess of 1.5 million, with boundaries 31 miles long and 26.5 miles wide) to name but two. Class A stations in New Jersey are doing the job intended for Class B stations while generally operating at less than half the power normally assigned to Class A stations. As discussed below, Class B stations operate under severe handicaps that prevent them from covering the service area for which the class was created. Growth of New Jersey communities has increased the New Jersey Anomaly without any remediation from the FCC. A flood of LPFM and translator stations without suitable protections will exacerbate the problem.

12. The entire state of New Jersey has experienced dramatic urban and suburban growth over the past several decades. Once rural areas are now burgeoning metropolises. Increasing urban and suburban expansion and the concomitant increase in building density has left NJBA's members struggling to cover their allocated service areas and populations with quality signals. Thus, listeners are increasingly deprived of local news, information and

entertainment programming. While NJBA recognizes that the Commission has no control over growth patterns in the state, it can act to limit the new interference that will be introduced by the flood of LPFM and FM translators that are acceptable and grantable under its current rules.[11]

B. FM Stations Have Not Been Fairly Allocated to the State of New Jersey

13. Local service is essential to Section 307(b)'s "fair, efficient and equitable" distribution of radio services.[12] The relief requested here is indispensable to the continued provision of local service furnished by New Jersey's radio stations and upon which New Jersey's radio listeners rely.

14. Section 307(b) is not a static standard. It imposes upon the Commission an ongoing obligation to forestall excessive concentration of FM assignments in larger cities and to ensure adequate service to smaller communities."[13] Precisely the opposite allotment system occurred in New Jersey. This is the inevitable consequence of the allotment of large numbers of FM stations to New York and Philadelphia, at the expense of significant and substantial New Jersey communities.

15. Notwithstanding Section 307(b)'s charge, New Jersey has largely become an electronic media desert in another important respect. Despite its substantial population, the state was overlooked in the post-World War II revolution that swept America into the new electronic age of television and FM radio. The fact that New Jersey ended up without a single commercial

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[11] AM broadcasters in New Jersey are in no position to fill the void created by the New Jersey Anomaly. Of 40 AM stations allocated to New Jersey, only nine have nighttime power greater than 1000 watts. Fourteen are daytimers or virtual daytimers with nighttime power of 250 watts or less. *Broadcasting & Cable Yearbook 2003-2004.*

[12] *See Pasadena Broadcasting Co. v. FCC*, 555 F.2d 1046, 1050-51 (D.C. Cir. 1977) (local service is essential to the "fair, efficient and equitable" distribution of radio services).

[13] *Communications Investment Corp. v. FCC*, 641 F. 2d 954, 963-64 (D.C. Cir. 1981).

VHF TV station[14] and with only a handful of higher power Class B FM radio stations *vis a vis* its cross river neighbors exemplifies its status. The net effect of these policies is that New Jersey has been treated unfairly, inefficiently and inequitably.

16. Many of New Jersey's largest communities have no commercial FM allotments. For example, looking only at communities with a population of 50,000 or greater, none of the following communities have commercial channels allotted to them:

- Bayonne, population 61,842
- Brick, population 76,119
- Cherry Hill, population 69,965
- Clifton, population 78,672
- East Orange, population 69,824
- Edison, population 97,687
- **Elizabeth, population 120, 568**
- Gloucester, population 64,350
- Hamilton, 87,109
- Irvington, population 60,695
- **Jersey City, population 240,055**
- Lakewood, population 60,352

[14] Channel 13 (WNET), Newark, was originally licensed to Atlantic Television as a commercial station in 1949. Following its economic failure in 1961, Channel 13 was sold to Educational Broadcasting Corporation, which converted it to non-commercial status. Channel 13 operates as a *de facto* New York station. Congress attempted to bring a VHF station to New Jersey in the wake of the RKO scandal. In 1983, Channel 9 (WWOR-TV) was reallocated to Secaucus. Currently, however, Channel 9 is only nominally a Secaucus station. Its studios, news operations, and transmission facilities are located in New York City.

- Middletown, population 66,327
- North Bergen, population, 58,092
- Old Bridge, population 60,456
- Passaic, population 67,861
- Piscataway, population 50,482
- Union, population 67,088
- Wayne, population 54,069
- Woodbridge, population 97,203

It may be unreasonable to expect that all, or even the majority, of these communities, should have no FM allotments. It is completely inconsistent with the objectives of Section 307(b) that cities the size of Jersey City and Elizabeth are without at least one commercial FM allotment.

17. Not only have New Jersey's communities been shortchanged in the allotment process, but entire New Jersey **counties** have no local commercial FM stations. Of 21 New Jersey counties, six — comprising approximately 33% of New Jersey's population — are without local FM service allotted to their communities:

- Bergen County, population 884,118
- Burlington County, population 423,394[15]
- Gloucester County, population 254,673
- Hudson County, population 608,975
- Hunterdon County, population 121,989

[15] Station WPST has a Petition pending before the Commission to change its community of license from Trenton to Burlington County. While this will have the beneficial effect of finally bringing a local FM station to Burlington, it comes at the expense of another New Jersey community, without any net improvement to the situation in the state.

- Union County, population 522,541

How is it possible to reconcile the objectives of Section 307(b) with the fact that counties the size of the foregoing, particularly Bergen, Hudson and Union Counties, are without at least one full power commercial FM allotment?

18. Middlesex County, population 750,162, and Morris County, population 470,212, each have only one commercial band Class A allotment. Passaic County, population 489,049, has a single Class B station with its transmitter site located in New York City. Until only very recently, Camden County, population 508,932, had but one commercial allotment, with its latest allocation being a Class A re-allotment to Pennsauken at the expense of a Class B allotment to Bridgeton.[16]

19. Only one conclusion can be drawn from the foregoing: Radio service that should be devoted to the state of New Jersey has been inequitably allocated to communities in other, nearby states. Had FM radio service been fairly and properly allocated to New Jersey in accordance with Section 307(b), more New Jersey communities would have allotments, many more of which would be Class B allotments and the New Jersey Anomaly would not exist.

20. Each of the foregoing geographic areas is largely, if not entirely, dependent upon stations in adjacent counties or cities for New Jersey oriented local commercial FM service. Because they have no alternative, many listen to so-called "local" news, which is actually about nearby, out-of-state communities such as New York and Philadelphia, in lieu of their own "local" news. New Jersey communities fortunate enough to have a true "local" station are largely served by underpowered Class A and disadvantaged Class B radio stations. In general, both large and

[16] *Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Bridgeton and Pennsauken, New Jersey)*, 18 FCC Rcd 12192 (2003) (substituting Channel 300A at Pennsauken for Channel 299B at Bridgeton).

small communities with no stations must rely on neighboring FM stations for local news. In many cases, the signals from neighboring FM stations come from far outside their protected contours.[17] Those stations must, in turn, overcome ever-increasing obstacles to serve their own communities, much less neighboring counties/communities.

21. The Section 307(a) "public interest, convenience and necessity" licensing standard obligates the Commission to ensure that all citizens are provided with programming responsive to their needs and interests. The Commission recognized this obligation over twenty years ago when it stated that:

> [T]he history of governmental involvement in non-entertainment programming has been driven by one overriding concern — the concern that the citizens of the United States be well informed on issues affecting themselves and their communities.[18]

22. The Commission has previously recognized that Section 307(b) imposes a continuing obligation "to assess the extent to which these FM practices were achieving the desired objectives."[19] It the spirit of that obligation, NJBA proposes that the Commission adopt a Notice of Proposed Rulemaking to adopt the reforms necessary to ensure that New Jersey residents continue to receive and enjoy the wealth of information they obtain from their state's commercial broadcasters.

23. New Jersey's broadcasters previously advanced a reasonable proposal to improve the service furnished by the state's broadcasters.[20] Although the Commission ultimately adopted

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[17] See paragraphs 68 *et seq.*

[18] *In the Matter of Deregulation of Radio*, 84 FCC 2d 968, 977 (1981).

[19] *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 at para. 3.

[20] *See Notice of Proposed Rule Making in MM Docket 88-375*, 3 FCC Rcd 5941 (1988) (New Jersey Class A Broadcasters Association request that the maximum permitted effective radiated power for Class A FM broadcast stations be increased from 3000 to 6000 watts).

a variation of the New Jersey proposal,[21] New Jersey's broadcasters achieved little to no benefit, because only a handful of New Jersey's Class A stations were able to take full advantage of increased coverage as the Commission fashioned the new rule.[22] New Jersey, both its people and its broadcasters, deserve Commission recognition of their unique broadcasting coverage problem.

24. Notwithstanding the limitations on the range of their signals, the local radio service provided by the vast majority of New Jersey's broadcasters strives to ensure that the state's citizens are "well informed on issues affecting themselves and their communities."[23] Unfortunately, however, many New Jersey citizens remain uniformed on such issues because of Commission allocation policies that have left large areas of the state without "local service." To overcome these deficiencies, NJBA submits this proposal to promote local service.

II. COMMISSION POLICIES HAVE HISTORICALLY UNDERMINED RADIO BROADCASTING IN NEW JERSEY

25. New Jersey's present condition can be traced back to Commission allotment and facilities decisions and policies that have long favored high-powered Class B and C stations over Class A stations. These policies and decisions might not have been so disastrous had New Jersey received a fair allotment of Class B stations. Instead, most higher power stations were allotted to neighboring New York and Pennsylvania. As a consequence, New Jersey is populated largely with underpowered Class A stations that are inadequately protected from interference that would arise from large numbers of translator and LPFM stations operating in the state.

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[21] *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations*, 4 FCC Rcd 6375 (1989).

[22] *See* para. 35 *infra*.

[23] *Id.*

26. The Commission's current allotment strategy focuses on station class. "The rules applicable to a particular station, including minimum and maximum facilities requirements are determined by its class. Possible class designations depend upon the zone in which the station's transmitter is located."[24] Initially, however, the FM service was comprised of a single class of higher powered stations. It was the revision of these initial rules that reduced New Jersey to where it is today; a state served largely by inadequately protected, underpowered Class A stations, striving to serve rapidly growing communities and a highly sophisticated populace for which the class was not intended.

27. In the next major development of FM regulation, the Commission's rules provided for only two classes of stations: (1) low power Class A stations limited to 1 kW ERP and 250 feet HAAT, or equivalent, assigned in Areas 1 and 2, and (2) Class B stations authorized on 60 channels in Area 1 with no more than 20 kW ERP and 500 feet HAAT, or equivalent with no fixed maximum in Area 2.[25] In 1962, however, the Commission adopted its Plan II to divide the country into three zones (instead of the previous 2). Zone I includes all or part of 18 northeastern states (including New Jersey) and the District of Columbia. Zone I-A is limited to southern California; and the rest of the country is in Zone II. Under the Plan, Class A stations are assigned to all zones; Class B stations are assigned to Zones I and I-A; and Class C stations are assigned to Zone II.[26]

28. This decision not only maintained, but also exacerbated the huge disparity between Class A stations and their higher powered counterparts. While the Commission adopted

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[24] Section 73.210(a) of the Commission's rules.

[25] *See Revision of FM Broadcast Rules, Particularly as to Allocation and Technical Standards* ("*Docket 14185*"), 40 FCC 662, 678 (1962).

[26] *Id.*

new rules increasing the Class A maximum to 3 kW at 300 feet, the Class B maximum was increased to 50 kW ERP at 500 feet HAAT. Class B stations meeting the newly established spacings were permitted a blanket power increase of 30,000 watts. The new Class C stations were permitted maximum facilities of 100 kW ERP at 2,000 feet HAAT.[27] Class A stations were left with a primary service radius of 15 miles; one that pales in comparison to the 40 and 57 mile service radius allotted to Class B and C stations respectively.[28]

29. Class B stations were permitted to increase power largely to cover expanding communities.[29] Class A stations in New Jersey have been doing the same — providing service to ever-expanding communities, only without the protections afforded to the Class Bs. Since 1962 Class B stations have enjoyed greater interference protection than did Class A stations. Class A station separations were previously based on protection to the 0.912 mV/m contour while Class B separations were based on protecting the 0.524 mV/m contour.[30] As a result, Class B stations enjoyed much larger protected service areas than did Class A stations for reasons that transcend mere higher power. Class B stations were granted wider service areas in recognition of the fact that large metropolitan communities in the northeast averaged 33 to 40 miles in radius at the time. A smaller service area would have been totally unacceptable for many communities in Zone I.[31]

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[27] *Id* at 681.

[28] *See Modification of FM Broadcast Station Rules to Increase Availability of Commercial FM Broadcast Assignments* ("*Docket 80-90*"), 94 FCC 2d 152, 183 (1983).

[29] See generally, Docket 14185, 40 FCC at 662.

[30] *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments, Docket 80-90, Memorandum Opinion and Order*, 94 FCC 2d 152, 175 (1983), *recon. granted in part*, 97 FCC 2d 279 (1984).

[31] *Id.*

30. There are striking similarities between the circumstances that led the Commission to adopt and preserve a wider service area for Class B stations and the situation facing New Jersey today. Many New Jersey communities are largely dependent on Class A stations, serving larger geographic areas than those intended for the class. Unless the Commission grants the proposals in this petition, the service areas for these stations will become fragmented and more inadequate. For the most part, listeners to these stations will not receive substituted service. Instead, large pockets of New Jersey communities will lose service they currently have to interference. Examples of the expected loss of service are strikingly demonstrated in the maps that accompany Exhibits 12 and 13, and as discussed below at paragraph 80.

31. The disparity between a Class A station and its higher powered counterparts was long aggravated by the Commission's policy of authorizing stations to operate at less than the maximum for their class.[32] "[S]eparation requirements are based upon the assumption that each assigned station is, or at some time in the future will be, operating at the maximum power and antenna height for its particular class."[33] Allowing stations to operate at less than the maximum requires other stations to protect areas where there is no service to protect.[34]

32. Other policies also favored higher powered stations to the detriment of Class A stations. For example, in *Docket 14185* the Commission established community size as the determining factor for the assignment of channels. "Class C stations are 'designed to render

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[32] *See Docket 80-90*, 94 FCC 2d at 153 (as of 1980, 80% of Class C stations and 35% of all FM stations were operating significantly below the maximum permitted for their class). *See also, 1998 Biennial Regulatory Review — Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, 13 FCC Rcd 14849, 14868 (1998) ("519 of the 863 FM stations presently occupying Class C assignments, or approximately 60 percent, operate with facilities less than [the maximum] 450 meters HAAT").

[33] *Modification of FM Broadcast Station Rules to Increase the Availability of Commercial FM Broadcast Assignments*, 78 FCC 2d 1235, para. 11 (1980).

[34] *Id.*

service to a community, city or town and large surrounding area' (Section 73.206(b)(4)); Class B facilities are intended 'to render service to a sizeable community, city or town or to the principal city or cities of an urbanized area, and to the surrounding area' (Section 73.206(b)(2)); and Class A stations are 'designed to render service to a relatively small community, city or town and the surrounding rural area (Section 73.206(a)(2)).'"[35]

33. The Commission ultimately rescinded this rule in 1982 after granting numerous waiver requests allowing the allotment of higher class channels to Class A communities.[36] The net effect of these polices was disastrous to the equitable distribution of FM broadcast stations to New Jersey. By allotting Class A, instead of Class B, stations to growing communities in New Jersey, and by disproportionately allotting more powerful stations to the neighboring states of New York and Pennsylvania, the Commission condemned New Jersey broadcasters to a permanent state of second class status, contrary to the directives of Section 307(b) of the Communications Act. Many of the Class B and B1 stations are short spaced, pushed to the water's edge, or allocated to the least populous areas of the state. Underpowered Class A stations struggle to bring service to communities that should be served by higher-powered stations.

34. The Commission attempted to improve the ability of Class A stations to serve larger communities by adopting rules that permitted Class A stations to increase effective

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[35] *Amendment of Part 76 of the Commission's Rules and Regulations to Govern Importation of Radio Signals by Cable Television Systems*, 67 FCC 2d 491, ___(1978). Section 73.206 has been rescinded.

[36] *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

radiated power from 3000 to 6000 watts.[37] Interestingly, one of the factors that the Commission took into account in its proceedings was the need to "offset some of the competitive disadvantages currently faced by Class A stations."[38] That result was not broadly achieved in the state of New Jersey.

35. Although the Class A proposal was initiated by the New Jersey Class A Broadcasters Association, in the final analysis, only four[39] New Jersey stations were granted full relief under the revised rules as Class A stations.[40] More than 80% of the state's Class A stations were left as, and are today, severely under-powered, facilities. Consequently, the state's Class A stations are particularly vulnerable to interference from translators and LPFM stations.

36. The situation facing the state's Class B stations is not much better. Full facility 50 kW Class B stations, absent substantial interference, have protected contours of 40 miles and, considering the relatively flat terrain over a substantial portion of the state, a practical receiving range of over 50 miles. But very few New Jersey Class B stations come close to achieving the full potential of a Class B allocation. The following chart summarizes the Class B allocations in New Jersey.

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[37] *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations*, 4 FCC Rcd 6375 (1989).

[38] *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations, Notice of Proposed Rulemaking*, 3 FCC Rcd 5941, para. 18 (1988).

[39] *See* Footnote 7.

[40] WOJZ, Egg Harbor City was also permitted to upgrade to B1 status.

Class B Stations

Region	Number of stations	Comments
Atlantic City/ Cape May	5	Only one station approaches full Class B facilities. One station is licensed to a community in neighboring Cumberland County, but has its transmitter site located in Atlantic County. In general, Atlantic City area stations are of low height, because of FAA restrictions and short spacing.
Trenton	4	With one exception, all stations are highly directional.
Somerset	1	
Newark	3	One non-commercial station broadcasting on the commercial band; one that is short spaced to other New Jersey stations; the transmitter for the third is located in New York City; in contrast 15 commercial band Class B stations are licensed to neighboring New York City.
Camden	1	Non-commercial station broadcasting on the commercial band; in contrast 13 commercial band Class B stations are licensed to neighboring Philadelphia.
Other	2	Although licensed to New Jersey, these two stations have transmitter sites located in New York City.

37. Only four of the state's class B stations broadcasting from within the state approach full, reasonably interference free facilities. The remaining Class B stations operate with moderate to severely impaired facilities. Consider that two of four Class B stations licensed to Trenton are highly directional facilities, with most of their power pointed toward Pennsylvania, rather than New Jersey, the state to which they are licensed to serve. Moreover, one of the least populated regions of the state (Atlantic City/Cape May) has been favored with the highest concentration of Class B stations because it is located the furthest from New York and Philadelphia.

38. There are also five Class B1 stations licensed to New Jersey. Three are licensed in counties with comparatively sparse populations: two in Atlantic County and one in Sussex

County. Two of the Class B1 stations two are highly directional. The transmitter site for the fifth Class B1 station is physically located in New York City.

III. AN INFLUX OF LPFM AND TRANSLATOR STATIONS WILL EXACERBATE THE NEW JERSEY ANOMALY

39. On February 6, 2003, the Commission announced an auction filing window for certain FM translator station construction permit applications.[41] In January of 2000, the Commission adopted a Report and Order establishing a low power FM radio service.[42] The cumulative effect of these developments will be to devastate the New Jersey broadcasting landscape with the influx of hundreds of applications for LPFM and translator stations. If allocated and assigned, many of those new stations will result in the creation of significant new interference to existing service, cause massive disruptions to long established listening patterns and, in general, lay waste to the broadcast landscape as it currently exists.

40. The public interest will not be served by the indiscriminate introduction of new secondary services such as LPFM and translator stations into a state that already has had to make do with substandard facilities for the better part of the history of FM radio.[43] NJBA seeks only the minimum relief required to redress this problem in furtherance of Section 307(b)'s mandate

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[41] *Public Notice, FM Translator Auction Filing Window and Application Freeze*, DA 03-359, (February 6, 2003).

[42] *Creation of Low Power Radio Service, Memorandum Opinion and Order on Reconsideration*, FCC 00-349 (2000).

[43] NJBA is not opposed to LP100 and similarly sized translator stations as a general matter and does not oppose their establishment in areas outside the practical range of listenership of licensed commercial broadcast stations. Inside that range, however, their introduction almost diabolically exacerbates the very problem the Commission seeks to address by establishing the LPFM class of service.