media, its power and influence will without question soon be second to none. It is particularly irresistible to children, tens of thousands of whom already spend more time before their TV receivers than they do in school.

Television, like other technical innovations, is neutral in character; its use (or rather, our use of it) will ultimately determine its value. In view of television's extraordinary influence, which must grow rather than abate in future years, the Commission has an especial responsibility to the public — adults as well as children — to insure that this great natural resource to a substantial degree is devoted to cultural interests, to education as well as entertainment. The Commission's lawful task is not merely to establish the technical framework for television service. The public must not only be reached, it must (in the truly beneficial sense of that word) be "served." The Commission's goal, within the ambit of its statutory powers, should therefore be to bring about the best possible television service for the American people. The participation of educators on a full-scale basis is indispensable to its achievement.

V

It is clear from the record in these proceedings, as it is from the entire history of broadcasting, that educational stations can and will make a distinctive and valuable contribution to television. Although there are commercial stations which, as part of their public service responsibilities, have granted time and facilities for educational telecasting, these programs at best do not even begin to satisfy education's need in television. Commercial stations in general cannot provide, nor in all fairness could they be expected to provide, a complete educational service. Only a system of independently licensed educational stations operating full-time on a non-commercial basis can accomplish such a service. 12/

Educational-TV stations, when established, will do more than furnish a uniquely valuable teaching aid for in-school and home use. They will supply a beneficial complement to commercial telecasting. Providing for a greater diversity in TV programming, they will be particularly attractive to the many specialized and minority interests in the community, cultural as well as educational, which tend to be by-passed by commercial broadcasters thinking in terms of mass audiences. They will permit the entire viewing public an unaccustomed freedom of choice in programming. Educationally licensed and operated stations will, in addition, result in a substantial and beneficial diversification in the ownership and control of broadcast facilities. This would be closely in line with established Commission policy which has sought to achieve such diversification through the exercise of its licensing authority. Finally, educational stations will provide the highest standards of public service. Introducing non-commercial objectives and activities, they will be a leavening agent raising the aim and operations of our entire broadcasting system.

12/ This record and history of broadcasting further establish that commercial radio and television over the years have in general failed to give even a barely minimal opportunity for educational broadcasting. The need for educational stations, however, would as above stated, exist even if this were not the fact.

VI

The Commission's mandate, in these circumstances, requires it to provide a thoroughgoing opportunity for education in television, to grant educators an adequate "home in the spectrum." It can do so only by maximizing the number of reservations for education and by realistically implementing its action here and in its Rules and Regulations so as to encourage and enable educators to take full advantage of these reservations. By "maximizing the number of reservations", I mean the necessity of giving education one of the paramount priorities in the allocation of channels and of reserving as many assignments as possible, consistent with the other major needs in the spectrum. Certainly the Commission has not adopted or applied such a policy here. 13/

There can be no doubt that the television spectrum in the main should be devoted to commercial operations in accordance with the traditional concepts of our broadcasting system. Commercial broadcasting plays a vital function in the development and operation of this system, one which the non-commercial cannot fulfill. Educational television has, however, its own uniquely valuable contribution of public service to make to this system. Thus, only by establishing a high ranking educational priority could the Commission meet its obligation, inherent in the Communications Act and expressly recognized in its 1935 Report to Congress respecting Section 307(c) of that Act, to "actively assist in the determination of the rightful place of broadcasting in education and to see that it is used in that place."

In establishing a scale of relative values, upon which its allocations and assignments are based, the Commission has sorely undervalued education and placed it in a grossly subordinate position. As a result of the Commission's failure to strike a proper balance of the various interests here involved, education has not been provided with the proportionate share of the channels it deserves. Certainly commercial broadcasting should get the "lion's" share of these TV frequencies; it should not, however, get the "lamb's" share as well.

13/ The sole allocation principle respecting education adopted by the Commission is that which assigns a channel to those cities which are primarily educational centers. Beyond this, education has played no part in the allocation of channels; The Commission has merely reserved one channel in a city when, by applying allocation principles, three or more have been assigned to it. For these reasons, the Joint Committee on Educational Television has requested that the Commission adopt an educational priority to serve as a basic principle in the allocation of channels. (See Pars. 83-4 of the Sixth Report). Despite the Commission's glossing over of this request, it should be noted that many more reservations would have been provided herein if such a high-ranking priority had been adopted before the issuance of the Third Notice or this Final Decision.

VII

The evidence of educators' deep interest in television and the steps they have already taken or contemplate as to the building and operation of TV stations is detailed, voluminous and persuasive. Educators' affidavits have, in scores of instances, gone far beyond expressions of mere willingness or hope. They have set forth concrete facts and figures; they have particularized in minute degree the why's and how's of their plans for educational television. Merely to glance through them —to mention only the affidavits of the New York State Board of Regents, the New Jersey Board of Education, the Wisconsin State Radio Council, the Universities of Kansas, Houston, Ohio State and Southern Illinois, of educators in the cities of Milwaukee, Houston, Pittsburgh, Chicago, San Francisco, Boston, etc. — establishes conclusively that education, given a proper reservation, will make excellent use of the facilities set aside for it.

The Commission holds herein that the entire record in the general portion of the proceedings overcomes objections to the basic principle of reservations. 14/ In the same way, the entire record in these proceedings, particularly the evidence in the city-by-city hearings, should be held to overcome any and all objections to finalizing specific reservations herein. Cumulatively, this entire record supports a maximum number of reservations sufficient for a nationwide service, which would allow almost everyone in this country to enjoy the benefits of an educational "school of the air." At the very least, this record requires that the Commission finalize all of the reservations proposed in the Third Notice and grant, in the absence of more basic considerations to the contrary, those other reservations specifically requested by educators herein. 15/

VIII

With the foregoing remarks to serve as background, we may now turn to an examination of the Table of Assignments itself. In my opinion, the Commission's provision for educational-TV is generally inadequate in that:

a. It fails to reserve sufficient channels for a nationwide educational service.

Since reservations for all practical purposes are indispensable to the establishment of educational television stations, it is axiomatic that only a policy of setting aside channels on a nationwide basis will accomplish the development of a truly national educational service. Yet, the 233 reservations finalized by the Commission, representing approximately 11.6% of the total

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14/ Par. 44 of the Sixth Report.

15/ It should be noted that educators have unfairly been required to participate in both the general and city-by-city portions of these proceedings. To my mind, the Commission in the public interest could and should have provided a substantial number of reservations in its final decision without requiring any showing from educators in either portion and certainly without requiring one in both.

number of assignments, fall woefully short of providing the requisite number of channels for such a service. They allow at best for haphazard and inequitable educational development of the medium. 16/

There is no allocation for educational-TV in approximately one-fourth of all of the metropolitan communities in this country. This includes cities as large as Youngstown (Ohio) with a metropolitan area population of 525,000; Allentown — Bethlehem (Pennsylvania) with a population of 430,000; and Springfield-Holyoke (Massachusetts) with a population of 400,000. The people in these many large cities, therefore, will probably be deprived for all time of a valuable educational service which their more fortunate neighbors in comparable or smaller communities may soon enjoy.

Similarly, there is only a single reservation provided for each of the following states: Massachusetts, Maryland, Kentucky, Wyoming, Delaware, Rhode Island and Vermont, out of a combined total of 114 channels assigned to them. Only two reservations have been provided for the entire states of Minnesota, Nebraska, Arizona, Idaho, Nevada and New Hampshire. In New York City where scores of educational and cultural institutions serve more than 11,000,000 people in the area, only one channel has been reserved despite the forcefully documented request of the New York State Board of Regents for a second channel to meet the combined needs of the Regents, the City itself, the Board of Education and the many private schools and institutions of higher learning located there. This is done despite the fact that New York City is today the primary production center for commercial television and its many writers, artists and technicians would likewise be of great value to educational television.

b. The reservations have predominantly been confined to the ultra-high (UHF) portion of the spectrum and an insufficient number of VHF reservations provided:

By limiting education to UHF frequencies in cities in which commercial television over VHF has already made substantial inroads or will soon do so, the Commission has placed the educators there at a fundamental disadvantage. This situation exists in a large number of cities, including such major communities as Detroit, Philadelphia, Cincinnati, Cleveland, Washington, etc. While it may be true that some educators in these circumstances will find UHF operations only a "temporary handicap", for others it may prove to be a

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16/ Thus, for example, by providing a reservation in every city in which two assignments were proposed by the Third Notice (rather than the three assignments used as the basis for reservations in that Notice), the Commission could have set aside an additional 146 assignments for education. These would, of course, allow for a closer approximation of a nationwide system. (See my Separate Views to the Third Notice for a discussion of cultural monopoly as contrasted to the economic variety, Section II). It has also been my constant position that the Commission had the responsibility to make or initiate a study of educational needs throughout the country to serve as the basis for television allocations to education.

permanent disability. The public's stake in educational-TV is too great to be forced to rest on such speculation.

The past year since issuance of the Third Notice has further aggravated this problem, and made even clearer the inadvisability of forcing education into the UHF in these cities. More than 16 million TV receivers are now in the hands of the public and, in many communities set ownership nears or stands at the "saturation point." Educators undertaking the task, considerable in itself, of raising funds for non-commercial operations will be faced with the difficult obstacle that their UHF operations in these cities would not be capable of being received by a single one of the millions of outstanding sets, unless these sets are first converted.

No one can be unmindful of the fact that commercial operators attempting UHF telecasting in cities with established VHF service will themselves be handicapped by an initial competitive disadvantage. 17/ But, however great this problem of integrating UHF into existing VHF operations may be, it can best be handled by commercial operators who are spurred on by competitive motives and possible monetary profits and it properly should be entrusted to them. For the Commission to force education to carry what is essentially a substantial commercial burden is unrealistic and unwise, for it appreciably limits the opportunity a reservation offers to educators. 18/

Education's share of the VHF is clearly inadequate. Not a single VHF reservation has been provided for the states of New York, Michigan, Ohio, Indiana, Connecticut, New Jersey, Virginia, West Virginia, Nebraska, Kentucky, Rhode Island, Delaware, Vermont, and Maryland, out of a combined total of 97 VHF channels assigned to them. Only a single VHF has been reserved in each of the following states: Massachusetts, Pennsylvania, Wisconsin, Missouri, North Carolina, New Hampshire, Maine, Mississippi, Nevada, South Carolina, Utah, Idaho, Wyoming and Louisiana, out of a combined total of 136 VHF assigned to them. Thus, in 28 states, including many of the leaders in population and resources which have particular need for educational television, educators have received fourteen VHF out of a total of 233 assigned.

In order to correct this inequitable distribution of channels to education, the Commission should have, whenever possible, placed in the VHF the additional reservations allocated herein and should have made particular effort to provide a VHF reservation in the "closed" and predominantly VHF cities.

17/ As expressly stated in Par. 200 of this Report. See also my Dissenting Opinion dealing with Powers and Antenna Heights, Part A, herein.

18/ An extreme instance of such unrealistic allocations is found in ten cities, in each of which the Commission has made two VHF assignments and then has reserved for education the only UHF channel assigned there. These cities are: Bangor (Maine), Great Falls, (Montana), Dickinson and Williston (North Dakota), Pierre (South Dakota), Walla Walla (Washington), Laredo (Texas), Huntington (West Virginia), Toledo (Ohio), and Syracuse, (New York). Moreover, in every one of these cities, except Syracuse, there was at least one of the assigned VHF channels available for reservation.

c. The Commission has improperly bound its policy of reservations too closely to a showing of present demand by educators.

A study of the specific assignments herein clearly establishes that the Commission has refused to extend its reservations to the cities necessary for a nationwide educational service solely for the reason that no showing of demand for such reservations has been made by local educators in these cities. On this same basis the Commission in several cities has deleted proposed VHF reservations. Only in cases where a proposed reservation has not been opposed by commercial interests has the Commission finalized reservations, whether VHF or UHF, without requiring evidence of educational demand. In all other instances educators have supported the proposed reservations in their respective cities.

Reservations are too critically needed, however, to be made to depend on showings of present demand. That local educators in each and every city affected have not, at this premature date in the early history of TV, given formal assurances of their intention and ability to make use of the medium, should not be material here. In this crucial area of public welfare, the Commission must not rely solely upon the self-interest and awareness of present-day educators to delineate and prescribe future educational needs in television. The public interest, in my opinion, would have required the Commission to make substantial reservations in this allocations proceeding, even if educators had made no formal showing of any kind on this record.

As amply shown on the record and spelled out by the Commission herein, 19/ the fact that many local educators in specific localities are not now ready to claim frequencies is a basic reason for the very principle of reservations and precisely because of it have channels now been set aside for future educational use. It is therefore grossly inconsistent and incongruous to hold present educational demand to be unnecessary in determining the general principle requiring reservations, and then to make it an essential in the city-by-city hearings concerning specific reservations.

If the Commission is, however, to require a showing of educational demand, despite the above objections to such a policy, it would be much more valid for it here to point to and rely on the great quantum of evidence from educational institutions and communities that are now ready, willing and, in some cases, even able to begin full-time television operations as the basis for a more liberal policy towards education. It is to those eminent educators who have taken the lead in TV that we should look, if we must, to determine what in general may be expected from education in years to come. 20/ Uniformity of opinion and action from every community in the nation is simply too much to expect. That it has not been manifested is in no way proof of any permanent lack of interest by less advanced or smaller schools or any fixed inability on their part to undertake singly or cooperatively, the operation of their

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19/ See Pars. 37 - 44 of the Sixth Report.

20/ See Section VII, herein.

own non-commercial stations. It is solely and simply due to the fact that in educational television, as elsewhere, some must lead so that others may follow. 21/

The very purpose of an allocations plan and the Table of Assignments is to erect a bulwark to protect TV's development against the inroads of present demand. This purpose should apply consistently to both educational and commercial allocations, and neither the reservations nor commercial assignments to the smaller cities should be limited by the fact that identifiable persons or groups have failed to articulate formally a determination and ability to use the facility. The future rights of the commercial and educational interests that are not yet sufficiently vocal to appear in these proceedings are precisely those which the Commission has the primary duty to protect.

An overall national allocations plan for the distribution of all television channels in the public interest must not be grounded predominantly upon considerations of immediate demand. This is true even where, as here, such demand may be expressed in the form of affidavits rather than as applications for construction permits. In establishing the structure and nature of our future television system, the Commission must look beyond contemporary opinions and attitudes that patently are underdeveloped and which assuredly will change with time and circumstance. To do otherwise is to tie the future with the bonds of the past.

d. The Commission in its allocations improperly fails to distinguish between educational and commercial assignments.

The Commission in acting upon the assignments for specific cities has considered education merely as one of the television services to be provided for a given community. It has failed in every case to recognize the essential distinction between the educational and commercial television service, which calls for their different treatment. The function, scope and mode of operation of educational television differ markedly from those of commercial telecasting. An assignment for education is not designed solely to bring another TV station to a community, but to provide a separate and unique service to it, permitting fuller expression of its educational and cultural interests. In keeping with this distinction a city already served by commercial stations may be entitled to an assignment for education even though on comparative factors, no additional assignment for commercial purposes could be permitted to it. This is vital in specific assignments for such cities as Detroit and Columbus, hereinafter discussed.

21/ So, for example, America's unique system of free public schools did not have an instantaneous and simultaneous development in all parts of the United States, but rather developed first in the larger cities, such as New York and Philadelphia, and thereafter spread in time throughout the country. Educational-TV is presently, in a much more critical situation than was the public school system in its initial phases, for assignments are necessary now in order to preserve even the opportunity for future growth and development.

The Commission has heretofore recognized the difference between the educational and commercial services. In FM it has set aside a separate block of channels exclusively and entirely for non-commercial educational stations. The only reason for not utilizing this method of "block reservations" in television, as expressly stated in the Commission's Third Notice, was in order to achieve greater efficiency of allocations throughout the entire Table of Assignments. 22/ That the Commission now chooses in TV to proceed by reserving specific channels in individual cities should not, however, cause it to lose sight of the essential fact that education is a completely separate and distinct service and should be so treated.

e. This decision will in general exclude education from the unassigned portion of the TV spectrum, the "flexibility" channels.

The Commission has, as hereinbefore stated, established channels 66 to 83 as a pool of unassigned channels, known in the Third Notice as the "flexibility" band. Although these unassigned channels represent more than 20% of the entire television spectrum, the Commission has provided a total of only fourteen assignments for education in them. Even this small number has been set aside solely upon specific demand by educators in the cities affected.

By making these unassigned channels available (after one year) on a demand basis to any party instituting proper rule making proceedings, the Commission has severely limited educators' opportunity to secure any further assignments in them. The Commission's statement herein that these unassigned channels will "primarily" be used for communities without educational (and commercial) assignments does not afford an adequate protection to educators, since no specific standards have been provided to effectuate this intention. 23/ In light of the Commission's own acknowledgments that educators need a longer time to enter television, it is impossible to attach substantial significance to the provision herein permitting educators to file for an unassigned channel even during the coming year when most proposed amendments to the Table will not be accepted. 24/ A one-year preference to these unassigned channels is as illusory as would be a one-year reservation.

The Commission's provision for "flexibility" channels, particularly in so far as education is concerned, is therefore completely inconsistent with the fundamental principles followed by it with respect to channels 2 through 65. To be consistent and equitable, the Commission must establish a firm principle under which education would have a preference in "flexibility" channels equivalent to its reservations in the other channels. This preference could be accomplished by a rule of "limited eligibility", such as spelled out hereinbefore for smaller communities without television assignments. (Part B of this Opinion). In other words, I would retain the proposal concerning

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22/ Par. 6 of Appendix A of the Third Notice.

23/ Set forth in Footnote 11, of the Sixth Report.

24/ Set forth in Footnote 11, of the Sixth Report.

"flexibility" channels contained in the Third Notice and extend it to include cities without educational assignments, instead of almost completely deleting that proposal as the Commission has done in this Report.

f. Eligibility for the licensing of non-commercial stations has been unduly limited.

I believe that municipalities should be made eligible in every instance to operate stations on reserved non-commercial channels. To limit eligibility in general to educational institutions is, in my opinion, unnecessarily strict, for in many instances it may prevent the most efficient administration of the licensed channel and may even result in the complete loss of an otherwise ready and valuable licensee.

In providing for this new and unique educational service, the Commission should not be unduly restrictive of its future development. Television is so much more costly than aural broadcasting and involves such substantial differences in organization and operation, that practices followed in FM should not necessarily be binding here. As the city usually holds authority over the public school system, it is not only incongruous but it contradicts the basic principle of licensee responsibility to provide that its subordinate entity is eligible for license while the city itself is not. Moreover, in many instances the municipality could more efficiently operate the station, particularly so when it has jurisdiction over the many and varied educational and cultural institutions in the city.

It is clear that every licensee of a reserved channel will be required to broadcast exclusively on a non-commercial basis, featuring specialized educational and cultural programming, and will be bound by the general requirements for cooperative arrangements among all educational institutions in the area. In view of these careful limitations as to the nature and scope of educational-TV operations, I can see no reason why the Commission's Rules should in any case prevent a municipality which is ready, able and otherwise qualified to build and operate a station, while the area's educators are not, from bringing this vitally needed service to the public. 25/

IX

Had the Commission adopted and applied the general principles set forth above, adequate provision for education would have been achieved. Since it did not, however, and for the further reasons enumerated below in particular cases, I find it necessary in several instances to dissent from the Commission's final Table of Assignments. My objections to specific assignments may be grouped in the following categories:

25/ The Commission has recognized this need to some extent by providing for municipality eligibility in certain limited instances. (See Pars. 50-3 of the Sixth Report and Section 3.621 (c) of the TV Rules).

a. Propdsed VHF reservations have been deleted. — (Pars. 431, 588, 611 and 586)

In Indianapolis (Indiana), Kansas City (Missouri) and Omaha (Nebraska), the Commission has improperly deleted proposed VHF reservations and substituted UHF reservations in their place. In Columbia (Missouri), a proposed VHF reservation for a "primarily educational center" has been deleted without any substitute reservation provided. 26/ I believe, however, that the VHF reservation should have been retained and finalized in every one of these cities.

These deletions have been based upon the lack of local educational demand for VHF reservations and commercial opposition to them. The basic fallacy of a policy predicated upon demand has already been pointed out and is fully applicable here. Reservations, it should be remembered, are primarily set aside for the benefit of thepeople who will be served by these non-commercial stations. A reserved channel therefore confers no interest which local educators can refuse, barter or sell. The only right an educator has in a reserved channel is one of use and service, subject to Commission approval and its Rules and Regulations. If he is unwilling to exercise this right, no matter his position or influence, the VHF channel should remain reserved in that community for the use of its more enlightened and public spirited citizens and educators.

The public interest should not here be neglected solely because educators now in office refuse to accept or recognize televisions's opportunity and challenge. Not only may changes in administration bring about a change in the thinking of their institutions, but the passage of time and the example set by other educators using TV, may bring about radical revision even in their own attitudes. They may then be quick, if the channel is gone, to demand its return and cry that the Commission should have guarded them against their own error. We have seen such a cycle in radio and must insure against its repetition in television. The Commission must not adopt the shortsightedness of a few as its own basic policy.

It should be noted here with regard to all allocations that the contest for assignments is now largely confined to the VHF frequencies, and particularly to those cities in which VHF stations are already on the air. Thus, of the 73

26/ Another deletion of a VHF reservation, in effect, was made in San Diego (California) where the Commission's Third Notice had proposed to reserve VHF channel 3, and strong support for such a reservation had been received from local educators. Subsequently, due to an agreement with Mexico respecting border allocations, the Commission deleted one VHF of the three assigned to San Diego, that one being VHF channel 3 reserved for education. Since no other VHF has been reserved in San Diego, it is clear that education there has been forced to bear a disproportionate cost of this international agreement. Storrs (Connecticut) is a substantially different matter, for there the proposed UHF reservation was shifted to another Connecticut city in order to provide a more efficient system of reservations for a state-wide educational service. (Par. 283 of the Sixth Report).

cities in the United States in which the Commission had proposed VHF educational assignments, commercial interests in 22 of these cities have objected to the reservations and requested that they be deleted. In fully half of the 26 instances in which a VHF reservation was proposed for cities with presently operating stations, commercial objections were received to such reservations. Yet, at the same time, there was not a single commercial objection seeking to delete specifically proposed UHF reservations, although a total of 127 had been proposed by the Commission. 27/

Without doubt, however, a tight situation such as exists where VHF is now operating is only being delayed in the remainder of the VHF and in the entire UHF, and will develop there with increasing intensity as available TV assignments are taken up. To insure the full and unrestricted opportunity in television that education needs and deserves, the Commission must now stand firm against the immediate claims of commercial expediency seeking dele tions from those few VHF channels which have been reserved.

b. Additional VHF and UHF assignments have been provided without being reserved for educational purposes.

1. In its Third Notice the Commission set forth the principles for determining allocations to education, which provided in part for a reservation in every city with three or more assignments and a VHF reservation in cities with at least three VHF assignments of which one was still available. The Third Notice scrupulously followed these principles in proposing its assignments and reservations. Yet, in several instances herein the Commission has provided a number of additional assignments which these principles would require to be reserved for education, but in every instance save one, the Commission has deviated from the principle, failed to make such reservation and, instead, has assigned the channel for commercial use. 28/ It has done so solely on the basis that no educational demand has been manifested for such reservation. This is the case in Youngstown (Ohio); Scranton, Altoona and Harrisburg (Pennsylvania); Santa Barbara (California), and Bellingham (Washington) where third assignments have been provided, and in Lubbock, (Texas) and Buffalo-Niagara Falls (New York) where third VHF's have been assigned, the latter by virtue of the combination for assignment purposes of those two cities into one metropolitan area.

The Commission has failed to give any reason why the general preestablished rules respecting educational allocations should not be applied to these additional assignments. How can the Commission consistently distinguish those

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27/ In Madison (Wisconsin), it should be noted, a commercial request to move the proposed reservation from the UHF to VHF was denied expressly on the basis that no educational demand for the VHF supported this request. (See Par. 581 of the Sixth Report.)

28/ Only in Sacramento (California), where the Commission has reserved the third VHF assigned to that city have the principles of the Third Notice been followed; even here such assignment was not due alone to those principles, but as much, if not more, to the local educators' demand for the VHF reservations.

instances where a city received its assignments under the Third Notice from those where that third assignment, or that third VHF, came to it as the result of the city-by-city hearing? Furthermore, in only a single one of these instances (Buffalo) did the commercial interests requesting the additional assignment refer to or deal with the question of whether this assignment, if made, should be reserved for education as required by the principles of the Third Notice or should be made available to commercial interests. Therefore, in order to achieve a consistent application of these aforementioned principles, the Commission should reserve every third assignment and third VHF, above specified, for educational purposes.

2. Similarly the Commission has allocated a first or second VHF channel to several cities, but in no case has this VHF been assigned for educational purposes, although there was clear need for such action and the educators affected have strongly articulated their support of educational assignments. Thus, in Hartford (Connecticut), the added VHF assignment, if reserved, could immediately serve as the hub of a contemplated state-wide educational network. In Bay City (Michigan) where local educators made a strong showing for a VHF channel, the Commission disregarded it despite the fact that an additional VHF was assigned to that city. Although that VHF was not the exact one requested by Bay City's educators, it should be noted that the Commission did not find such circumstances to be an obstacle, when, on its own motion, it allocated VHF 10 to Altoona (Pennsylvania) although commercial interests there had demanded the assignment of a completely different VHF channel. 29/ This example illustrates the pattern of Commission inconsistency; it deviates (in Youngstown, Lubbock, etc) from principles requiring reservations on the basis that no educational demand has been manifested, and yet in Bay City it adheres to principles restricting reservations even in the face of clear demand for such assignments.

While it is true that the general principles of the Third Notice do not require these additional VHF's to be reserved, I believe that ordinary fairness at least requires consistent Commission action in like situations, whether commercial or educational. In these above-mentioned instances, the entire record so well supports education's need for the VHF channels involved that they should be set aside in every one of these cities.

c. VHF reservations requested for early educational operations have not been provided.

The Commission must not only reserve channels for education but it must implement its reservation in a realistically effective manner, reasonably calculated to bring about the actual operation of these channels. In order to achieve large-scale educational use of television, it is clearly imperative that there first be pioneers into the field whose stations will provide a strong stimulus for the entire movement and serve as "pilot plants" for similar operations. The Commission, however, has made practically no allowance for this need and in almost every instance has refused to provide the additional VHF reservations which have been requested for immediate or early

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29/ Par. 370 of the Sixth Report.

educational operations. In so doing it has rejected forceful showings of the public interest requiring such assignments. 30/

The particular facts in each of the following cases further demonstrate the validity of these requests for VHF reservations:

1. Columbus, (Ohio) (Par. 417 of the Sixth Report)

Ohio State University in Columbus is now ready, willing and able to make immediate use of VHF 12 in Columbus and it already has on file an application for a construction permit to build on that channel. Ohio State is without question among the leading and most influential institutions in the field of educational broadcasting. Its activities began in 1922 and have continued on a constantly increasing scale to the present time over its own Stations WOSU and WOSU-FM. Its annual broadcasting budget presently exceeds $150,000.

With a VHF channel, Ohio State could immediately carry its leadership into television and give a needed impetus to the development of this new, specialized medium. The existence of three operating VHF stations in Columbus, however, and the high percentage of VHF set ownership there, near a saturation point of 55%, requires Ohio State, as a practical matter, to secure a VHF channel for its operations. Without a VHF, its operations will be delayed and it becomes a matter of speculation when the school will enter television on a full-time basis.

Undeniably, the shifts in assignments which would be required in order to bring VHF 12 to Columbus present certain difficulties. The Commission, however, should not merely "count the noses" of comparative populations nor make the bare number of channels involved the determinative factor. 31/ In this situation, I believe that the proper application of allocations principles and the public interest require the Commission to make this requested assignment of VHF 12 to Columbus for educational purposes.

2. Detroit, (Michigan) (Par. 479 of the Sixth Report)

The Board of Education of the City of Detroit has requested, by a series of channel shifts, the assignment of a fourth VHF (11) in that city in place of UHF Channel 56 proposed to be reserved there. 32/ I believe that the three existing VHF television stations in Detroit, as well as the 600,000 TV sets in the

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30/ In every instance herein the educators have filed complete and lengthy affidavits, including the engineering data necessary to accomplish the requested shifts.

31/ It should be noted that under the principles established in the Third Notice, a VHF reservation would have been provided for Columbus had its three VHF assignments not already been in actual operation. This is also true in the case of Detroit; hereinafter discussed.

32/ These requests, it should be noted, would also bring first VHF reservations to Ohio and Michigan, and would correct to some extent the inequitable situation that now finds these states among those without any reservation in the VHF.

hands of its public, make a VHF reservation necessary if education is not to be placed at an initial handicap in its operations in Detroit. Furthermore, education there has already had extensive and successful experience in actual television programming and is, therefore, uniquely capable of quick expansion into full-time educational operations over its own independent station.

The Commission's actions here and in Columbus reveal striking inconsistency. Rejection of the Ohio State request for a VHF assignment was predicated upon a comparison of the relative populations of Indianapolis, Clarksburg and Huntington as against Columbus and, in addition, the net loss of one VHF channel caused by that counterproposal. While disapproving the use of such a numerical yardstick in this proceeding, I firmly believe that its consistent application would have resulted in a grant of the educational counterproposal for Detroit. The gain of a fourth VHF in Detroit, the fifth largest city in the country with a metropolitan population of 3 million, together with a first VHF for Bay City-Saginaw with its 240,000 population, as requested, would more than compensate in my opinion for the loss of the second VHF proposed in Toledo with its 400,000 population and the first VHF proposed in Flint with its 270,000 population. There would be no net loss in the total number of VHF channels and a substitute UHF channel could be provided for Toledo, which would help the educators there, who otherwise face the unhappy prospect of having the only UHF assignment in that city.

On any basis, therefore, the assignment of a VHF to Detroit for educational purposes is warranted and clearly in the public interest.

3. Fort Wayne (Indiana) and Carbondale (Illinois)
(Pars. 438 and 518 of the Sixth Report)

Indiana Technical College has requested the assignment and reservation of VHF 5 in Fort Wayne for immediate educational operation. Southern Illinois University has requested the assignment and reservation of VHF 10 in Carbondale to permit its early initiation of educational-TV operations. Both require a VHF channel for additional, substantial reasons: Indiana Technical College, in order to make use of TV equipment (valued at more than $100,000) donated to it, some of which is usable only in the lower portion of the VHF; Southern Illinois University, in order to bring a needed first VHF service to more than 370,000 people in the southern one-third of the state, a number considerably greater than that which could be reached by a UHF operation. The Commission has denied both requests on the basis that each violated minimum mileage separations established herein and, in addition, has denied the further request of Indiana Technical College for an assignment to be limited to low-power operations in order to prevent objectional interference. 33/

33/ There is substantial merit, in my opinion, to Indiana Technical College's assertion that the Commission should permit such educational low-power operations on the basis that non-commercial stations, unlike commercial stations, will not produce or respond to economic pressures constantly seeking higher power to expand service areas and acquire greater audiences. There are, however, as above shown, more fundamental grounds upon which the Commission should have granted the requested VHF assignments to these cities.

The Commission's denial of these requested VHF assignments has resulted in the loss, for the time being, of particularly valuable educational licensees who could otherwise have begun early operations. Here, too, a UHF assignment may cause substantial delay and make speculative the time when these schools will enter the medium on a full-scale basis. Here then are particularly glaring examples of what has resulted from the Commission's mistake in not recognizing education as a separate and distinct service, its omission of a high-ranking educational priority in the allocations, and its failure to construct an allocations plan and a Table of Assignments reasonably designed to meet these major needs in educational television. These faults are responsible for the absence of educational VHF assignments in Fort Wayne and Carbondale and I believe the Table of Assignments to be in error in not providing them. Had proper principles been established in this proceeding, these assignments would have been granted as being in strict conformity with them, rather than, as they have been forced to appear here, counterproposals seeking operations in violation of these general principles provided herein.

X

The Commission, in making an allocations plan, is forced to act in an area filled with imponderables and unknowns. It ventures into the future without assurance or expectation of absolute certainty. It is only reasonable to assume, therefore, that some misjudgments and errors will be made in the balancing and the determination of the many conflicting factors involved, all of which are subject to future change. If the Commission must err, however, it should take care to do so on the side of the public interest.

Elsewhere in this Report the Commission refers often to the "safety factor" requiring particular attention on its part not to unduly circumscribe future developments. Nowhere is such margin for error more necessary than here in the case of educational reservations where a denial is, for all practical purposes, permanent and irremediable. It would be far better therefore, since it must choose an alternative, for the Commission to reserve too many channels than for it to reserve too few. It is the latter alternative which involves the cost too great to hazard.

XI

Education in a democracy is not a luxury; it is an imperative. The strengthening and expansion of our educational system is a most urgent requirement of our national policy. Nothing that could be done to improve that educational system, however, can approach the force and impact of television.

Educational use of television on an extensive scale is not an impractical dream or a noble hope; rather it stands on the threshold of realization. Given sufficient recognition and encouragement, its substantial fulfillment could be achieved in the relatively near future. For those reasons, and in order to keep faith with its statutory responsibilities, the Commission should provide maximum reservations to preserve in full this once-in-a-lifetime chance for both television and education. I deeply regret that this has not been done in these proceedings.

The channels for education provided herein, however incomplete, do offer an opportunity which the American people should seize upon as soon as

possible and which they cannot afford to let slip away by default. They offer, too, a challenge that must be accepted and met by every school, every teacher, parent, public official, technician and public-spirited person and organization in each community or concerned with each community herein affected. This priceless opportunity for public welfare is one that must carefully be guided and guarded by all in order to achieve the maximum benefits of which it is capable. Without doubt, there are sizeable obstacles, not the least of which is the opposition of selfish interests, that must be overcome before educational stations in large numbers are built and put into operation. In view, however, of the enormous public benefits offered by educational-TV, and its steadily growing support, I firmly believe that with earnest efforts on all our parts these obstacles will be overcome and that educational television will prevail and grow and, in time, exceeding our greatest expectations, will flourish as an integral part of our educational and broadcasting systems.

DISSENTING OPINION OF COMMISSIONER JONES

I

Even the detail in the Commission's decision released today cannot conceal those faults which compel my dissent.

I dissent because this firm, fixed and final allocation plan pretends to keep the large city broadcasters from squatting on the best television channels to the exclusion of the small city. Actually if you attribute all the selfishness charged against them in the Commission's decision, broadcasters could have done little more on an application basis, without an allocation plan, to carve out an advantage to the detriment of the smaller cities.

The general rules and standards and to a greater extent the city-to-city allocation plan actually exclude VHF channels from the smaller cities unless there happens to be no larger city within artillery range to put them in. This is justified on the basis that VHF covers wider areas than UHF and that the larger cities can serve the rural population. So the general standards are drafted to the advantage of the largest cities to accomplish this basic purpose with VHF channels.

This policy literally shrinks the 12 VHF channels of the spectrum (all of the VHF channels) to the equivalent of 4 in the northeastern part of the United States and other areas like it. This occurs because the bigger you make any single station's coverage the wider you have to space stations. The wider you space stations the lesser number of times you can use the channel in the entire country.

The Commission has pretended that these high powers, antenna heights and wider VHF spacings actually give more service to the rural areas. In fact, the contrary is true. In northeastern United States and other areas like it 148% more rural and city area could get a Grade A service and 59% more could get Grade B service if the 250 mile median spacing (between stations operating on the same channel) is cut in half when 500-foot antennas are used, and cut one-third when 1000-foot antennas are used.

The Commission has made 100 kw maximum power for VHF Channels 2 to 6 and 316 kw for VHF Channels 7 to 13 (roughly 3 times the low band VHF power) and 1000 kw (10 times low band VHF power) for UHF Channels 14 to 83. It has made 2000-foot antenna heights the maximum except in Zone I (northeastern United States) where 1000-foot is maximum. These are the values which have to be used by broadcasters everywhere (from New York City to Goldfield, Nevada — population 336) to make the Commission's plan even approach degraded efficiency. This means that there is a million dollar entry fee for every broadcaster to guarantee the Commission plan's efficiency. If broadcasters from small towns (VHF was given to the largest cities and UHF generally to the smaller cities to fill in the gaps not covered by VHF) are to contribute to efficiency they had better study astronomy to figure up their balance sheets and buy lots of red ink.

This plan throws the heaviest financial burden upon those least able to pay. UHF transmitters cost more to construct and operate. UHF receivers cost more. Initially they will not be as good as VHF receivers and more complicated and more expensive receiving antennas are needed to pick up a useable UHF signal on every farmer's house top or wind mill. In addition, the higher the farmer and small urban resident has to construct his UHF receiving antenna, the longer the line is to his receiving set and the greater is the line loss by the time the available UHF signal reaches the terminals of his receiver.

If a UHF station doesn't happen to be built in a small city which is supposed to fill in the area not covered by the large city VHF station, the rural and small urban resident has to buy an expensive VHF antenna array to get the distant VHF signal or buy a hunting license.

The Commission's plan will make the television broadcasting business a million dollar blue chip game as a result of the powers and antenna heights chosen for its level of efficiency. The corollary of this philosophy is that those powers and antenna heights require abnormally, if not unreasonably wide separations. The wider the VHF separations are the less channels there are in any given city. In short, it is creating an artificial scarcity of VHF channels. The Commission thinks that it has eliminated 307(b) contests between cities (it has not eliminated all) by incorporating this firm, fixed and final allocation plan into its Rules. But it has created a bigger Frankenstein with this artificial scarcity of channels in this plan than it is trying to avoid. Where the prospect of million dollar returns are at stake in major markets more applicants will be seeking a scarce number of channels. When many applicants compete for an unconscionably few VHF channels with the lucrative return on investment provided by this plan (inordinately big VHF service areas) it will take years before the Commission can judge the merits on the kind of contests that will surely ensue.

The Commission has had the paralysis of analysis for one year, not consumed in drafting the general Rules and Standards, but consumed in a search for a city-to-city allocation plan which it can freeze on the country by rule-making proceedings. During this period people have been denied all television service in many parts of the United States and have been limited to one service in others. In addition, the Commission has created or continued television broadcast monopolies in one-station cities and limited monopolies in some two- and three-station major cities of the nation. The mischievous damage that has been done by delaying the commercialization of UHF (83% of

the channels to be used for television broadcasting) is hard to contemplate. 90% of the contests in the city-to-city proceedings involved only VHF channels.

Even now the UHF portion of the allocation Table is incomplete. Its introduction has been delayed because the Commission apparently anticipated, until lately, that it would lump UHF and VHF channels in the same application proceedings for any city and thus could not release UHF channels for television broadcasting until it perfected the VHF assignments.

Now, sound UHF station commercialization is handicapped economically and technically by 17,000,000 VHF-only receiving sets. Any prospective UHF broadcaster is not only handicapped where UHF and VHF are intermixed but also in areas where UHF is not used to supplement the inefficient assignment of VHF channels.

Especially is this true because the UHF broadcaster cannot produce a better picture than a VHF broadcaster — the standards (lines, frames and fields) are identical. In addition a UHF broadcaster in the large intermixed (UHF-VHF) cities would have to be assured of 170 mile spacings (and they are not in this plan) for VHF stations operating at 100 kw power for low band VHF (Channels 2 to 6) and 316 kw for high band VHF (Channels 7 to 13) at 500-foot antenna height to serve the same area with a UHF station at 1000 kw at 2000 feet. After paying for 900 kw more of power than the low band VHF and 600 kw more power for high band VHF and 1500 feet higher antenna heights for both, he still has to buy an audience of VHF-only receivers.

The Communications Act gives the Commission the duty of fostering the fullest development of the art. It is not the function of the Commission to construct and operate stations. Its function is to promulgate Rules and Regulations that will make it possible for citizens of the United States to become licensees and operate broadcast and television stations in the public interest, convenience and necessity. The purpose of the allocation plan now being adopted by the Commission is to create a nation-wide, competitive television system, but the effect of the plan is to deny local television to cities not included in the Table. Once the Table is established and construction permits are granted, followed by licenses and operation on the channels assigned in this Table, the Commission will not be able to dislocate such licenses to make another plan more efficient without litigation ensuing between such licensees and the Commission.

II

I dissent because the firm, fixed and final allocation plan constitutes an inefficient use of our valuable spectrum space. Therefore it is fundamentally a plan to deny local television channels to cities and communities in the United States. Only 1274 of such cities are given the privilege to build one or more television stations. Of those 889 are each given the privilege to build only one local station, notwithstanding the fact that the touchstone of the Communications Act is competition. Federal Communications Commission v. Sanders Bros. Radio Station, 309 U.S. 470.

The city-to-city allocation plan is confined to 1,274 cities because the Commission has established a standard service area which will meet the demands of the largest city in the nation and has applied it for allocation purposes to the

smallest city included in the Table. 1/ In addition, for assignment purposes the Commission has assumed that every station occupying any channel assigned in the Table will employ the maximum power and antenna height regardless of the relative populations of the cities or the sizes of their respective trading areas and the areas of their cultural influence.

An examination of the various cities in the Table shows that it is unreasonable to expect that maximum power and antenna heights will be utilized in the smallest communities included in the Table. For example, New York City has a population of 7,891,957 and its trading area is 3924 square miles. Goldfield, Nevada, the smallest city included in the Table, has a population of 336, which is .0043% that of New York. Esmeralda, the county in which it is located, has a population of 614. The broadcast industry, of course, is based upon the advertising sponsorship of programs, and the advertiser selects the stations he wishes to use according to the potential number of people to be served, and the rate paid is based upon the number of people in the service area of each station. For instance, one New York station covers a population of 14,332,829 under the present Rules and Standards of the Commission. Using the same standard for Goldfield, a 50 mile radius normalized to the county lines contains a population of 3715. The rate for the Class A hour of this New York station is $3750, making the cost to the advertiser twenty-six cents per thousand. If we apply this cost per thousand to the Goldfield area, its Class A hour rate would come to ninety-seven cents. Obviously, the rate of a Goldfield station would not be figured precisely on these population percentages, but any hourly rate they could negotiate would not be enough more to change the situation materially. Therefore, it seems very clear from an examination of the largest and the smallest communities where VHF channels are assigned in the Commission's allocation plan that the chance for a financially sound broadcast station at maximum powers and antenna heights cannot be based upon a gross income of ninety-seven cents an hour for Class A service. The probability that any such station would ever be operated at maximum power is very remote. It is more logical and consonant with practical business facts to assume that if the Goldfield channel is ever occupied it will be operated at the minimum powers and antenna heights provided in the allocation plan. It cannot be argued that the comparison between the city with the largest population and the one with the smallest population included in the Table is unfair because that is the very basis upon which the Commission has constructed the allocation Table. The same factors are ignored by the Commission in constructing its Table of Assignments in all the varying sizes of cities included and excluded from the Table. It provided itself with no flexibility from an allocation standpoint to change separations, powers and antenna heights which would meet the reasonable needs — give service to the natural trading areas or the areas of their cultural influence — of any given city in the United States.

The entire philosophy of providing the standard service area for all cities based upon a service area satisfactory to the largest city in the Table exposes some absurd results. For example, the Commission concluded that

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1/ Minimum separations of 170 miles and 1000 foot antenna heights in Zone I make this standard service area slightly smaller than the standard service area for cities and communities in Zone II.

"the geographical distribution of people and cities of the United States does not lend itself to a simple rule for spacing of stations" which will protect the interference free service area of each channel. Yet the Commission has adopted just such a simple rule that it condemns as the sole criteria for assignment of channels and refusal to assign channels to cities throughout the nation.

Zone I is described as "one large contiguous area where there is a substantially higher density of population and concentration of cities." Zone II is described as an area which has a low population density "or where large cities are more widely separated". The Commission says that 180 mile VHF co-channel separations were not intended to be minimum co-channel spacings throughout the country and that 190 miles is the appropriate minimum spacing for Zone II because "if we were to permit stations at close separations in such areas, we would deprive persons residing in the interference areas between such stations of television service." The Commission says that a different situation exists in Zone I "where there is a substantially higher density of population and concentration of cities" and that "lower minimum spacings in such an area will not have the tendency of depriving residents of the area of television service, since there would be no overlapping of service contours and a multiplicity of alternative services." The simple rule that the Commission applies to these two zones makes the enormous difference of 4 to 6 miles in Grade B service radius between the two zones. Four to 6 miles increase in Grade B service radii doesn't make much sense in serving the outlying areas from a relatively few large cities in Zone II. Neither does a contraction of 4 to 6 miles in service radii with 20 mile closer co-channel spacing make much sense in Zone I. Since the results of the 20 mile differential in minimum co-channel spacings between Zones I and II have no effective or practical relationship to the objectives which the Commission espouses, it seems clear that they are only a convenient "simple rule" to limit local television facilities to the 1,274 cities included in the Table.

This is true unless the Commission has another basis to defend these minimum co-channel spacings. The major contention might be that engineering factors dictate the national policy of minimum spacings selected by the Commission for each zone in order to get efficient use of the spectrum assigned to television, even though the Commission has never said that this firm, fixed and final allocation plan does make efficient use of the spectrum.

In its Memorandum Opinion of July 13, 1951 (FCC 51-709 [7 RR 371] it avoided any defense of this plan. Likewise, in this Report it avoids a forthright avowal that this plan makes optimum use of the channels. Instead, it couches all its discussion of "A Table of Assignments" in the abstract, that "an engineered table * * * permits a substantially more efficient use of the available spectrum" or that "an Assignment Table drawn up upon an examination of the country as a whole can confidently be expected to more closely approximate the mathematical optimum * * *". The Commission even biases its recognition that "the maximum number of stations which can be accommodated on any given channel" can be calculated mathematically with the hedge "once a fixed station separation has been agreed upon". As a matter of fact, this dodge of mileage separations is the Achilles heel to this allocation plan's efficiency. The arbitrary mileage separations of 155 miles and 170 miles for co-channel UHF and VHF stations, respectively, in Zone I, and 175 and 190 miles, respectively, in Zone II, are not based upon engineering principles at all. These separations are based upon a policy decision of the Commission for specific size service areas

for television stations. All of the engineering for this plan is subordinate to and complementary to this non-engineering policy decision. Therefore the arbitrary minimum co-channel separations of 170, 190 and 220 miles for VHF and 155, 175, 205 miles for UHF, respectively, have no sacrosanct engineering basis related either to optimum use of a single channel or efficient use of the spectrum — all of the channels.

Fortunately, there is a mathematical and engineering basis for selecting co-channel mileage separations for any given channel in each group, i.e., VHF Channels 2 to 6 (low VHF), VHF Channels 7 to 13 (high VHF) and UHF Channels 14 to 83. To visualize the problem of achieving maximum use of a given channel so we can calculate its maximum use, it is necessary to think of a series of dots spaced an equal distance from each other on a map of the United States. If we draw lines between the dots we will have a series of equilateral triangles overlaying the entire United States. The dots will represent assignments of a single channel. The length of the sides of each equilateral triangle will be the mileage separation between stations. Such a scheme of assigning channels will be referred to hereinafter as a "full triangular lattice". Appendices 1 through 6 are a series of charts based upon a "full triangular lattice" of a single channel in each portion of the spectrum. Appendices 1 and 2 for 63 megacycles are valid for Channels 2 to 6 (low VHF) utilizing 10 kilowatts, 100 kilowatts and infinite kilowatts of power at antenna heights of 500 feet and 1000 feet, respectively. Appendices 3 and 4 for 195 megacycles are valid for Channels 7 to 13 (high VHF) utilizing 31.6 kilowatts, 316 kilowatts and infinite kilowatts of power at 500 feet and 1000 feet, respectively. Appendices 5 and 6 for 500 megacycles are valid for UHF Channels 14 to 83 utilizing 100 kilowatts, 1000 kilowatts and infinite kilowatts of power at 500 feet and 1000 feet, respectively. 2/ These appendices, all based on the record in this proceeding, show that the minimum spacing proposed in the Third Notice, as amended and finalized in this Sixth Report and Order, is too great to produce the maximum service on any given channel in any group: low VHF, high VHF or UHF.

Appendix 1 shows that any one of the low VHF channels, 2 to 6, utilizing 100 kilowatts of power at 500 feet antenna height obtains maximum efficiency of area coverage at 140 miles co-channel separation instead of the 170 miles minimum separation finalized in this Report. 3/ It is significant that any one of this group of channels is as efficient in area coverage utilizing 10 kilowatts of power at 500 feet antenna height when co-channel spacing is 100 miles as it is utilizing 100 kilowatts of power at the same antenna height when minimum co-channel spacing is 170 miles.

This appendix further shows that at all co-channel spacings between 100 and 140 miles, every one of these channels is more efficient in channel coverage utilizing 10 kilowatts of power at 500 feet than it is utilizing 100 kilowatts at the minimum spacing of 170 miles. 3/ Appendix 1 also shows that if we utilized powers of infinity 4/ at 500 foot antenna heights the maximum coverage

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2/ Each of these appendices is based upon the record in these proceedings.

3/ The minimum spacings for Zone I are used because the minimum of 190 and 220 for Zones II and III respectively are less efficient yet for feasible antenna heights over most of these Zones.

4/ Infinite power cannot be achieved. For the purpose of this dissent the term means powers elevated as high as are practically obtainable.

for any one of this group of channels would still be at 140 miles co-channel separation instead of the minimum finalized in the Sixth Report.

Appendix 2 shows that the maximum coverage for any one of this group of channels is obtained at co-channel spacings of 155 miles when 100 kilowatts of power is utilized at 1000 foot antenna heights. It also shows that the efficiency is as great at 145 miles co-channel spacing as at the 170 miles 4a/ minimum finalized in the Sixth Report and Order. It further shows that if powers of infinity were utilized at 1000 foot antenna heights the maximum coverage would be as efficient at 137 mile co-channel spacing as it is at 155 miles utilizing the maximum power authorized in the Sixth Report and Order. It is significant that if 10 kilowatts of power is utilized at the same antenna height, the maximum coverage would be obtained at 145 miles and is equally as efficient at 140 miles as at 150 miles.

Appendix 3 shows that any one of the group of VHF Channels 7 to 13 utilizing 316 kilowatts of power at 500 foot antenna height obtains maximum efficiency of area coverage at 135 miles co-channel separation instead of 170 miles minimum separation finalized in this Report. It shows that any one of this group of channels is as efficient in area coverage utilizing 31.6 kilowatts of power at 500 foot antenna heights when co-channel spacing is 110 miles as it is when 316 kilowatts of power at the same height is utilized with the minimum co-channel spacing of 170 miles. 4a/ If the maximum power is utilized at the same height for any one of this group of channels they are equally efficient at 90 and 170 miles co-channel spacing.

Appendix 4 shows the efficiency of any channel in the same group utilizing the same designated powers at 1000 foot antenna heights. The maximum channel efficiency at this height utilizing maximum power of 316 kw occurs at 155 miles co-channel spacing; and it is equally as efficient at 130 miles as at the minimum of 170 miles 4a/ co-channel spacing provided for in the Sixth Report and Order. The maximum efficiency of one of this group of channel utilizing 31.6 kilowatts occurs equally from 140 to 150 miles spacing. If infinite power is utilized the maximum efficiency is at the co-channel spacing fo 155 miles.

Appendices 5 and 6 show that the channel efficiency of each of the UHF channels is less sensitive to station spacing than either VHF Channels 2 to 6 or 7 to 13. Appendix 5 shows that using 1000 kilowatts of power the maximum efficiency of a UHF channel occurs at 115 miles instead of 155 miles as finalized in the Sixth Report. This is the only group whose channels each increase in efficiency from 100 to 265 miles co-channel spacing utilizing antenna heights of 500 feet and infinite power. When 100 kilowatts at 500 feet are used the maximum efficiency of a UHF channel occurs at 100 miles co-channel spacing.

Appendix 6 shows that a UHF channel utilizing 1000 kilowatts at 1000 feet antenna height reaches its maximum efficiency at 130 miles co-channel spacing; utilizing infinite power at the same height it approaches a flat curve of maximum efficiency at around 250 miles co-channel spacing. When 100 kilowatts is used at the same height the maximum efficiency decreases at all distances beyond 100 miles co-channel spacing.

4a/ The minimum spacings for Zone I are used because the minimum of 190 and 220 for Zones II and III respectively are less efficient yet for feasible antenna heights over most of these Zones.

These appendices show that the Commission has not selected minimum co-channel spacings in its general rules and standards that obtain maximum coverage efficiency of Zone I if any power is utilized at 500 feet and 1000 feet antenna heights. This inefficient minimum spacing holds true for large areas in Zone II which have the same population and concentration of city characteristics as Zone I as will be more full discussed in connection with the actual assignments employed in the Table of Assignments hereafter. While the Commission represents that it can be confidently expected that an Assignment Table drawn upon the examination of the country as a whole will more closely approximate the mathematical optimum, the minimum spacings in the general rules and standards certainly ignore principles involved in obtaining that mathematical optimum. The VHF assignments actually employed in the Table of Assignments are even less efficient mathematically in Zone I particularly and in the parts of Zones II indicated. The UHF assignments are admittedly incomplete and a sample statistical analysis cannot be made, but such a complete analysis can be made of the VHF assignments. Appendices 7 through 18 are maps of all VHF assignments in the Table of Assignments. They are revealing, if not shocking, in their lack of adherence to the minimum spacings proposed in any zone. They are offensive, if not arbitrary and capricious, because the Commission will not permit a change in the Table until enough construction permits are granted to freeze this inefficient firm, fixed and final allocation plan forever.

Now let us examine the actual co-channel spacings employed in this firm, fixed and final allocation plan for VHF channels.

Appendices 19 and 20 are analyses of VHF assignments as shown on the assignment maps, (Appendices 7 through 18). Appendix 19 shows that the median co-channel separation is 280 miles for all VHF channels assigned to cities throughout the nation. Appendix 20 shows that in Zone I the median co-channel separation is 250 miles for Channels 2 through 6. There is no reason to believe that the separations employed in Channels 2 through 6 are different than Channels 7 through 13 in Zone I. If any section of the country is picked other than Zone I it is likely that the median co-channel separation will be within 20 miles of the 280 mile median for the entire nation.

Approximately 3/4 of 1% of all VHF assignments are less than 175 miles. In Zone I only 4% of station separations are 170 miles or less and only 8% are 180 miles or less. In the entire country only 7% of all the co-channel separations are 195 miles or less.

It is apparent that the Commission has constructed this Table of Assignments without regard to the minimum co-channel spacings of 170 miles in Zone I, 190 miles in Zone II and 220 miles in Zone III for all VHF channels. It is also quite apparent that in selecting these minimum co-channel spacings the Commission has not had the efficient use of each of the VHF channels or the efficient use of the VHF portion of the spectrum devoted to television as its major objective. For example, appendices 1 to 4, inclusive, show the appropriate co-channel spacings to obtain the maximum efficiency of all VHF channels when maximum powers are utilized at all feasible antenna heights. Appendices 1 and 4, of course, are based upon an assignment of channels on a full triangular lattice basis. These appendices are the efficiency charts for optimum use of the VHF portion of the spectrum. It is fair to use these efficiency charts as a basis for comparison of efficiency employed in constructing the actual Table of Assignments for each of the channels because

the separations actually used form a lattice work of co-channel stations at the distances indicated in the maps for each one of the VHF channels. Appendices 7 through 18 have had lines drawn through each co-channel assignment of each single VHF channel and the figures associated with each line show the distances to all co-channel stations in every direction. An examination of these maps shows that they form triangular lattices reaching all the way from 550 to 165 miles. Insofar as any one of these separations is expanded from the most efficient co-channel spacings, they are a degradation of the efficient use of the VHF spectrum. This is true because the geometric triangles formed by the actual assignments employed in the Table are just a variation from the theoretical equilateral triangles in the full lattice. Appendices 1 to 4 show the percentages of channel efficiency which will be obtained with optimum co-channel spacing on the low VHF (Channels 2 to 6) and the high VHF (Channels 7 to 13). Since the maps (appendices 7 to 18) and co-channel distribution curve (appendices 19 and 20) show that the median co-channel spacing is much greater than the optimum for channel efficiency (250 for Zone I; 280 for the entire country), it must be concluded that the channel efficiency is materially degraded. The following table shows the amount of this degradation:

ZONE I

	63 mc - 500' - 100 kw			63 mc - 1000' - 100 kw		
Separation in Miles	140	170	250	155	170	250
Efficiency of Coverage	23%	21%	14%	28%	28%	22%
	195 mc - 500' - 316 kw			**195 mc - 1000' - 316 kw**		
Separation in Miles	135	170	250	153	170	250
Efficiency of Coverage	28%	27%	14%	35%	28%	21%

ZONE II

	63 mc - 500' - 100 kw			63 mc - 1000' - 100 kw		
Separation in Miles	140	190	280	155	190	280
Efficience of Coverage	23%	18%	13%	28%	28%	18%
	195 mc - 500' - 316 kw			**195 mc - 1000' - 316 kw**		
Separation in Miles	135	190	280	153	190	280
Efficiency of Coverage	28%	22.5%	13%	35%	31%	15%

This Table and Appendices 1 to 4 show that the minimum co-channel spacing of 170 miles for VHF channels in Zone I does not permit maximum efficiency for any VHF channel when maximum power is utilized at any feasible antenna height, that co-channel spacings should be a little larger for higher antenna heights when higher powers are utilized in order to gain maximum efficiency on any VHF channel, and that more channel efficiency is gained by increasing antenna heights from 500 to 1000 feet than by increasing transmitter power by tenfold.

They show further that channel efficiency is cut about one-half with 500 foot antennas and one-third with 1000 foot antennas when the spacings are increased from 135 or 140 miles to 250 miles.

This table further shows for the median spacing for Zone I of 250 miles on 63 mc at 1000 feet and 100 kw, the channel efficiency is reduced from 28% to 22%, a reduction of 25%. For 195 mc, at 1000 feet, 316 kw, channel efficiency is reduced from 35% to 21%, a reduction of 40%. For those parts of Zone II which have a median co-channel spacing of 280 miles, the channel efficiency for 63 mc at 1000 feet and 100 kw is reduced from 28% to 18%, a reduction of 36%. For 195 mc at 1000 feet and 316 kw, from 35% to 15%, a reduction of 72%. This is significant because there are substantial areas in Zone II in which the high density population and concentrated city characteristics are the same as in Zone I.

On the other hand, if the maximum station efficiency — the largest coverage for any single station given a VHF assignment — is the goal of this Allocation Table, the minimum co-channel spacings chosen (and these are too large for optimum co-channel efficiency) are at war with this goal because maximum channel efficiency will not permit maximum station efficiency. The spacings which give maximum single station coverage are approximately twice as great as are necessary to give maximum channel efficiency.

The Commission pretends to follow a different policy in Zone I and in Zone II. It says Zone II is an area which has a "relatively lower population density or where large cities are more widely separated" and therefore wider separations are justified. In Zone I it says that the concentration of cities in wide areas of contiguous high density population justifies lower co-channel spacings. In fact, the spacings actually employed in the Table tend to protect the Grade B contour without any interference in both Zones I and II. The Commission said that in Zone I it was not concerned with interference to the Grade B contour because "there would be an overlapping of service contours of stations on different channels located in the interference areas." They have, however, protected the B contour in this zone to the same degree substantially that they did in Zone II, notwithstanding this statement of policy.

The spacings actually employed in constructing the Table for Zone I are large and incomplete lattices which result in less rural area coverage than if smaller and more complete lattices (more nearly a full lattice at optimum spacing) had been used. The smaller lattices would result in optimum city and rural coverage on any individual channel or on all channels collectively.

The engineering evidence in the record or that which can be computed by the Commission upon the basis of such evidence in the record, shows that more coverage is obtained on any channel by closer spacing than wide spacing.

Specifically, it shows that for each VHF channel in each group the coverage efficiency is higher with 1000 foot antennas and 10 kw power for low VHF, and at 31.6 kw power for high VHF, at spacings of 145 miles and 153 miles, respectively, rather than at 250 miles spacing, the median spacing actually used in Zone I. And even if maximum powers of 100 kw on low VHF and 316 kw on high VHF at 1000 feet are used, the optimum co-channel spacing only increases approximately 10 miles for 63 mc (from 145 to 155 miles) and for 195 mc (from 153 to 155 miles). Therefore, the above enumerated engineering principles still apply for these powers. So when the Commission says that it is using wide spacings to take advantage of the wide coverage capabilities of the VHF to cover rural areas, it is not based upon engineering fact, unless they mean single station coverage, when applied to Zone I and sections of Zone II where the geographic, population and city characteristics are like Zone I.

The Commission may contend that the efficiency charts (Appendices 1 to 4) are based upon total service of each channel assigned and that therefore they do not apply to the assignment policy of the Commission which recognizes only Grade A and B contours. It is true that the efficiency charts are based upon the total service of a station. Let us examine what that means. The total service is defined as the sum of all locations, no matter how distant from the transmitter, which receive a signal from the desired station for at least 90% of the time which is at least 28 db above the 10% interfering signal from each co-channel station, not more than 6 db below the adjacent channel interfering signal, and 30 db above random noise. The standard measurement of these signals uses the F(50-50) and F(50-10) curves.

The Ad Hoc Report indicated and the Commission tacitly admits that total service of a station as hereinafter described is the most meaningful definition of television service, either for a station or a channel, because it counts every possible location that gets an acceptable signal, regardless of how far removed it is from the transmitter. But the Commission for allocation purposes does not recognize this total service — to the sum of all locations for at least 90% of the time. It just recognizes a portion of such total service provided by the F(50-50) curve. Those two segments are designated Grade A and Grade B service. The Commission specifies that Grade A service has that quality acceptable to the median observer expected to be available for at least 90% of the time for the best 70% or more of the receiver locations. Grade B service is defined as service where acceptable signals are available for at least 90% of the time to 50% or better of the locations.

Appendices 2 and 4 show that with the median spacings of 280 miles used in constructing the Table only 15% of the United States would get service from one channel (316 kw - 1000' - 195 mc). If optimum channel spacing of 155 miles were used, 35% of that portion of Zone II which is like Zone I would get service from one channel. This is 2-1/3 times as much area as would be covered by the single channel with 280 mile spacing. This means that at 280 mile spacing it takes more than 6 high VHF (Channels 7 to 13) to cover the country once and at optimum spacing of 155 miles it only takes 3 of such channels if we assume in both cases that maximum power is utilized at 1000 foot antenna heights. Even if we did not have an allocation plan, it is doubtful that applicants filing for the channels as they saw fit could destroy 4 of the 7 channels the way the Commission has in this allocation plan.

If it is contended by the Commission that Appendices 2 and 4 based upon the total service of a station are not indicative of what happens to Grades A and B

service, used by the Commission as the criteria for allocation purposes, even from this standpoint closer spacings are more efficient. Appendices 21 and 22 show that high VHF (Channels 7 to 13) utilizing 316 kw power at 1000 feet at the median co-channel spacings of 250 miles in Zone I achieve only 12.3% channel efficiency of area within the Grade A type contour and 23.6% within the B type contour. They show further that under the same conditions but at 155 mile optimum co-channel spacing the area within the Grade A contour is 30.5% and the area within the B contour is 37.4%. This is a 148% increase of coverage within the Grade A contour and a 59% increase of coverage within the B contour. However, it must be remembered in the total coverage of the channel at 155 miles, efficiency of total coverage is 72% greater than at 250 miles. Of course, if you are comparing the coverage of a single station separated at 250 miles with a single station at a co-channel spacing of 155 miles, the area covered by each is 1922 square miles and 1072 miles, respectively. But it must be remembered that if you are going to make such a comparison for the 155 mile spacing you can get 2.6 as many station assignments on an area basis as you can with 250 mile spacing. The total area covered by the 2.6 stations is 2787 square miles. This is 860 square miles more area coverage by the closer spaced station on any high VHF channel. From any standpoint more complete area coverage can be had with high band VHF channels at the optimum co-channel spacing of 155 miles rather than 250 miles which the Commission has actually used in constructing the Table in Zone I.

III

It now becomes important to compare the minimum co-channel spacings as they affect the total single station service between the three bands — low band VHF, high band VHF and UHF. This is very important from a competitive standpoint, especially in cities where UHF and VHF are intermixed. The minimum co-channel spacings adopted by the Commission are such that they tend to restrict the service on any given UHF channel due to co-channel interference. It will now be shown that the minimum co-channel spacings adopted for the several bands unnecessarily reduce coverage of a single station on a UHF channel compared with single station coverage of a VHF channel and therefore make the UHF station non-competitive with VHF. It will also be shown that it is necessary to modify the minimum co-channel spacing for the UHF stations to equalize the coverage efficiency with respect to the VHF stations. This is particularly compelling because the UHF is just now being introduced for commercial broadcasting and the competitive value of these channels is 17,000,000 receivers behind the VHF channels. In addition, the higher cost of original construction and operation and the unavailability of equipment for UHF stations as compared with VHF stations are handicap enough already without the minimum spacings for UHF further threatening its competitive position with a VHF station in an intermixed market. In addition, the UHF receivers actually will be more expensive and for a time less reliable than VHF from the standpoint of the prospective viewer. At the minimum spacings of 155 miles for UHF and 170 for VHF, the UHF could never become competitive from the standpoint of single station coverage efficiency using maximum powers with antenna heights from 500 feet to 2000 feet, assuming that both groups of stations have the same antenna height. However, if a 2000-foot antenna is used on UHF with a maximum power of 1000 kw and a 500-foot antenna is used on low band VHF with 100 kw, UHF coverage is approximately equal to the low band VHF. Appendices 23, 24 and

25 are charts showing the distribution of locations receiving acceptable service on each of the bands utilizing maximum power and antenna heights of 500 feet, 1000 feet and 2000 feet, respectively, with spacings of 170 miles for VHF and 155 for UHF. They further show that in order to have the UHF cover the same total station service based upon minimum VHF spacing, the UHF licensee would be compelled to operate with maximum power of 1000 kw at 2000 feet, while the low band VHF station could operate with 100 kw at 500 feet. Obviously when a UHF station has to spend money for a 2000 foot tower utilizing 1000 kw in order to compete with a low band VHF licensee with 500 foot tower at 100 kw, he has a very serious financial handicap. From an economic standpoint no encouragement is given the prospective UHF licensee to use the UHF band in an intermixed city.

Especially is this true since the UHF broadcaster does not produce any better picture than the VHF broadcaster. The UHF standards — lines, frames and fields — are identical with the VHF. It would seem incontrovertible that from an economic standpoint the Commission ought not to adopt a policy of minimum spacings which require heavy expenditure for 1500 feet additional tower height and 900 kw more power in comparison with the low band VHF to cover substantially the same number of locations in the VHF service area. As a matter of fact, in comparing the relative number of locations served by UHF stations at minimum co-channel spacings with VHF stations at spacings actually employed in constructing the Table of Assignments, UHF stations operating in the same community would cover substantially less locations (approximately 50%) than VHF stations. This is significant because the Commission has adopted a policy of minimum co-channel spacing of 170 miles for VHF channels, but the actual VHF assignments tend toward a service which is limited by noise only. It has been said that the UHF Table is incomplete; nevertheless the minimum co-channel spacing for UHF is still 155 miles. Therefore this minimum spacing for UHF is an economic threat to anyone who might invest in a 2000 foot tower and equipment to generate 1000 kw radiated power in order to compete with a VHF licensee unless the minimum station spacing is at least 200 miles. What the applicant for a UHF license needs in order to be assured of competitive equality with the low band VHF, with VHF spacings actually employed in the Table (Appendices 7 to 13) would be a Table of co-channel spacings for UHF greater than 250 miles and powers considerably above 1000 kw.

Inasmuch as the Commission has assigned UHF more extensively to small communities, obviously all of our experience in broadcasting would certainly show us that licensees in such areas never will be able to make economic use of the UHF stations at maximum powers and antenna heights. In addition, in so far as UHF has been assigned as a local service to smaller communities generally, we have placed the heaviest burden upon both the broadcaster (the original construction cost and operating costs are higher for UHF than for VHF) and upon the viewer (VHF-only receiving sets will require adapters and sets capable of receiving UHF will be more expensive than for VHF). Even if a prospective UHF licensee would weigh the cost of the purchase of an existing VHF station in any one of the large multi-station markets with its high coverage efficiency assured by the actual spacings employed in the Table, versus capitalization of the cost of converting all VHF-only receivers presently in such markets, there still would be a large portion of the VHF service area he could not cover if both UHF and VHF stations operated at the same antenna heights and at the respective maximum powers. The prospective

applicant for UHF facilities in a major market where VHF is already operating has two costs to capitalize: (1) the costs of his station and (2) the cost of buying an audience, i.e., UHF converters for VHF-only receivers. Even if these converters were available to him at manufacturer's cost, this expenditure for just the opportunity to get listeners in such a mixed market would probably be more than his entire UHF station. And after capitalizing this additional cost, which the VHF licensee does not have, the minimum spacings and the spacings actually employed in the Table of Assignments for VHF channels will give him only half a VHF audience.

Obviously, the Commission can relieve the situation without throwing this tremendous burden upon the prospective UHF licensee in so far as equalization of service area is concerned by widening the UHF co-channel spacings and narrowing the VHF co-channel spacings to equalize the distribution of locations receiving acceptable service from all groups of channels. This certainly should be the main objective of any allocation plan where a new band of frequencies is being introduced for commercial operation.

The Commission blows hot and cold on two sides of the same proposition. On the one hand it says that maximum rural coverage is obtained with wide spacings, and on the other hand it says if you have a large number of cities close together you can get large rural coverage by the use of many stations on different channels because "there would be an overlapping of service contours and a multiplicity of alternative services." The question unanswered by the Commission is: why did it persist in wide spacings in constructing the Zone I portion of this Table? As a matter of fact, from the standpoint of efficient channel coverage there is no answer because the actual assignments have moved toward maximum single station efficiency instead of total maximum channel efficiency. Therefore, this firm, fixed and final allocation plan shrinks the available 7 high band VHF channels used at the median spacings of 280 miles actually employed in constructing the Table and gives no more coverage than three of the same group of channels if 155 miles optimum spacing were employed.

If co-channel spacings of 170 miles were actually used for VHF assignments in the Table and 200 miles for UHF at maximum powers (100 kw and 316 kw for low VHF and high VHF respectively, and 1000 kw for UHF) and all operate at antenna heights of 500 feet, UHF can be competitive with low band VHF. It can be competitive with low band VHF when 1000 feet antenna heights are used at the same respective spacings and powers. UHF is not only competitive with low band VHF but is also competitive with high band VHF when all operate at 2000 feet antenna heights with the same spacings and powers indicated above. Therefore, it is concluded that a 200 mile minimum co-channel spacing for UHF assignments in the Table is necessary to make UHF single station coverage competitive with VHF station coverage provided 170 mile spacings are actually adhered to for VHF channels. Appendices 23 through 28 show that the 170 mile co-channel spacings for VHF channels in Zone I and those portions of Zone II which have the same characteristics as Zone I, as heretofore indicated, should not be just a stated policy of the Commission for VHF channel assignments but they should actually be employed in constructing the Table to make UHF at 200 mile co-channel spacings competitive with VHF. These charts further confirm the fact that UHF has the potential of equalizing the station coverage of both high VHF and low VHF when all operate at 2000

feet antenna heights at the respective maximum power for each group and that UHF has better potential for wide area coverage than either of the VHF groups of channels when the UHF is spaced at 200 miles and the VHF is spaced at 170 miles or its equivalent. They show that there is a basic error in the Commission's assumption that only VHF channels have a potential for wide area coverage — assigning VHF channels to the largest cities.

Appendices 26, 27 and 28 show that you can make any one of these groups of channels (low band VHF, Channels 2 to 6; high band VHF, Channels 7 to 13; and UHF, Channels 14 to 83) the preferred wide area coverage channels simply by employing wider spacings for the group the Commission wishes to prefer. 5/ Appendices 23 to 28, inclusive, show that if a proper co-channel spacing policy is incorporated into the general Rules and Standards of the Commission and actually followed in an assignment table, each can be made to serve the same area and the same relative number of locations in such area. This ought to be a bare minimum objective for a policy of intermixture of VHF and UHF channels in the same city. Contrary to this objective, the general Rules and Standards and this firm, fixed and final city-to-city allocation plan show every sign of trying to skirt around the natural wide area coverage potential of UHF as if the technical problems in both transmitter and receiver equipment development for UHF may never be overcome or that scientific knowledge in overcoming the present equipment difficulties is frozen at the present stage.

Obviously, the Commission's assignment plan that presumes to look ahead for forty years ought to provide a sound economic setting for licensees of each group of channels to be competitive with all others to afford each licensee a fair chance to render service to comparable service areas, with the same opportunity for fair return on his investment.

Inasmuch as the Commission has used UHF by and large for assignment to small cities and as a mere supplement to the wide area single station coverage of VHF channels located generally in the larger cities, the burden of UHF is thrown generally upon the people least able to pay if they are ever to receive a Grade A service — the rural populations. General experience would tell us that the rural populations are the least able to pay the higher price (higher cost receivers) for Grade A television service and that a prospective UHF broadcaster has less chance to recoup investment in constructing and operating a UHF station which costs more than a VHF station. These considerations are not consistent with the original basic purpose of this firm, fixed and final allocation plan — to protect the small communities against preemption of VHF channels by large cities. The Commission should abandon the use of VHF in large cities for wide area rural coverage. Optimum spacings less than those used in the Assignment Table or in the Rules and Standards give more Grade A service to the rural population than the method used by the Commission.

Appendices 1 to 6 show incontrovertibly that optimum channel efficiency can be obtained at the optimum spacings indicated below, at both minimum and maximum powers, and antenna heights of 500 feet to 1000 feet, as follows:

5/ Provided sufficient antenna height is utilized by UHF.

	Antenna Height	Power	Spacing
Low band VHF	500 feet	10 kw	125 miles
	1000	10	145
	500	100	135
	1000	100	155
	500	Infinity	140
	1000	Infinity	160
High band VHF	500 feet	31.6 kw	100 miles
	1000	31.6	153
	500	316	135
	1000	316	155
	500	Infinity	140
	1000	Infinity	156
UHF	500 feet	100 kw	100 miles or less
	1000	100	100 miles or less
	500	1000	125 miles
	1000	1000	130 miles
	500	Infinity	More than 250 miles
	1000	Infinity	More than 250 miles

The values taken from the efficiency charts (Appendices 1 to 6) and the above table are practical because we can utilize powers, heights and co-channel spacings at any values within these parameters to obtain optimum use of 82 television channels. Roughly, ten times the power is required to obtain the same expansion of coverage that can be obtained with doubling the antenna height.

Values of power, height and spacing between these parameters may be used to obtain more optimum use of all channels, VHF and UHF. It is unreasonable to use excessive powers which preclude a simulated full triangular lattice, especially in Zone I and the parts of Zone II hereinbefore indicated, which would provide maximum station coverage at the expense of optimum use of the spectrum (all television channels).

Appendices 1 to 6 show that the maximum channel efficiency as distinguished from single station efficiency is obtained regardless of powers ranging from rather nominal values of 10 kw for low band VHF, 31.6 for high band VHF and 100 kw for UHF, to the highest practical powers obtainable with co-channel spacings ranging from between 100 and 155 miles. Therefore, it would seem logical to utilize this difference in efficiency of antenna heights versus power in a manner that will fit the median size city, as a general allocation plan, and the largest city as an exceptional case. To put it graphically, use a lattice that will fit the median size city in the country and tear out the lattice for the exceptional case, i.e., Los Angeles from a standpoint of geographic considerations and Denver from the standpoint of population characteristics.

Appendix 30 illustrates the different spacings that can be used with standardized interferences to provide substantially equal service areas for cities of all sizes located at random distances from each other in order to simulate a perfect full lattice; a sample of how this table may be put into effect is shown by Appendix 29.

Appendix 31 shows how to get different sizes of service areas for different size cities to supply their respective needs — trading areas or areas of cultural influence — with different co-channel spacings using standardized interferences and different powers and antenna heights. It shows how to get that unequal service area to meet the respective needs of the smallest community and the largest community with random spacings, random powers and random antenna heights in each group of frequencies. A sample of how this table may be put into effect is shown by Appendix 30.

IV

The Commission seeks to buttress its excessive separation factor by arguing that it is necessary in view of the limited amount of propagation data now available to provide a "safety factor". The majority recognizes, however, that such a safety factor can only be justified if it is possible in the future to modify its present separations. If the separations in the Table are to be fixed, the excuse for the "safety factor" must fail. The Commission says that when more propagation data is available it will take appropriate action with respect to modifying its Table — presumably assigning channels at closer spacings. This seems a plausible solution on the surface. However, the Commission completely destroys any hope that more assignments will be made in the VHF portion of the spectrum by its admission in footnote 25 that it has not been able to remove existing operations which do not comply with its minimum separations because "it has not been possible to remove these cases without unwarranted dislocation". At present there are only 108 stations on the air in 64 markets. Obviously any attempt at adjustments after more stations get on the air would involve more unwarranted dislocations which would preclude the Commission from adding more assignments. Since each additional station put on the air would increase the problem of dislocation involved in any attempt to modify the spacings adopted now, it is apparent that the Commission's "safety factor" is simply an increase in mileage separations arbitrarily imposed without any propagation data to support it in the VHF. In the UHF where propagation data by contrast is almost non-existent, they have failed to put in a safety factor in the general rules for co-channel spacing of UHF stations. Since the information on UHF propagation is admittedly so meager, the Commission is much more harsh with UHF spacings than they are with VHF. Either the Commission does not need a "safety factor" in the VHF or it is very reckless with the UHF, since the UHF propagation data that is available shows that interference is higher on the UHF than it is in the VHF on any comparable distance in miles from the transmitter. As a matter of fact, a minimum of 183 miles is required in the UHF to protect the Grade A service area of UHF stations. No place in the minimum spacing in the general rules and regulations have they impinged upon VHF Grade A service. In short, the Commission provides a "safety factor" where the information indicates it is not needed (in the VHF) and they don't provide it in the UHF band where the information is so meager it might be advisable. This is an admission that the Commission means to make local (small coverage) service out of UHF channels even when assigned to the largest markets regardless of its future potential for wide area coverage, or that it has a double standard in applying the "safety factor". Obviously the "safety factor" is a snare and a delusion.

The whole theory of a safety factor in minimum co-channel spacings is based upon administrative convenience rather than any sacrosanct value that may be attached to the minimum co-channel spacings adopted in the Commission's

decision today, at least within the parameters of the engineering evidence shown by the efficiency charts, Appendices 1 to 6, for the powers, antenna heights and separations indicated.

The whole idea that engineering considerations dictate the respective minimum co-channel spacings for each zone stems from two inconsistent ideas expressed in the Third Notice, Appendix A, paragraph C4a, wherein the statement is made predicting service areas and interference: "The Commission is satisfied that on the basis of the data presently available to it the data underlying the propagation charts are sufficient to afford an adequate statistical basis for describing the field intensities under average conditions, but it is expected that there may be substantial variations in individual areas." On the other hand, in the same document, Appendix A, paragraph E 1, under the subject of station separations, co-channel separations, the statement is made: "In the second place, much of the propagation data — although the best available * * * upon which the Commission relies is quite meager * * * until sufficient propagation data are available."

From these two statements the Commission acquires the philosophy that the tropospheric information it has is good enough for a national allocation plan but insufficient for particular assignments in specific cities. From an engineering standpoint there is absolutely no basis in fact to pretend that there is a difference in troposphere effects between stations where the co-channel spacings are reduced, the antenna heights raised to obtain greater efficiency in coverage and the power lowered to equalize the minimum co-channel spacings adopted in the Sixth Report and Order.

The Sixth Report and Order gives the implicit impression that engineering has dictated this unique plan — the inordinately wide spacings actually used in constructing the Table. It should be clearly pointed out that engineering factors do not determine a unique allocation. Thousands of different plans could be drawn up which were correct engineering-wise, changing the minimum co-channel mileage separations for each group of channels within the parameters of power and antenna heights that Appendices 1 to 6 recommend. Therefore there is wide latitude from an engineering standpoint for thousands of different plans. The engineering only places limitations on what can be done. The Commission has relied upon the simple rule of minimum co-channel spacings (even though it admits that a simple rule cannot be utilized) and for administrative convenience wants to throw away all of the engineering factors upon which all the minimum co-channel calculations for the plan are based. For instance, all of the Grade A and B service areas at all powers and antenna heights used in constructing the Commission's general rules and regulations and in its city-to-city allocation plan are based upon the simple formula that the desired station for at least 90% of the time produces a signal at the edge of its Grade B contour at least 28 db above the 10% interfering signal from each co-channel station, not more than 6 db below the adjacent channel interfering signal and 30 db above random noise. The standard measurement of these signals is the F(50-50) and the F(50-10) curves. Tables for the F(50-50) curve at 10 mile intervals from the transmitter show the field intensity of a 1 kw transmitter in db for antenna heights at 500, 1000 and 2000 feet. The F(50-50) is Appendix 32. The interfering signal field intensity of a 1 kw transmitter in db for the F(50-10) curve at distances for every 10 miles from 10 miles to 300 miles are shown in Appendix 33. Any layman can calculate the rate of decline of signal strength

for the desired station from Appendix 32 between any 10-mile separation and the rate of decline in the interfering signal with Appendix 33 at every 10-mile spacing and be able to add the appropriate number of db's for kilowatts of power contemplated to the values in this Table for both the desired and undesired station to predict the desired station's service area by jockeying antenna heights up and power down until the efficiency of antenna heights over radiated power brings the desired result. In this manner he can either equalize the approximate service area maintained by the minimum co-channel spacings adopted by the Commission or obtain a service area which will satisfy the community to be served and at the same time make more optimum use of the channel. There is no secret or trick in maintaining the ratios by this simple device and give the same safety factor from the standpoint of tropospheric interference as is given by the Commission with its minimum co-channel spacings adopted in this decision. The Commission on the other hand would leave an area without a channel assignment even if it is just one or six miles under the minimum spacing, rather than make the channel coverage (optimum spectrum use) more efficient. Cf. Coldwater, Michigan, and Pittsburgh, Pennsylvania, in the city-to-city portion of the Commission's decision. Again the Commission's false "safety factor" philosophy prejudices those least able to pay in favor of the great metropolitan populations. It would rather space stations so far that their service is limited by noise, a 100% of the time interference factor for the rural and small urban resident, by throwing emphasis to the importance of a 10% of the time co-channel interference factor. The rural resident can't get a signal in the noise zone with a hunting license because there isn't any signal but the metropolitan area resident in the interference zone can get a usable signal by orientation of a relatively inexpensive antenna installation (compared to the listener miles away from the transmitter) to take advantage of its ordinary rejection ratio. Therefore, it seems unjust and unreasonable that the Commission should take the hard and fast rule of minimum co-channel spacings as the sole criteria for station assignments as if they were all utilizing maximum power and maximum antenna heights.

I pointed out in my dissent to the Memorandum Opinion of the Commission on the statutory authority to adopt a Table of Assignments (released July 13, 1951) that Section 307(b) of the Communications Act requires the Commission to determine the problems of fair, equitable and efficient distribution of radio service among the several states and communities in proceedings on applications for radio station licenses and modifications and renewals thereof. I think it plain that Congress intended not merely to protect rights of applicants but to provide the most effective procedure for Commission determinations. I do not believe that the Commission can substitute its views or preferences for other procedures for the method laid down by Congress. I will not here repeat at further length the arguments contained in my dissenting opinion above referred to.[7 RR 381].

If it be assumed, however, that the Commission is free to evade its duty to decide 307(b) issues in competitive hearings on applications and in lieu thereof to make a predetermination of such issues in a general proceeding, there are two fatal objections to the Commission's present attempt to make such a predetermination. First, essential considerations required to be decided on the basis of fact have been completely ignored by the Commission in the instant proceedings. See Easton Publishing Co. v. FCC, 175 F.(2d) 344, 4 RR 2147. The second is that the engineering basis upon which the Commission purports to rest its decision does not in fact support the result but on the contrary demonstrates its invalidity.

The majority admits that the most important element in its assignment plan is its minimum spacing or station separation factor. It is demonstrated below that the minimum separation factor stated by the Commission is unsound from an engineering standpoint and is designed to preclude rather than permit maximum service. Further than that, it is shown that the Commission has completely failed to make assignments which would be permitted if it adhered to its own separations. The net result is that the Commission has drastically limited the number of television stations which could be licensed in this country and has created an artificial scarcity. I am profoundly disturbed not only by the long range effect of this action but by the immediate consequences, which are that years of litigation must ensue before any considerable number of new television stations can be put in operation in the United States.

It is theoretically possible from a technical standpoint to provide for over 2-1/2 times as many VHF stations if a proper separation factor is used as could be provided if the Commission's separation factor is used. Practical considerations undoubtedly would limit somewhat the number of stations that are possible from a theoretical standpoint. But these considerations apply alike to the number permissible using the Commission's separation factor and to the number possible using a proper separation factor.

The standard by which the rules and television allocation table adopted by the Commission must be tested is whether they provide "a fair, efficient and equitable" distribution of television service in compliance with Section 307(b). As the Commission said in its Memorandum Opinion in this proceeding released on July 13, 1951, that is the "standard to be applied in all cases. . .". In their Report they have given only lip service to that standard and then principally in situations in which the standard enabled them to reject some contention made by one or more of the parties (para. 194).

The fatal defect in the approach of the Commission is that, despite their occasional reference to the "fair, efficient and equitable distribution" standard, that standard has been abandoned in favor of an undiscriminating adherence, sometimes explicit and always implicit, to a supposed policy of administrative convenience. The inevitable result is an allocation which is neither fair nor efficient nor equitable and which so far departs from the realities as to be completely arbitrary and capricious. The preceding discussion has to some extent indicated the arbitrary nature of the engineering conclusions upon which the allocations rest; a brief summary of a few of the practical results will serve to illustrate how far the allocations serve to defeat the injunction of the Communications Act that the Commission "generally encourage the larger and more effective use of radio in the public interest" (Section 303(g)), and "when and insofar as there is demand for the same, the Commission shall make such distribution of 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." (Section 307(b)) (emphasis supplied)

The Commission emphasizes at the outset that the allocations "must be based upon, and must reflect, the best available engineering information" (para. 2). Having announced that undebatable proposition, they then proceed to adopt a table of allocations based upon curves which they explicitly concede are inapplicable to any specific station. This is the first administrative decision of

which I am aware which so frankly conceded that the general principles underlying it cannot be applied to any specific situation which will be governed by the decision. As the Commission admits, the allocations are based upon hypothetical situations which will never occur, upon the assumption contrary to fact, that the stations which will be involved will be "typical ones producing the average field intensities described by the charts". Such an arbitrary assumption may simplify the work of the Commission but it can scarcely be expected to result in a fair, efficient or equitable distribution of television facilities. It is easier to estimate the number of lemons in a barrel if you assume the barrel is filled with lemons, but the estimate is of dubious value if you know in advance that the barrel contains grapefruit and oranges but no lemons.

The most striking result of this blind devotion to administrative convenience is the arbitrary specification of minimum co-channel separations on the mistaken theory that "the larger and more effective use of radio in the public interest" and the "efficient" distribution of television service requires maximum station coverage in terms of freedom from theoretical co-channel interference rather than maximum use of the available frequencies. The Commission has sought to protect the interference-free service areas of existing and proposed stations by reducing substantially the number of stations which can be accommodated throughout the country by the device of establishing excessive minimum co-channel assignment spacings. The result is, as the Commission states, to improve the Grade B service of the proposed stations; it is also greatly to reduce the number of stations and the availability of additional service, both Grade A and Grade B, to the rural areas and to increase the areas which will not receive any television service. The result is to sacrifice efficiency in the distribution of the available channels in order to confer an unnecessary benefit upon the fewer persons who, because of the Commission's Rules, will be able to enter the field. In addition, the Commission has established a new class of stations which will utilize these same channels for non-commercial educational facilities which play a part in the scarcity of VHF assignments for both commercial and educational use in any city. 6/

6/ The Commission states several times in its opinion that the setting aside of channels for non-commercial, educational use is precisely the same type of reservation of channels as that provided by the assignment table for commercial stations in the various communities. This is not the view that I take of the assignment of shared use of the channels for non-commercial educational television stations, and I do not believe the majority's statement correctly describes the action of the Commission. The Commission has created a new class of radio stations and a new use of the radio frequencies, namely, non-commercial educational television. This class is as distinct from commercial television stations as point-to-point communication stations. The Commission in providing for any new use or frequencies and assigning specific frequencies on a full or shared time basis for a new service may be said to "reserve" frequencies for that service. This is an essentially different thing than a reservation of frequencies for specific applicants for specific communities, all of which are qualified for the use of the service involved. There are numerous Commission precedents, particularly where shared use of frequencies is involved, for designating areas in which the frequencies will be used for a certain service. (Footnote continued on following page)

The resulting inefficiency in the utilization of available channels would have been sufficiently serious had the Table conformed to the Rules. But, in compiling the Table, the minimum co-channel separations were largely ignored; for example, in the Eastern Zone, only some 4% of the allocations approximate the prescribed minimum, and the median separation is 250 miles, or 47% in excess of the minimum of 170 miles specified in the Rules. That means that many communities are losing the possibility of television service in order that stations located in other communities may be protected.

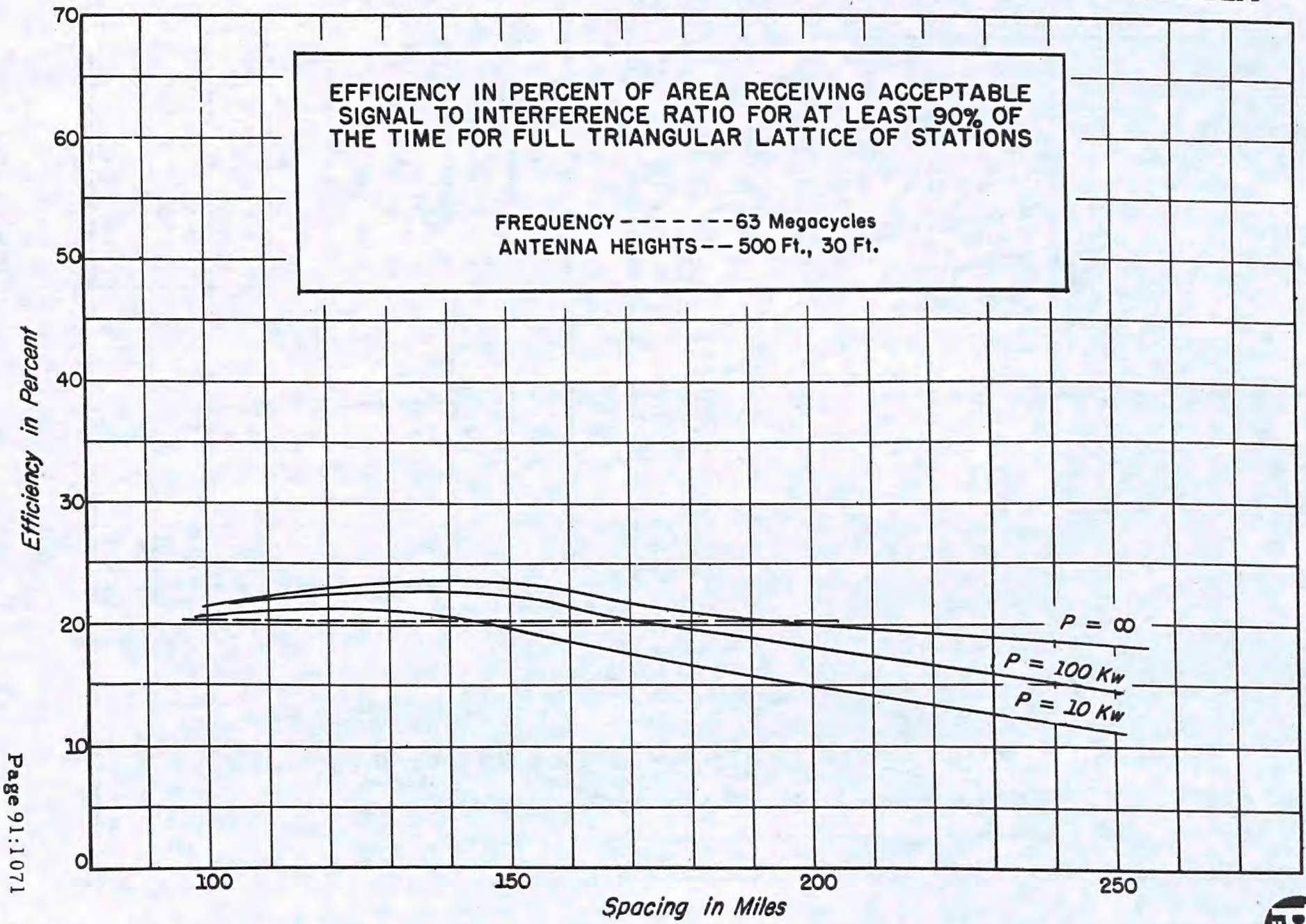
That unfortunate consequence is worsened by the arbitrary rules and the Commission's assumption that all stations, however small the community, will operate at the maximum permissible power. The Commission has rejected the proposal for assignments based upon limited power stations in small communities (para. 137-8) on the grounds that the Table and Rules "are based on the concept of affording each station the widest possible coverage . . ." and that limited power stations, although capable of serving the local needs of small communities, would be inconsistent with that concept. The result is obvious; fewer stations, less efficient use of available channels and disregard of local necessities and convenience in the interest of maintaining an inflexible concept.

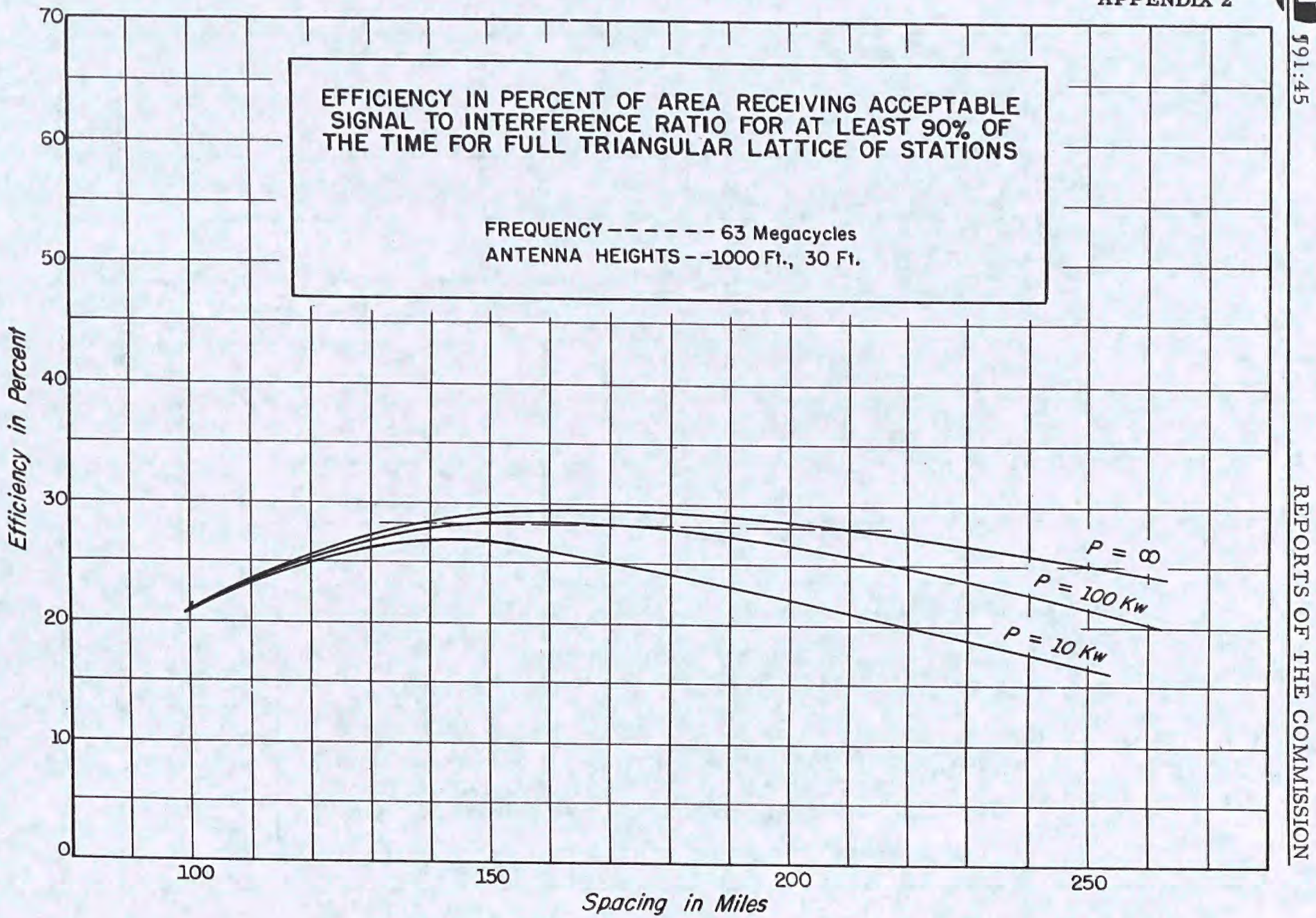
Characteristic of the arbitrary approach to the problem and of the resulting inefficient utilization of channels is the measurement of permissible co-channel spacings by the accidental location of post offices (para. 105-8). Communities will be deprived of additional channels because of the wholly irrelevant fact that their main post offices, which have no logical connection with any proposed or possible television station, are located nearer another post office or an existing transmitter than the required minimum distance, notwithstanding the existence of numerous potential transmitter sites at greater distances. It is not an answer to reply, as does the Commission, that the Table and Rules are concerned with "assignment spacing requirements" rather than "facilities spacing requirements". Transmitters will not, in the normal course of events, be erected on top of post offices; if there are available sites complying with the Rules, there is no reason to deprive a community of service, or of additional service, because of some ancient whim which determined the location of a main post office. Not by such accidents should the Commission make decisions affecting the efficient distribution of channels.

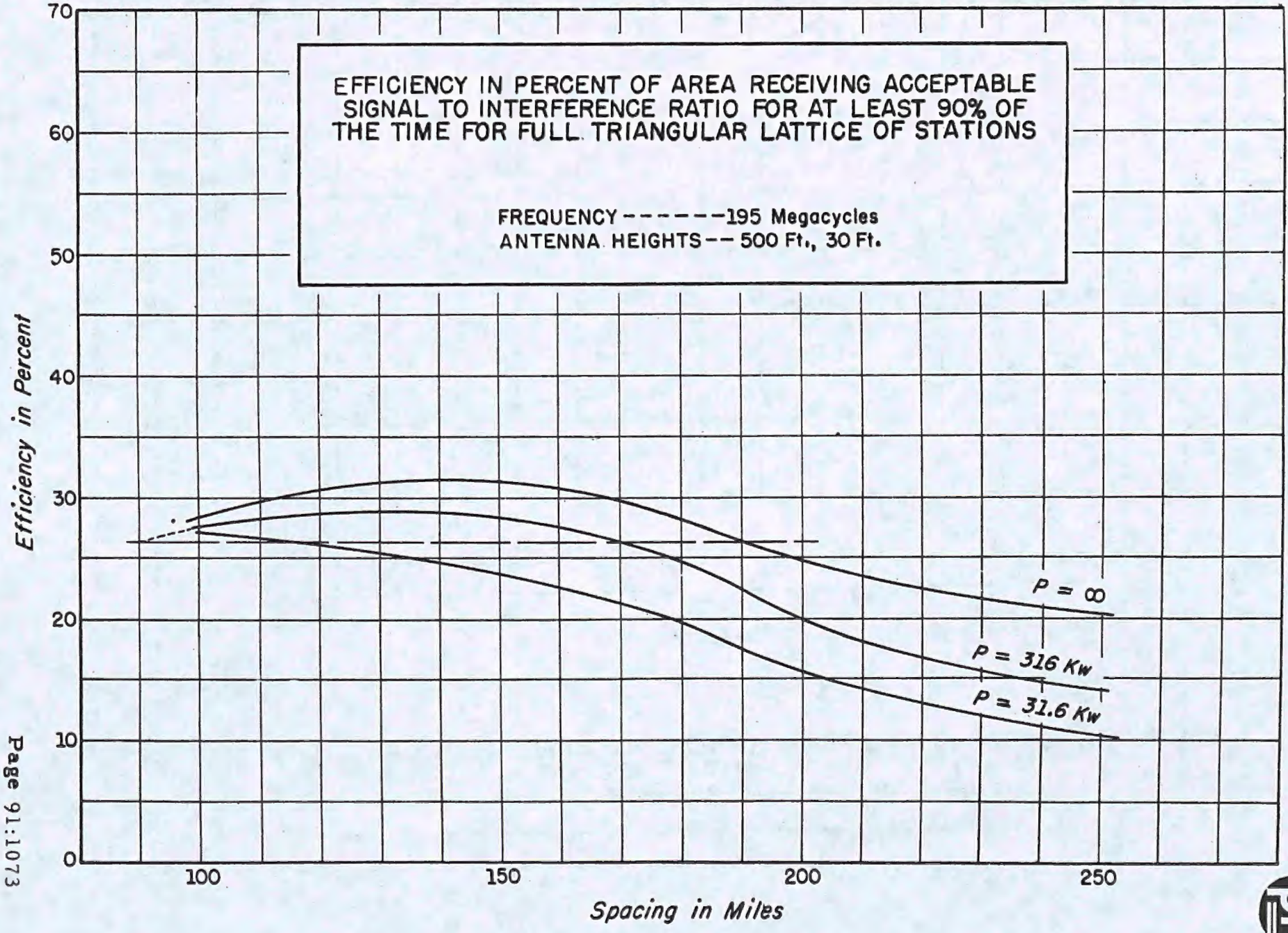
6/ (Footnote continued from preceding page)
For example, the Commission provided for shared use of frequencies for certain harbor purposes and certain highway purposes. Obviously, to assign a frequency for harbor use to Denver would be absurd. In designating areas for operation for non-commercial educational television stations, the Commission sought to select areas which are "cultural centers". It would obviously be a waste of channels for the Commission to assign channels for non-commercial educational stations to areas where there are no educational facilities for the operation of such stations. The fundamental difference between reservation of channels for a class of stations and reservation of channels for favored communities as against other communities equally qualified must be recognized if the validity of our assignments for non-commercial educational television stations is to be upheld.

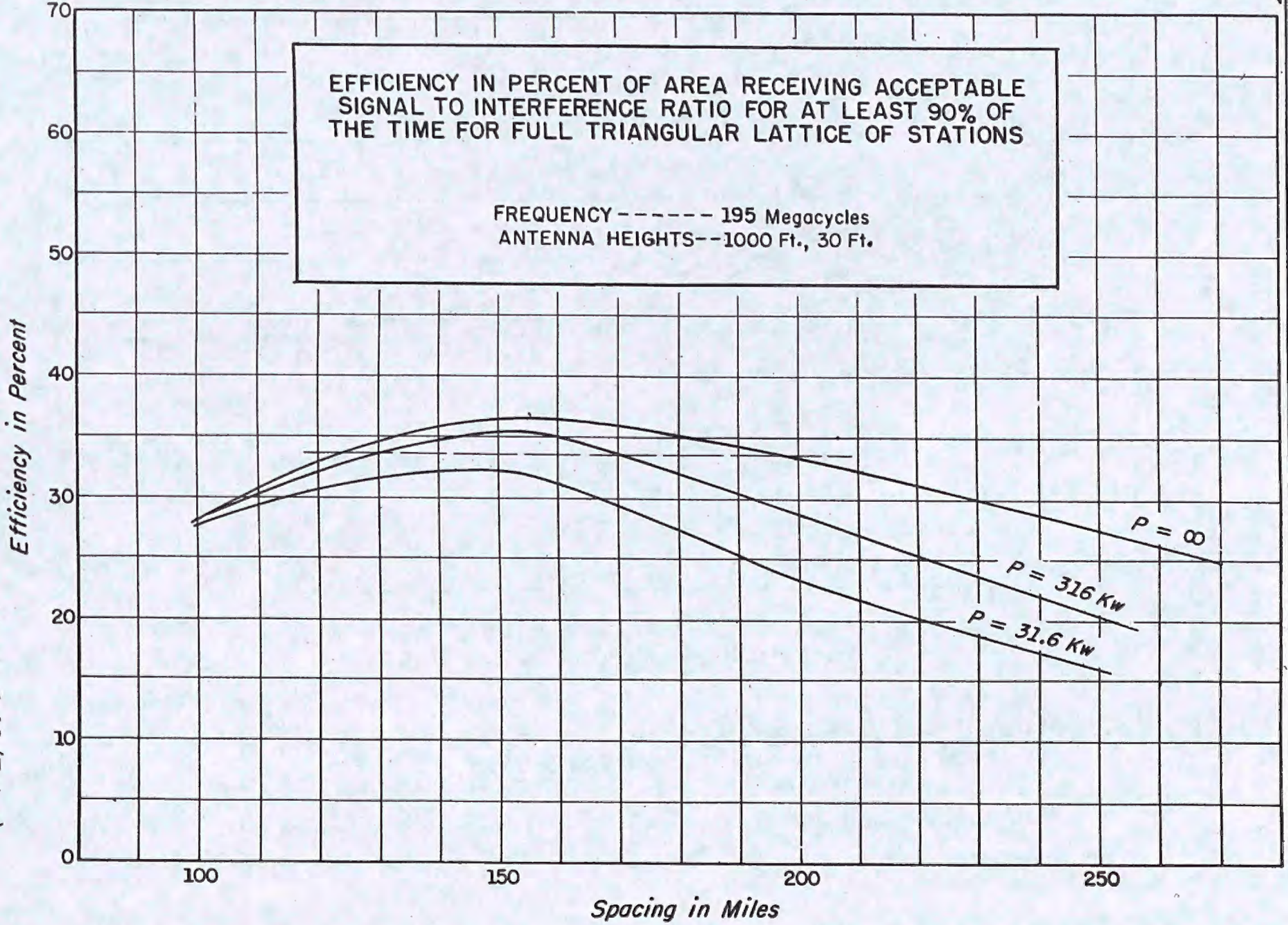
The Commission recognizes the economic problems which will be faced by UHF broadcasters where VHF broadcasting exists (para. 189) and expresses (para. 197) the pious hope that "UHF stations will eventually compete on a favorable basis with stations in the VHF". But, by giving excessive co-channel protection to VHF stations and inadequate protection to UHF stations the Commission has arbitrarily and adversely affected the ability of UHF stations to compete. The economic problems faced by UHF broadcasters are sufficiently serious without the interjection of additional difficulties by Rules and Tables based upon demonstrably incorrect engineering assumptions. The arbitrary penalization of UHF cannot be said to result in a "fair" or "equitable" distribution of television service or "the larger and more effective use" of television in the public interest.

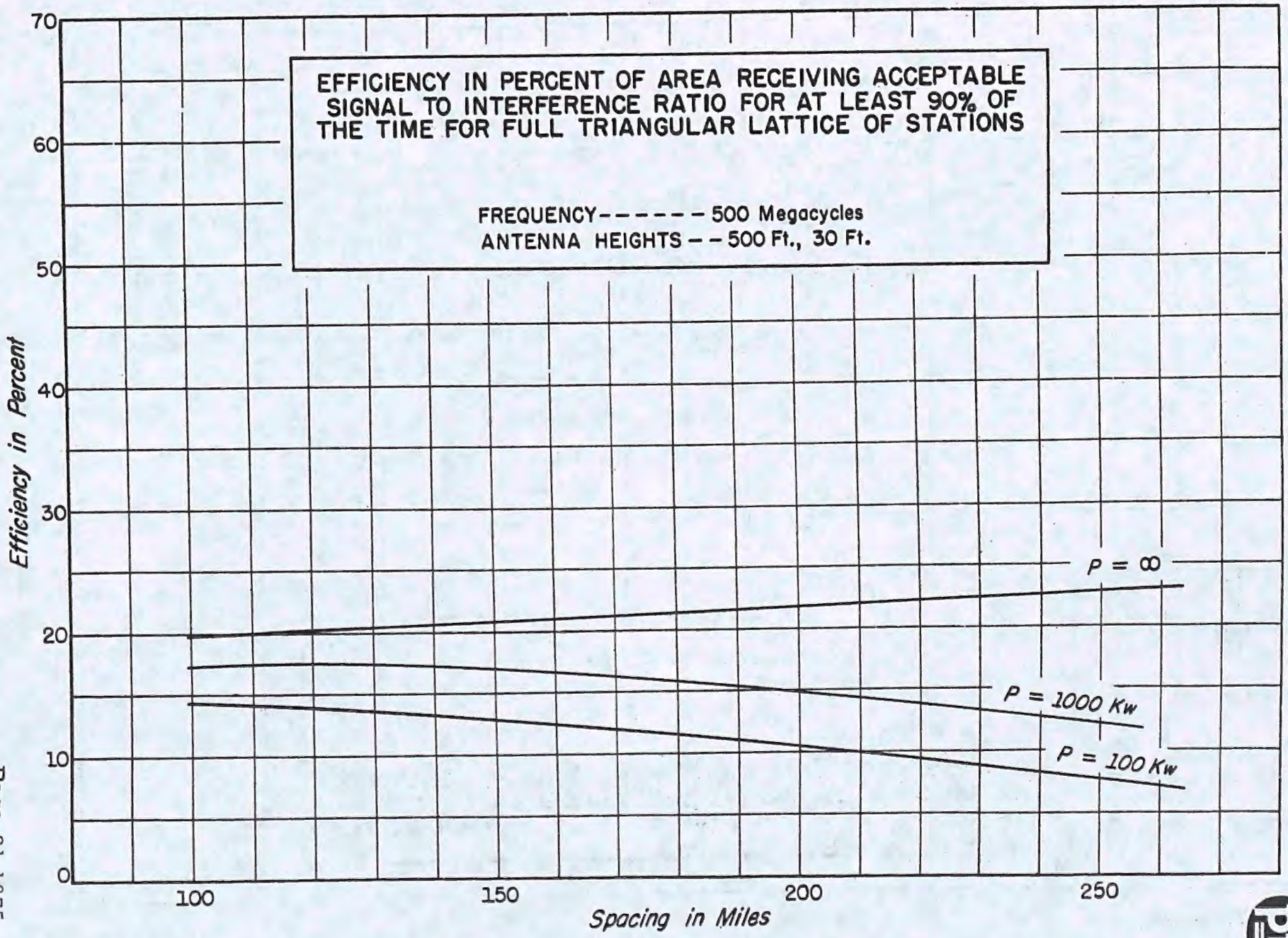
In short, the Commission's preoccupation with the concept of administrative simplicity has led it into the error of first treating all stations as if they were equal in order to facilitate standardization of rules concerning separation and other matters and then adopting rules designed to assure, so far as possible, that the standardization would be carried out in practice without regard to particular situations or local requirements. Efficient distribution of channels and the provision of the maximum number of television stations have been sacrificed to achieve a misleading appearance of simplicity of administration. The public interest, convenience and necessity have been abandoned to the theoretical convenience of the Commission. The small communities are to be subjected to rules drawn upon considerations applicable primarily or wholly to large cities. The apparent simplicity of administration is an illusion that will disappear as soon as the number and complexity of conflicting applications under the Standards emerge. The Commission thinks it has eliminated 307(b) contests between cities (it has not eliminated them all); but by creating a scarcity of frequencies it has created a bigger problem in each city where there will surely be more applicants than there are channels. The administrative burden created by competitive applicants for the limited number of frequencies by this artificial scarcity of channel assignments will far outweigh the administrative burden they are trying to eliminate – intercity 307(b) cases.

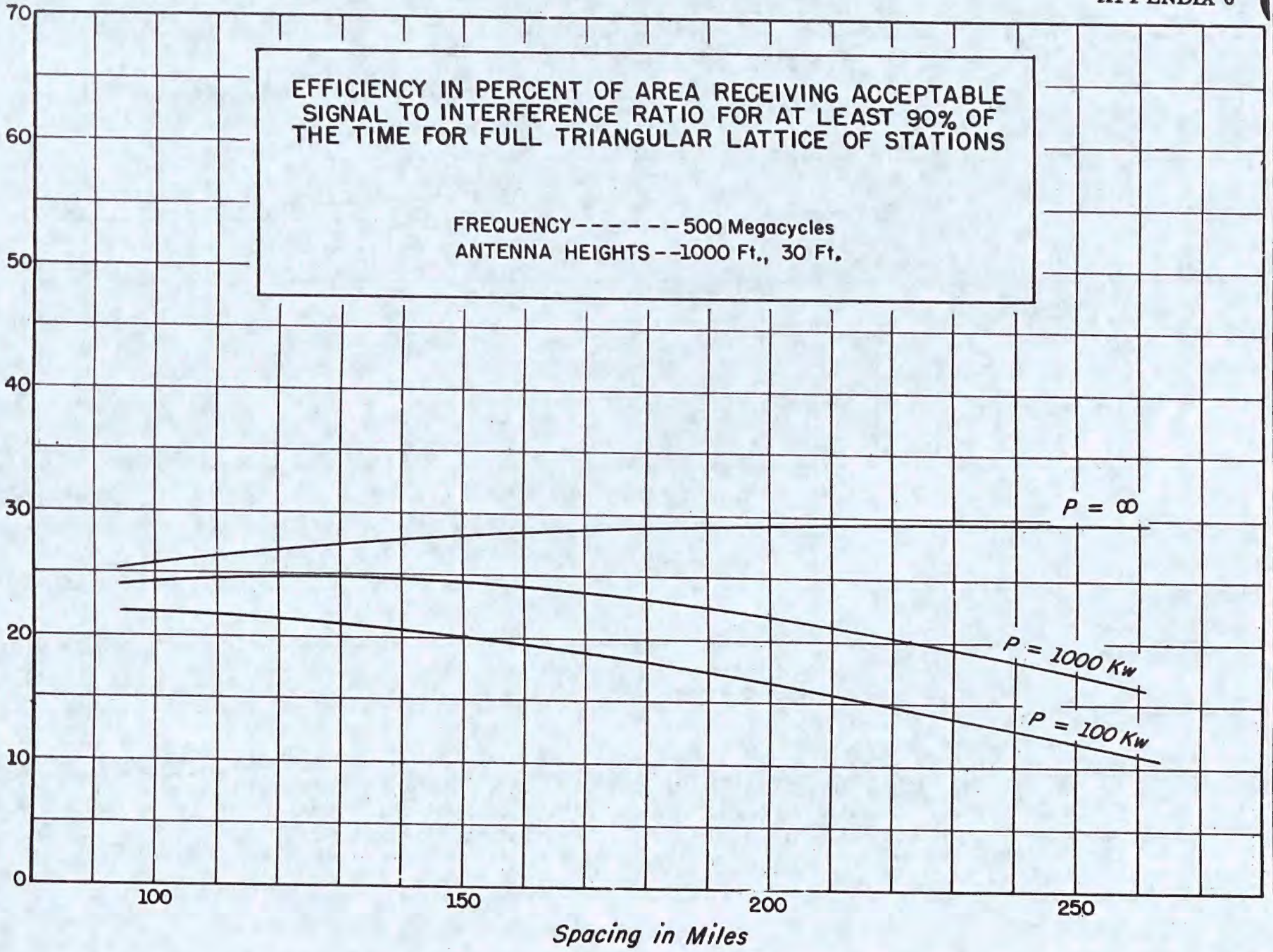

EFFICIENCY IN PERCENT OF AREA RECEIVING ACCEPTABLE SIGNAL TO INTERFERENCE RATIO FOR AT LEAST 90% OF THE TIME FOR FULL TRIANGULAR LATTICE OF STATIONS
FREQUENCY -------63 Megacycles
ANTENNA HEIGHTS--500 Ft., 30 Ft.
Efficiency in Percent
70
60
50
40
30
20
10
0
100
150
200
250
Spacing in Miles
P = ∞
P = 100 Kw
P = 10 Kw

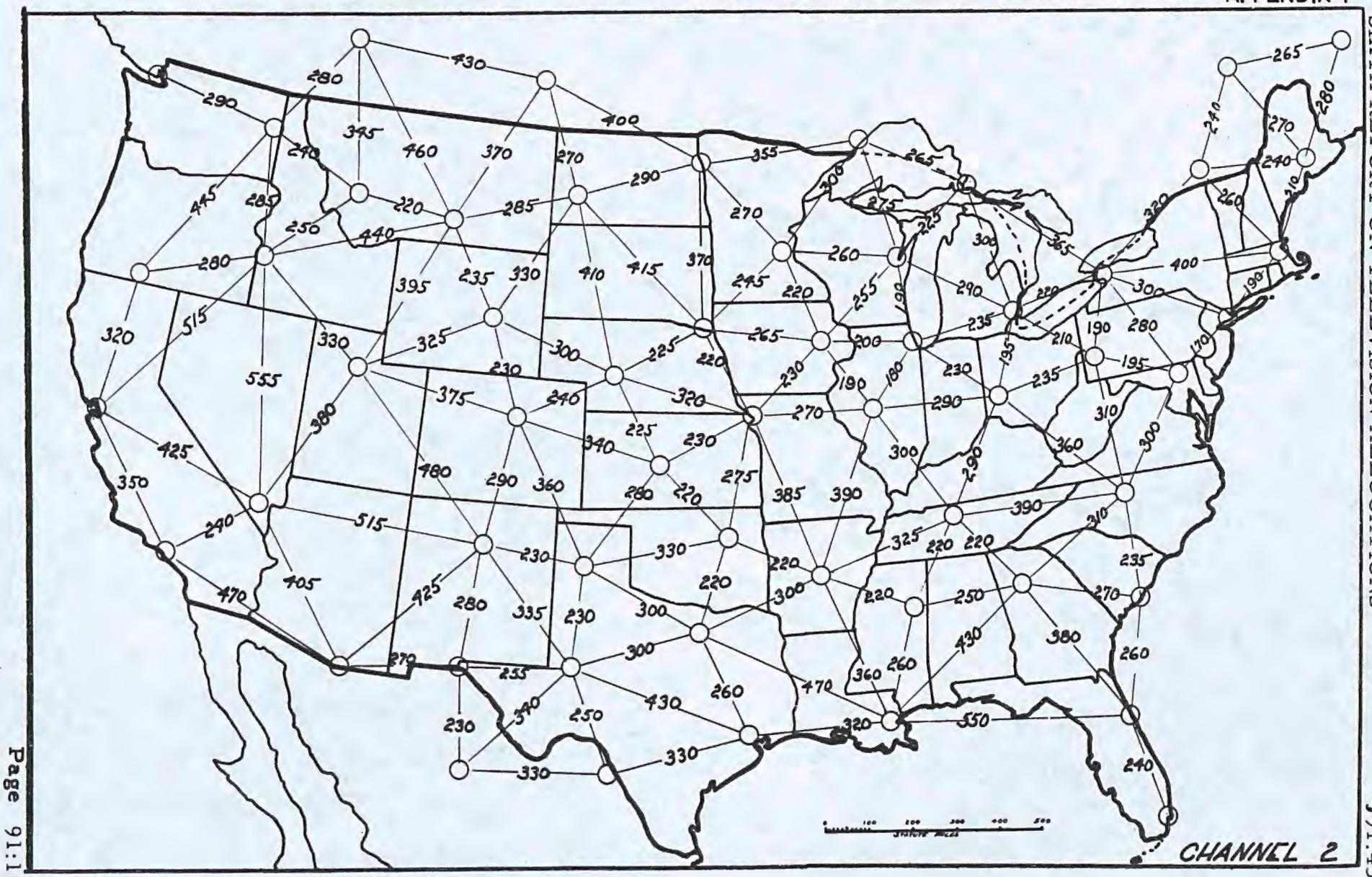

EFFICIENCY IN PERCENT OF AREA RECEIVING ACCEPTABLE SIGNAL TO INTERFERENCE RATIO FOR AT LEAST 90% OF THE TIME FOR FULL TRIANGULAR LATTICE OF STATIONS
FREQUENCY - - - - - - 63 Megacycles
ANTENNA HEIGHTS - -1000 Ft., 30 Ft.
Efficiency in Percent
70
60
50
40
30
20
10
0
100
150
200
250
Spacing in Miles
P = ∞
P = 100 Kw
P = 10 Kw

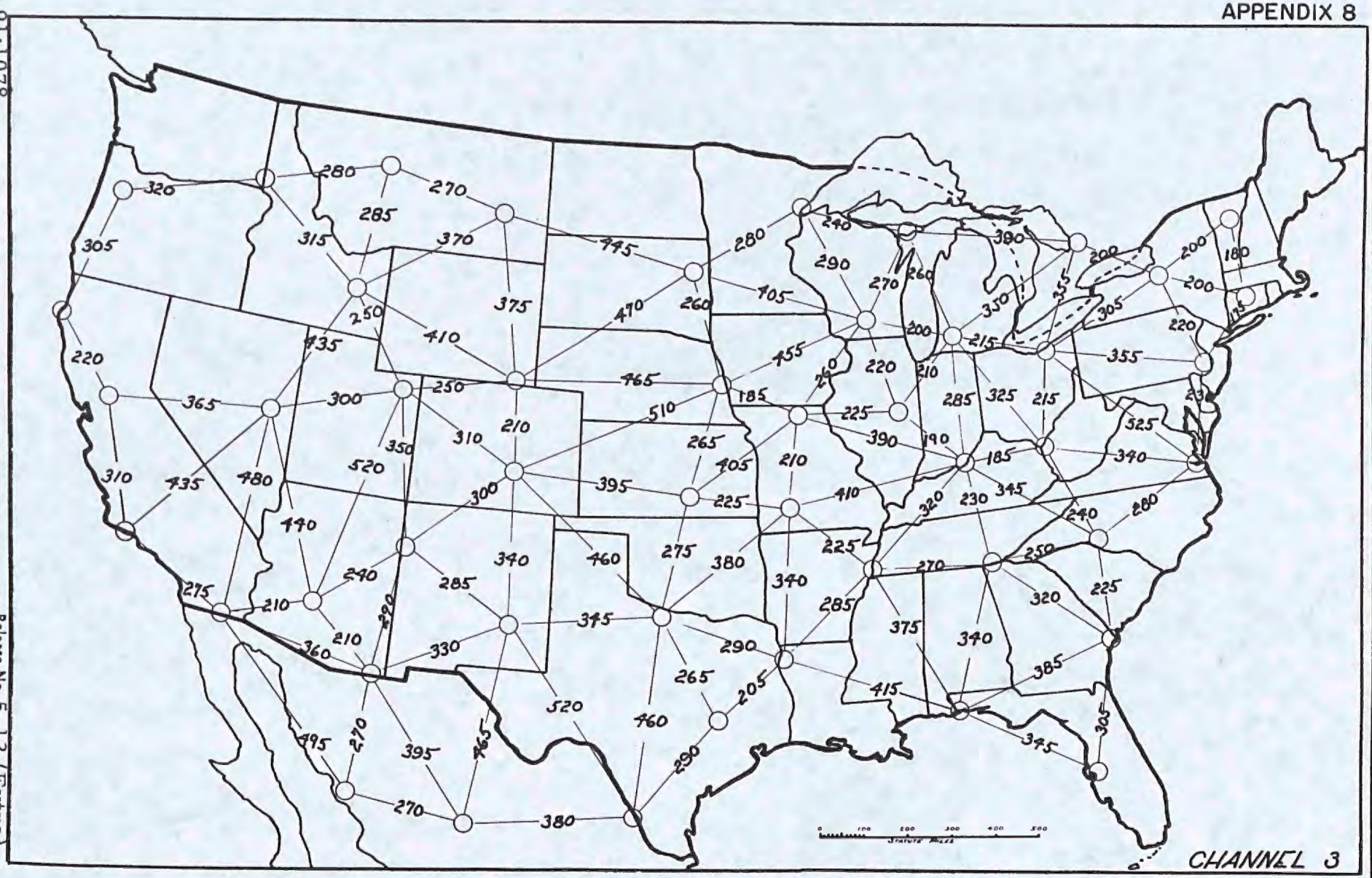

EFFICIENCY IN PERCENT OF AREA RECEIVING ACCEPTABLE SIGNAL TO INTERFERENCE RATIO FOR AT LEAST 90% OF THE TIME FOR FULL TRIANGULAR LATTICE OF STATIONS
FREQUENCY ------195 Megacycles
ANTENNA HEIGHTS -- 500 Ft., 30 Ft.
Efficiency in Percent
70
60
50
40
30
20
10
0
100
150
200
250
Spacing in Miles
P = ∞
P = 316 Kw
P = 31.6 Kw


EFFICIENCY IN PERCENT OF AREA RECEIVING ACCEPTABLE SIGNAL TO INTERFERENCE RATIO FOR AT LEAST 90% OF THE TIME FOR FULL TRIANGULAR LATTICE OF STATIONS
FREQUENCY ------ 195 Megacycles
ANTENNA HEIGHTS--1000 Ft., 30 Ft.
Efficiency in Percent
70
60
50
40
30
20
10
0
100
150
200
250
Spacing in Miles
P = ∞
P = 316 Kw
P = 31.6 Kw

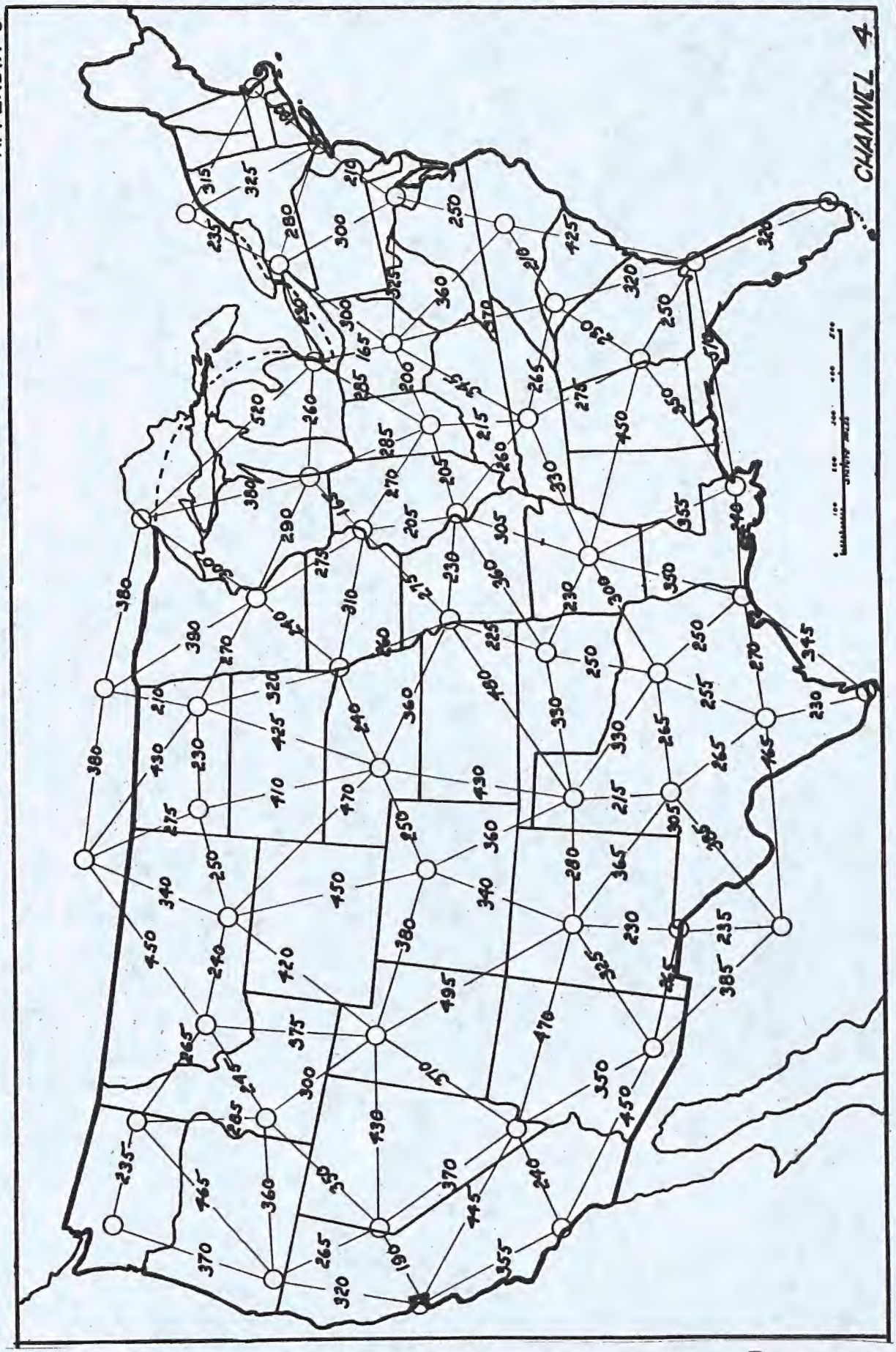

EFFICIENCY IN PERCENT OF AREA RECEIVING ACCEPTABLE SIGNAL TO INTERFERENCE RATIO FOR AT LEAST 90% OF THE TIME FOR FULL TRIANGULAR LATTICE OF STATIONS
FREQUENCY------ 500 Megacycles
ANTENNA HEIGHTS -- 500 Ft., 30 Ft.
Efficiency in Percent
70
60
50
40
30
20
10
0
100
150
200
250
Spacing in Miles
P = ∞
P = 1000 Kw
P = 100 Kw


EFFICIENCY IN PERCENT OF AREA RECEIVING ACCEPTABLE SIGNAL TO INTERFERENCE RATIO FOR AT LEAST 90% OF THE TIME FOR FULL TRIANGULAR LATTICE OF STATIONS
FREQUENCY - - - - - - 500 Megacycles
ANTENNA HEIGHTS - - 1000 Ft., 30 Ft.
Efficiency in Percent
Spacing in Miles
P = ∞
P = 1000 Kw
P = 100 Kw
0
10
20
30
40
50
60
70
100
150
200
250

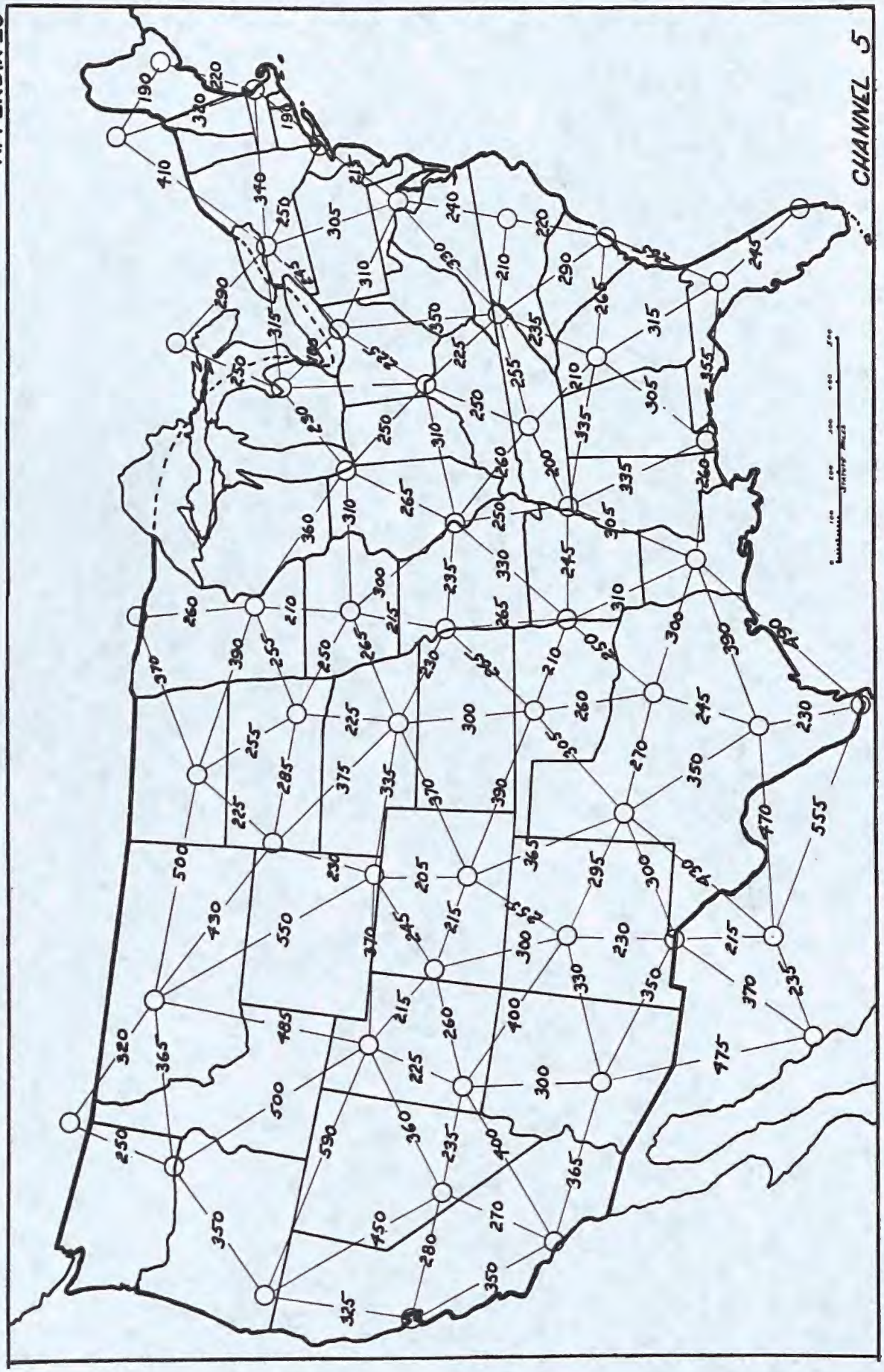

CHANNEL 2


CHANNEL 3

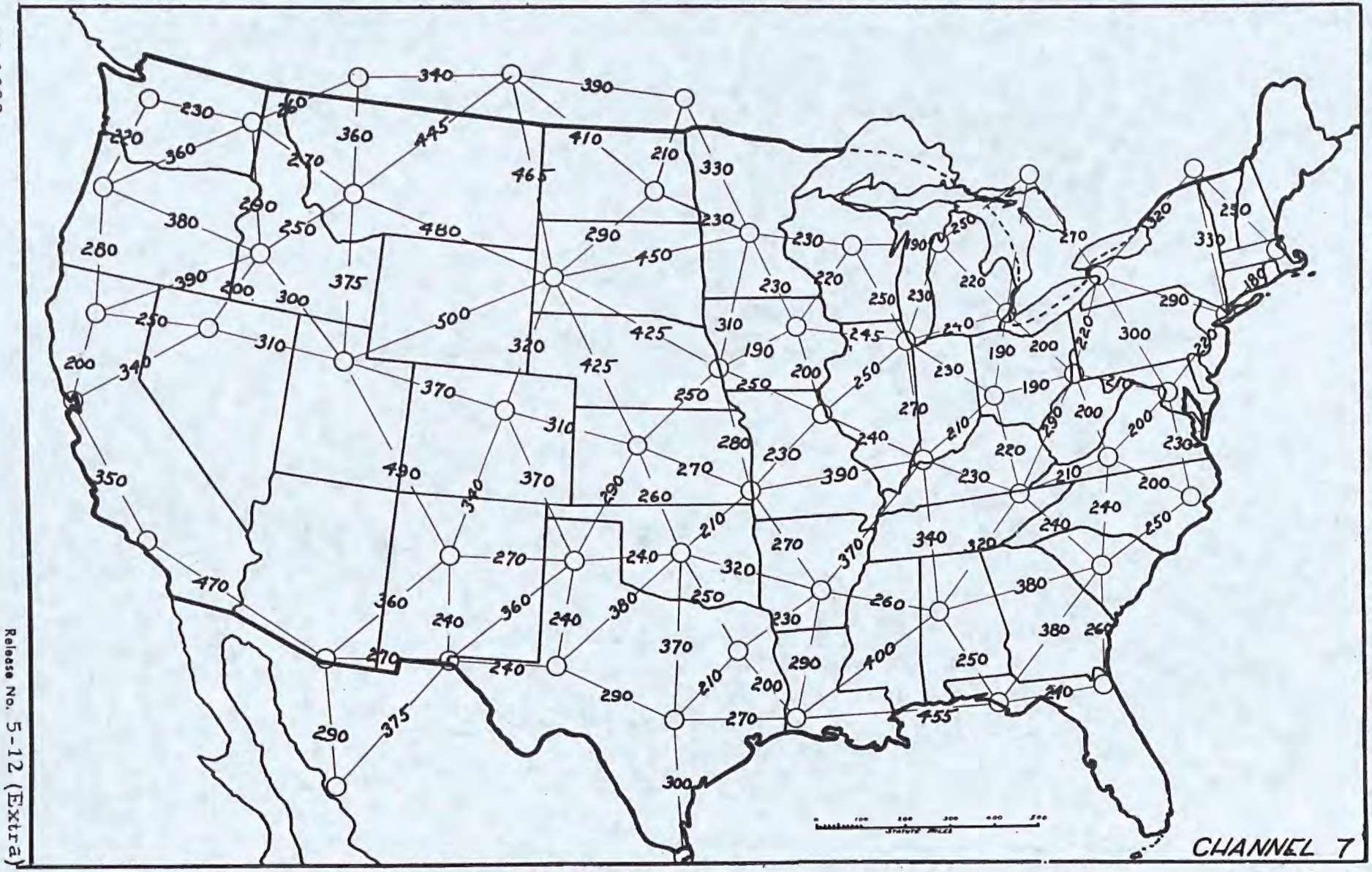
APPENDIX 9



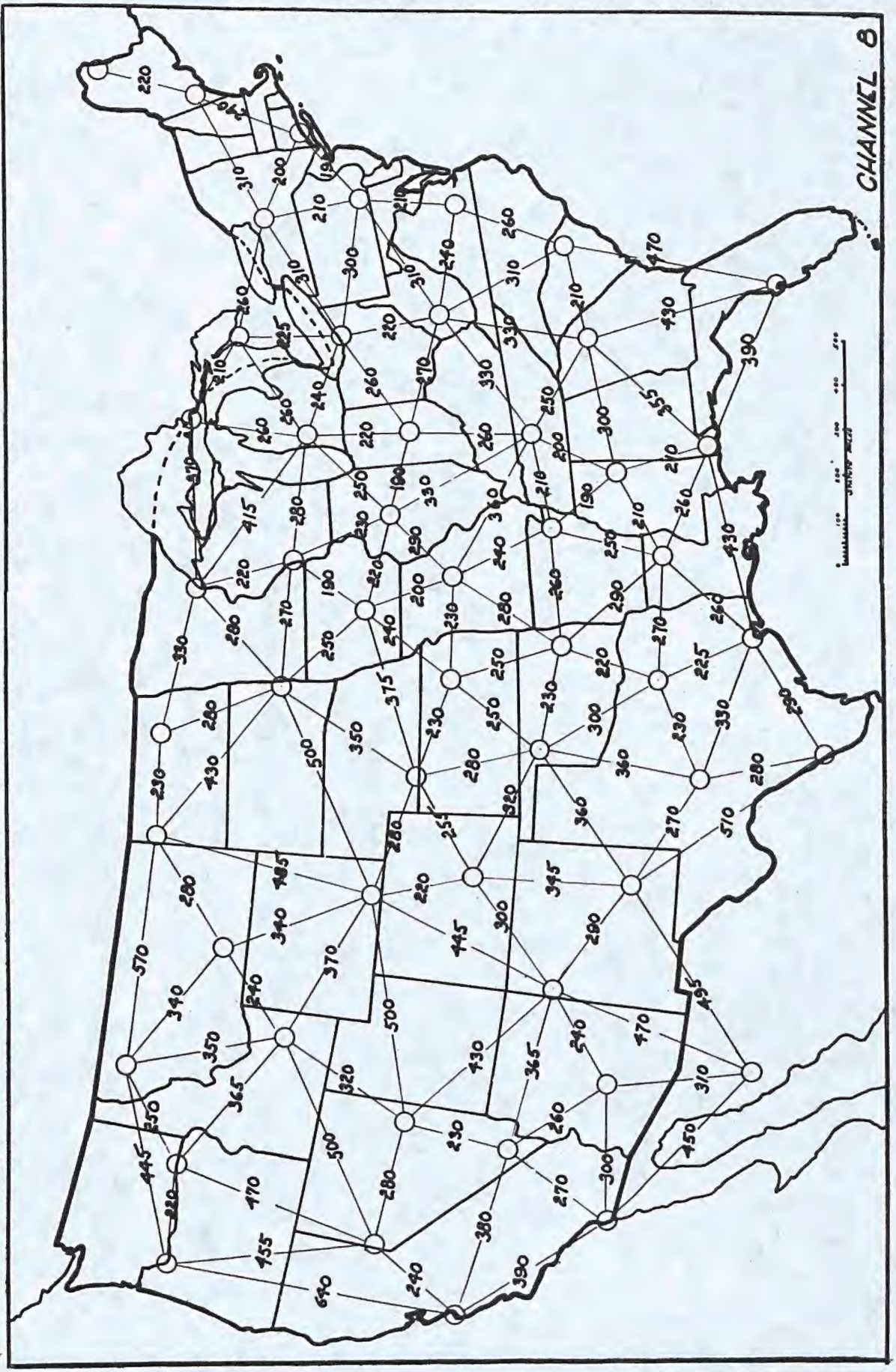
APPENDIX 10



CHANNEL 6

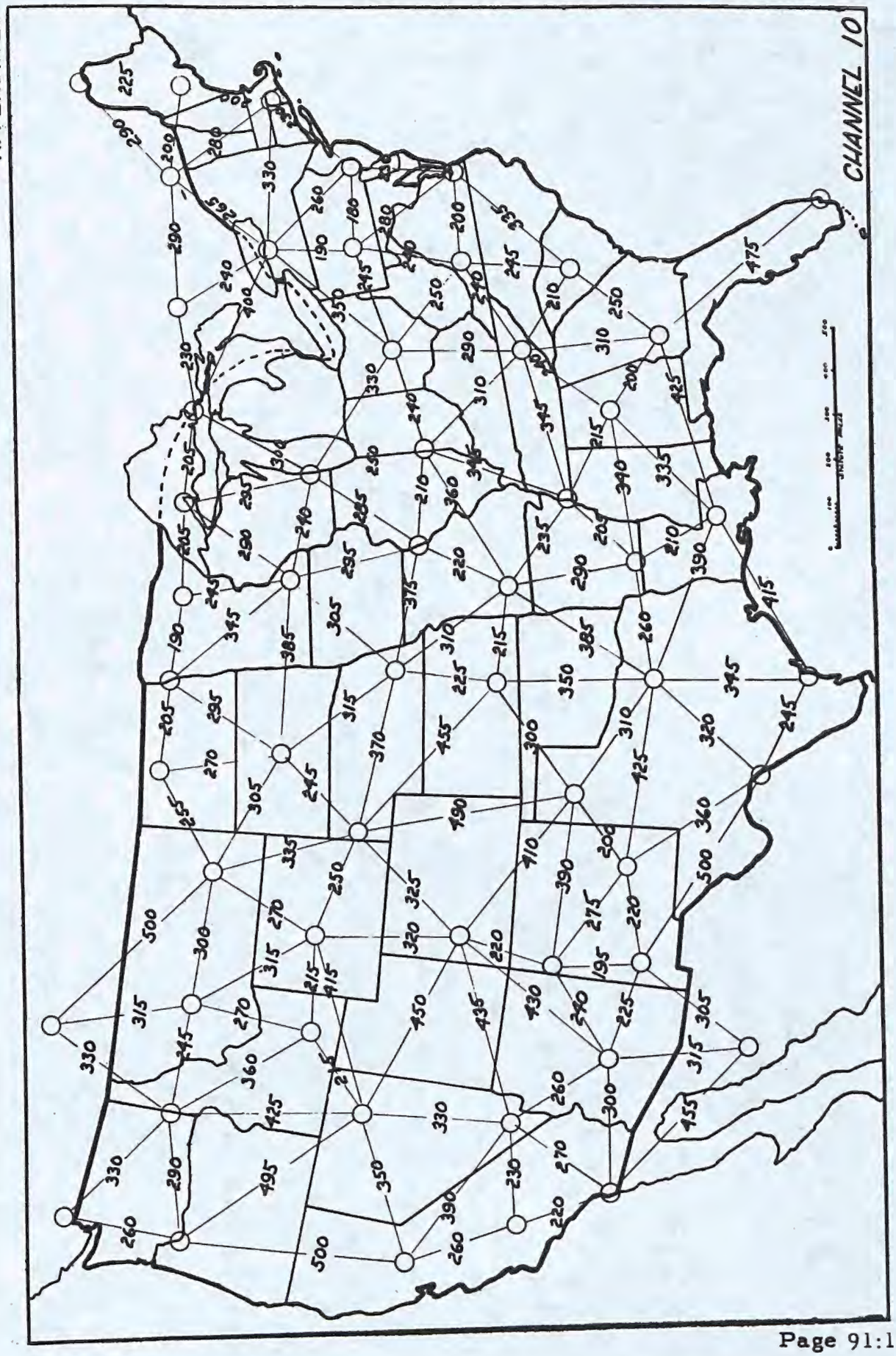

CHANNEL 7

APPENDIX 13

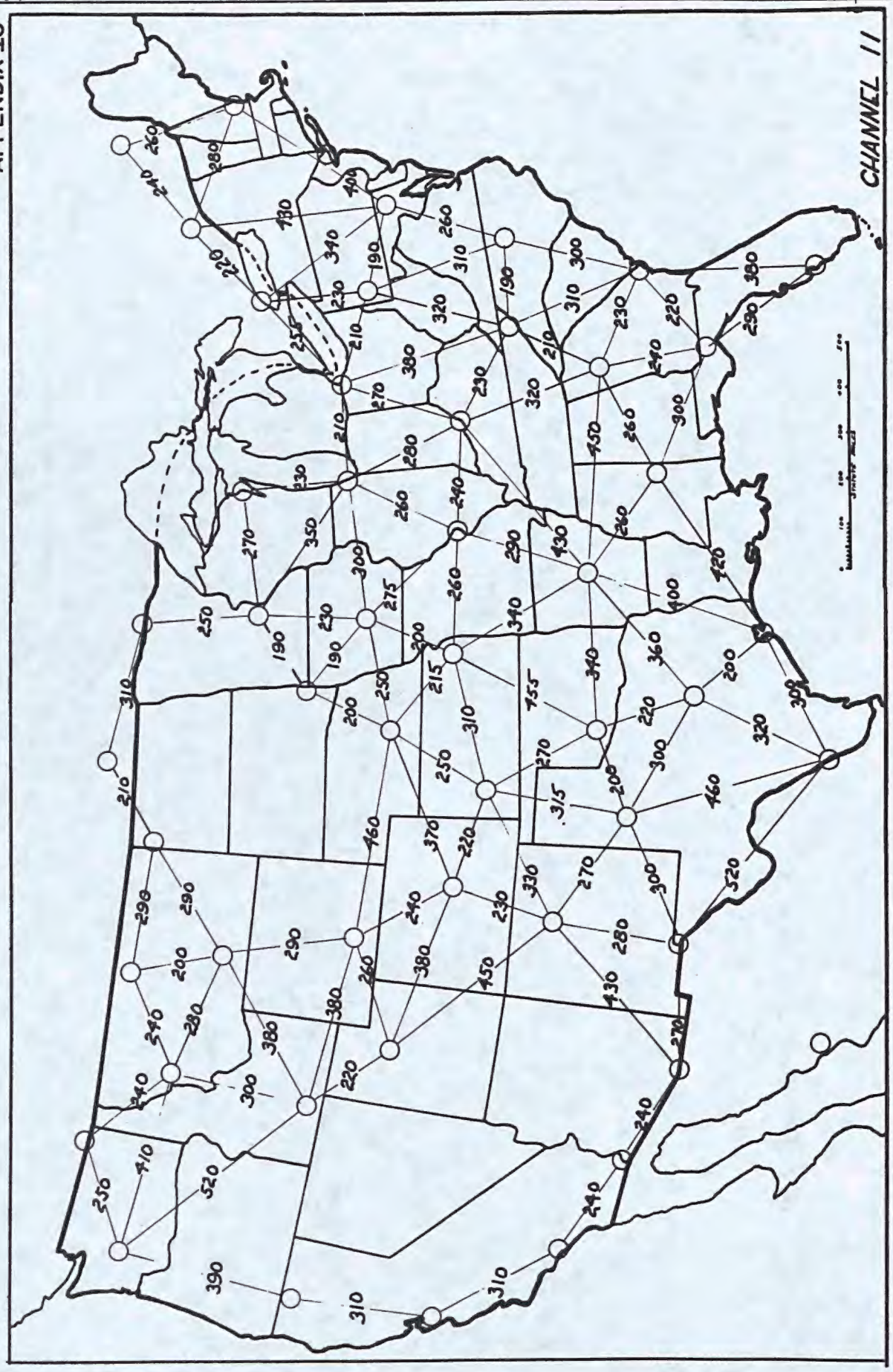


APPENDIX 14

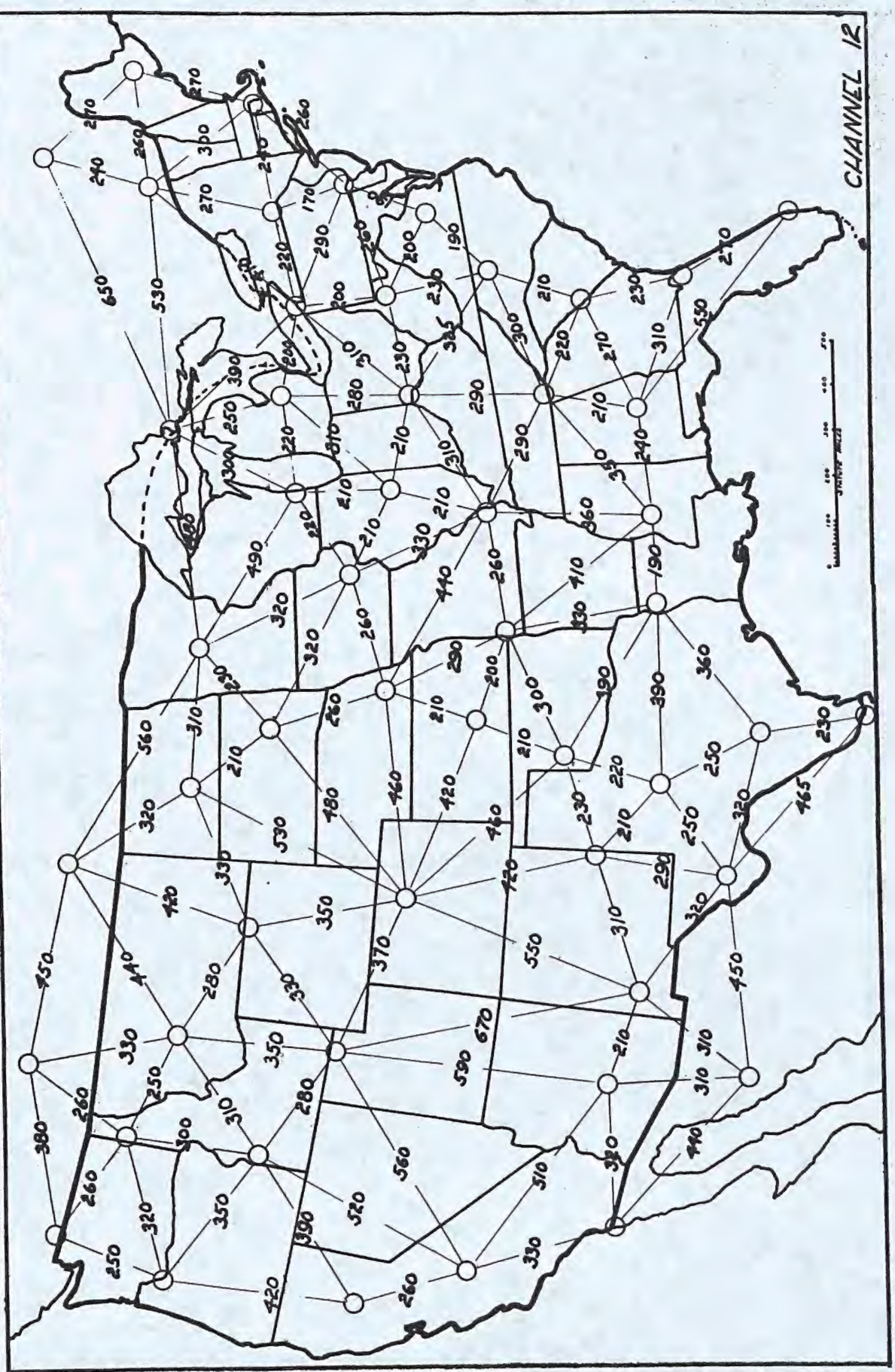
APPENDIX 15



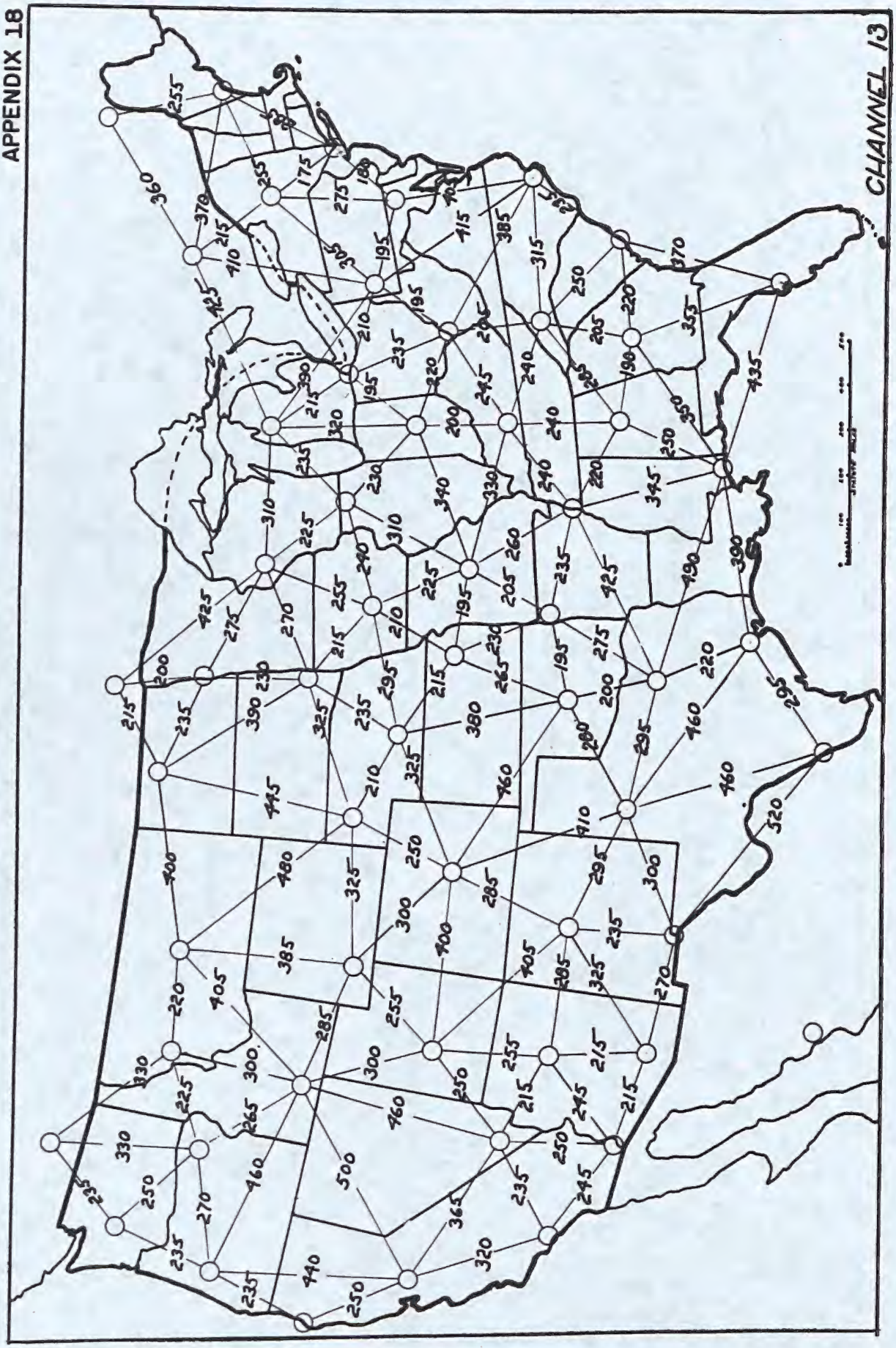
APPENDIX 16

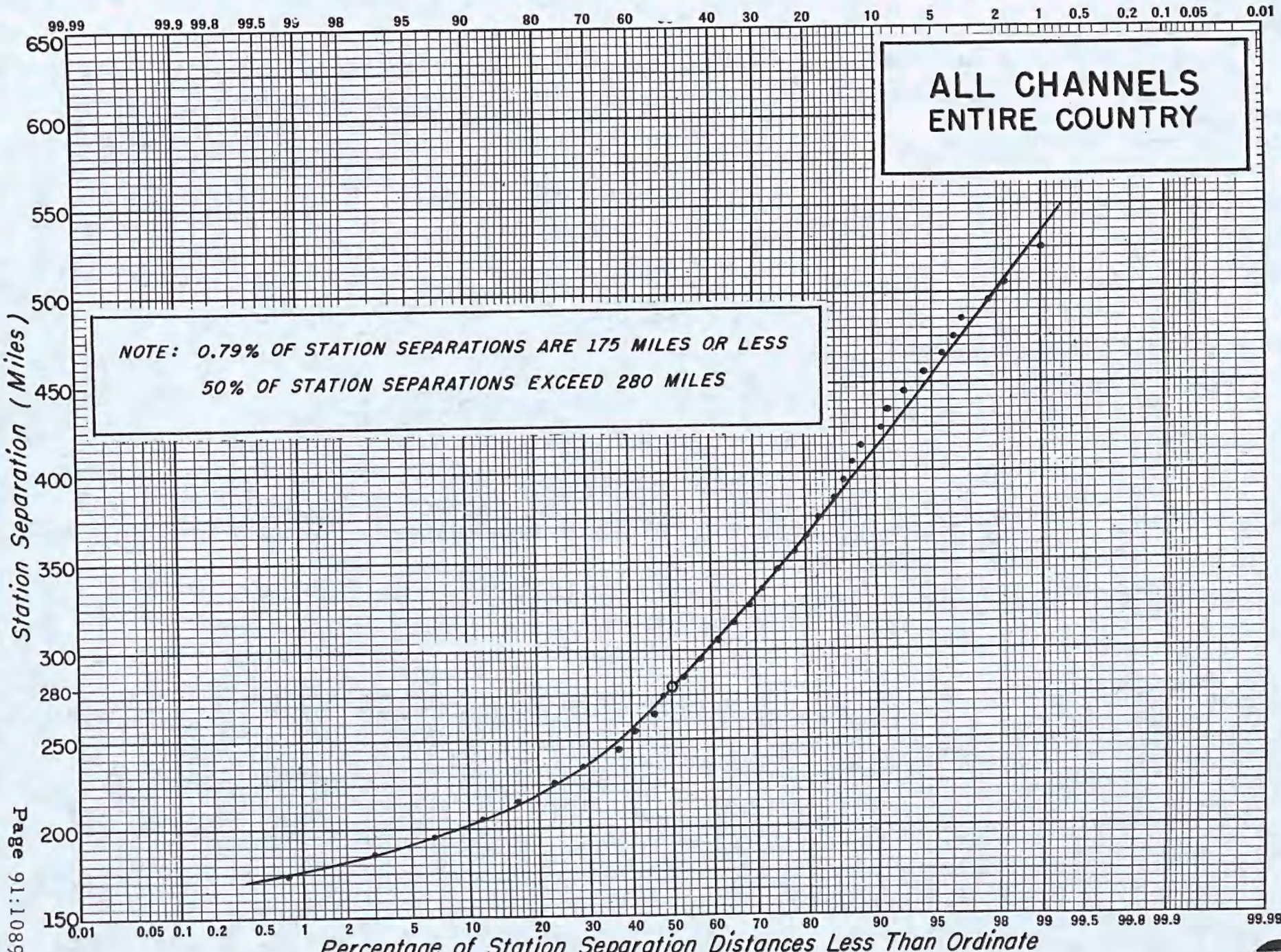


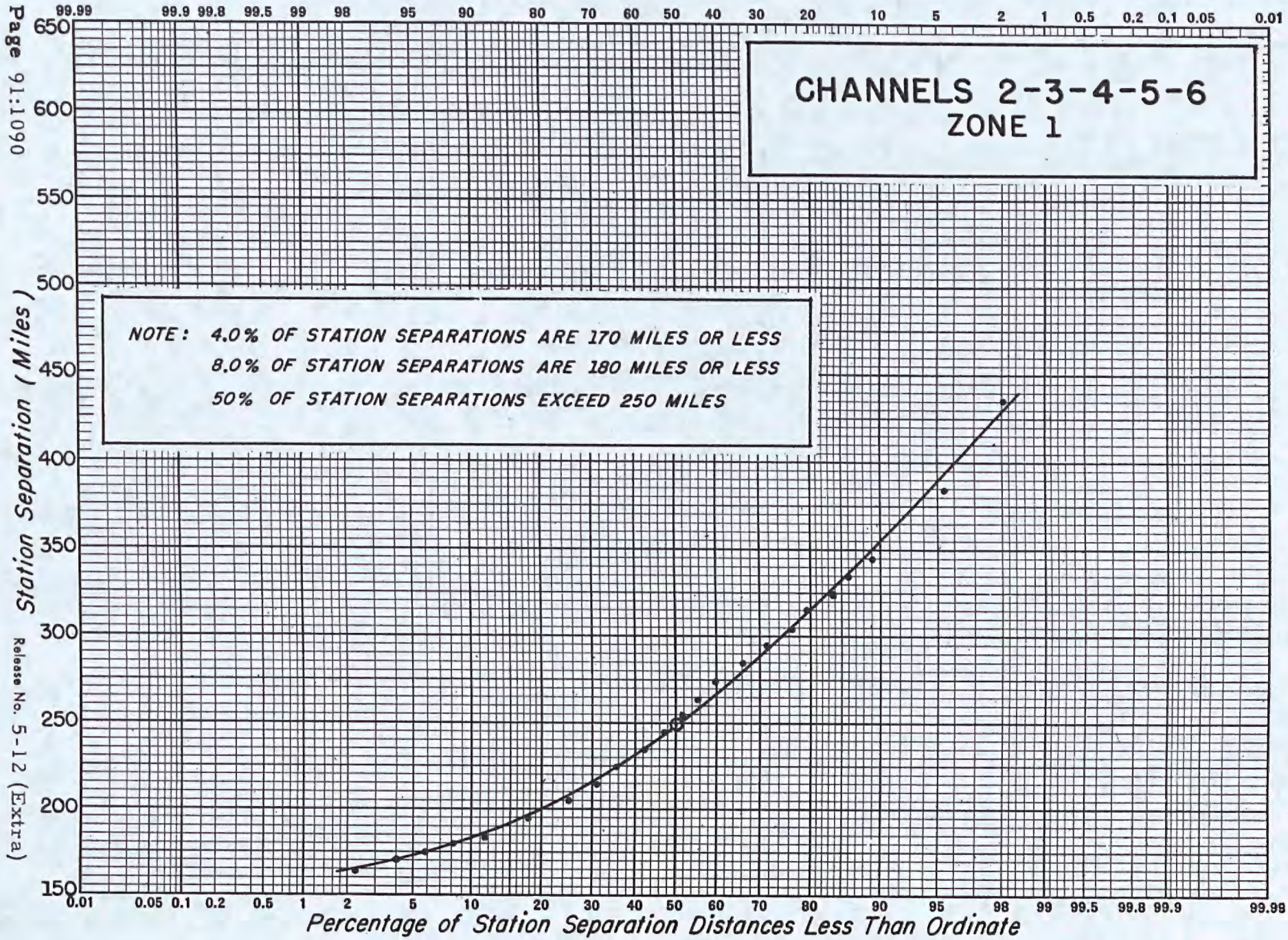
APPENDIX 17



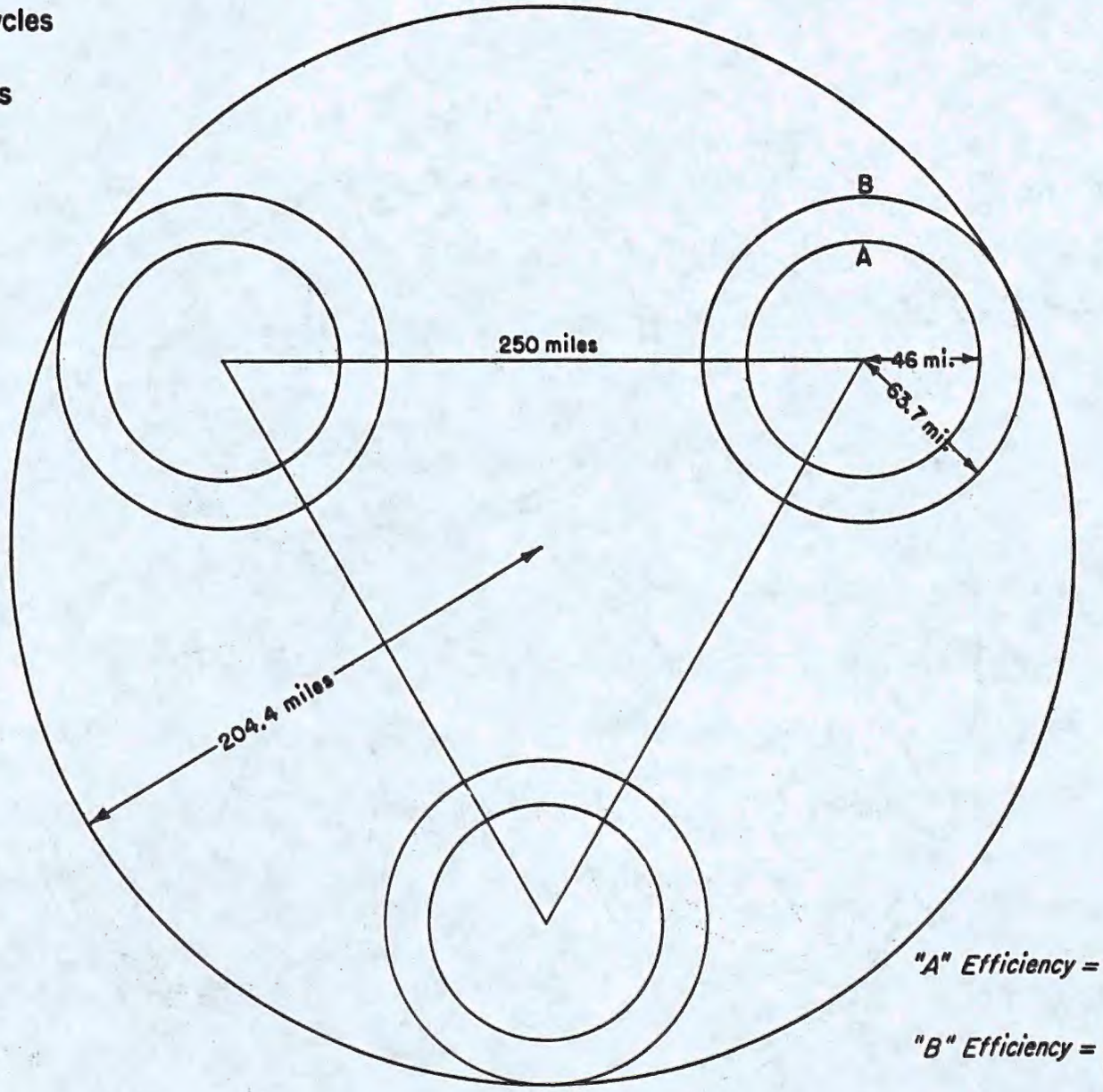
APPENDIX 18




ALL CHANNELS
ENTIRE COUNTRY
NOTE: 0.79% OF STATION SEPARATIONS ARE 175 MILES OR LESS
50% OF STATION SEPARATIONS EXCEED 280 MILES
Station Separation (Miles)
650
600
550
500
450
400
350
300
280
250
200
150
99.99 99.9 99.8 99.5 99 98 95 90 80 70 60 40 30 20 10 5 2 1 0.5 0.2 0.1 0.05 0.01
0.01 0.05 0.1 0.2 0.5 1 2 5 10 20 30 40 50 60 70 80 90 95 98 99 99.5 99.8 99.9 99.99
Percentage of Station Separation Distances Less Than Ordinate


CHANNELS 2-3-4-5-6
ZONE 1
NOTE: 4.0% OF STATION SEPARATIONS ARE 170 MILES OR LESS
8.0% OF STATION SEPARATIONS ARE 180 MILES OR LESS
50% OF STATION SEPARATIONS EXCEED 250 MILES
Station Separation (Miles)
650
600
550
500
450
400
350
300
250
200
150
99.99 99.9 99.8 99.5 99 98 95 90 80 70 60 50 40 30 20 10 5 2 1 0.5 0.2 0.1 0.05 0.01
0.01 0.05 0.1 0.2 0.5 1 2 5 10 20 30 40 50 60 70 80 90 95 98 99 99.5 99.8 99.9 99.99
Percentage of Station Separation Distances Less Than Ordinate

195 megacycles
1000 feet
316 kilowatts

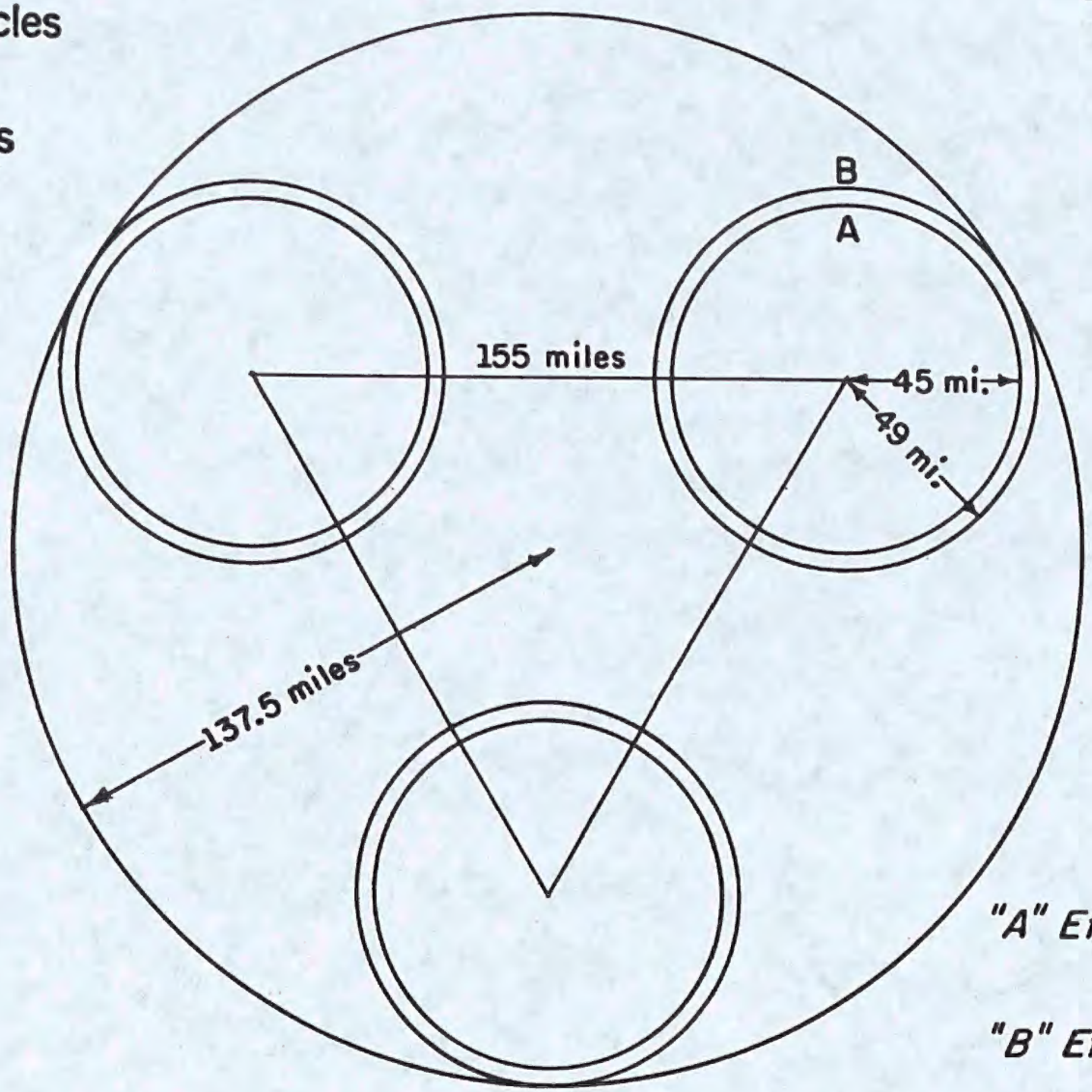


$$\text{"A" Efficiency} = \frac{200A_A}{\sqrt{3}\cdot S^2} = 12.3\%$$

$$\text{"B" Efficiency} = \frac{200A_B}{\sqrt{3}\cdot S^2} = 23.6\%$$

A = Service Area
S = Cochannel Spacing

195 megacycles
1000 feet
316 kilowatts

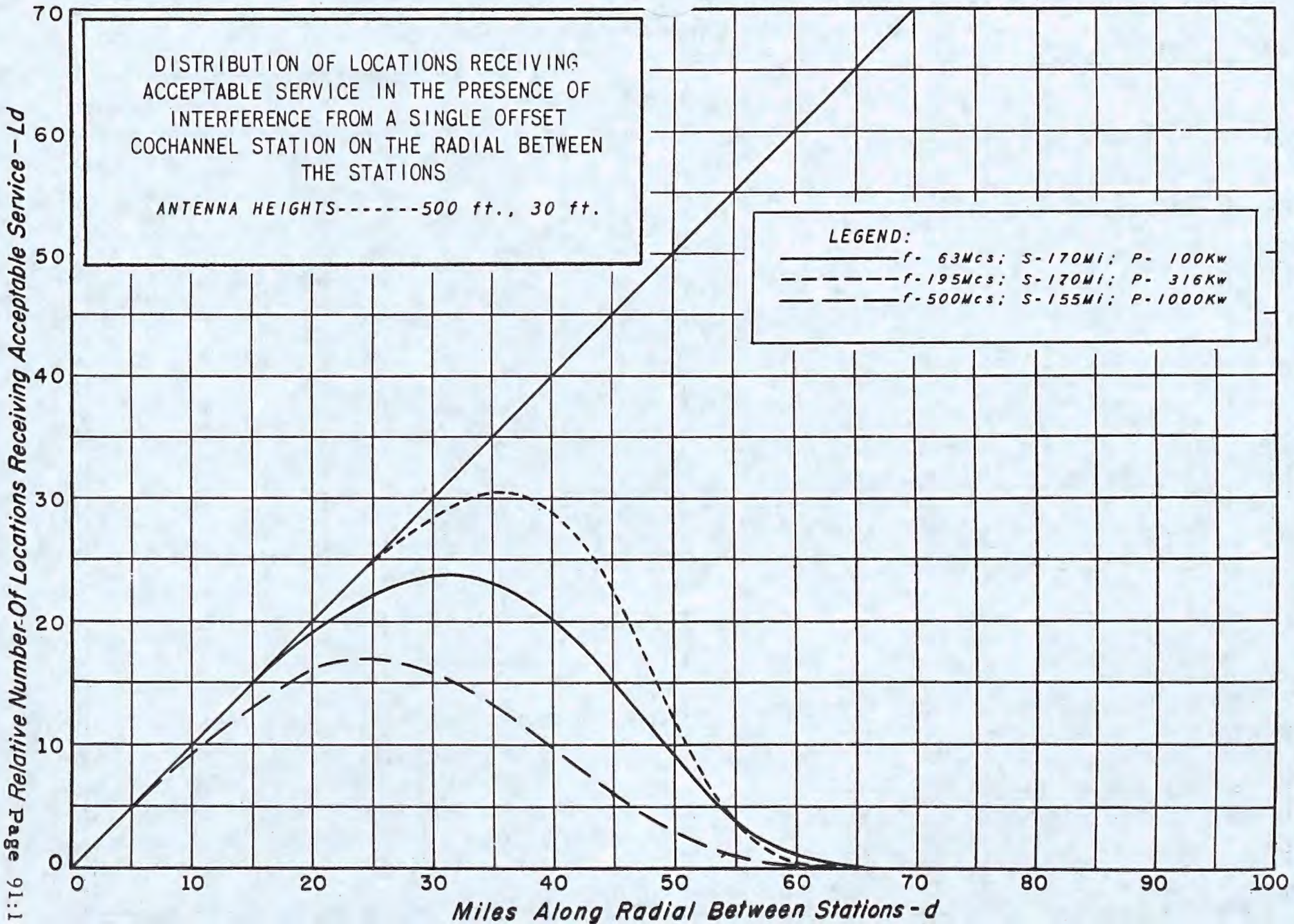


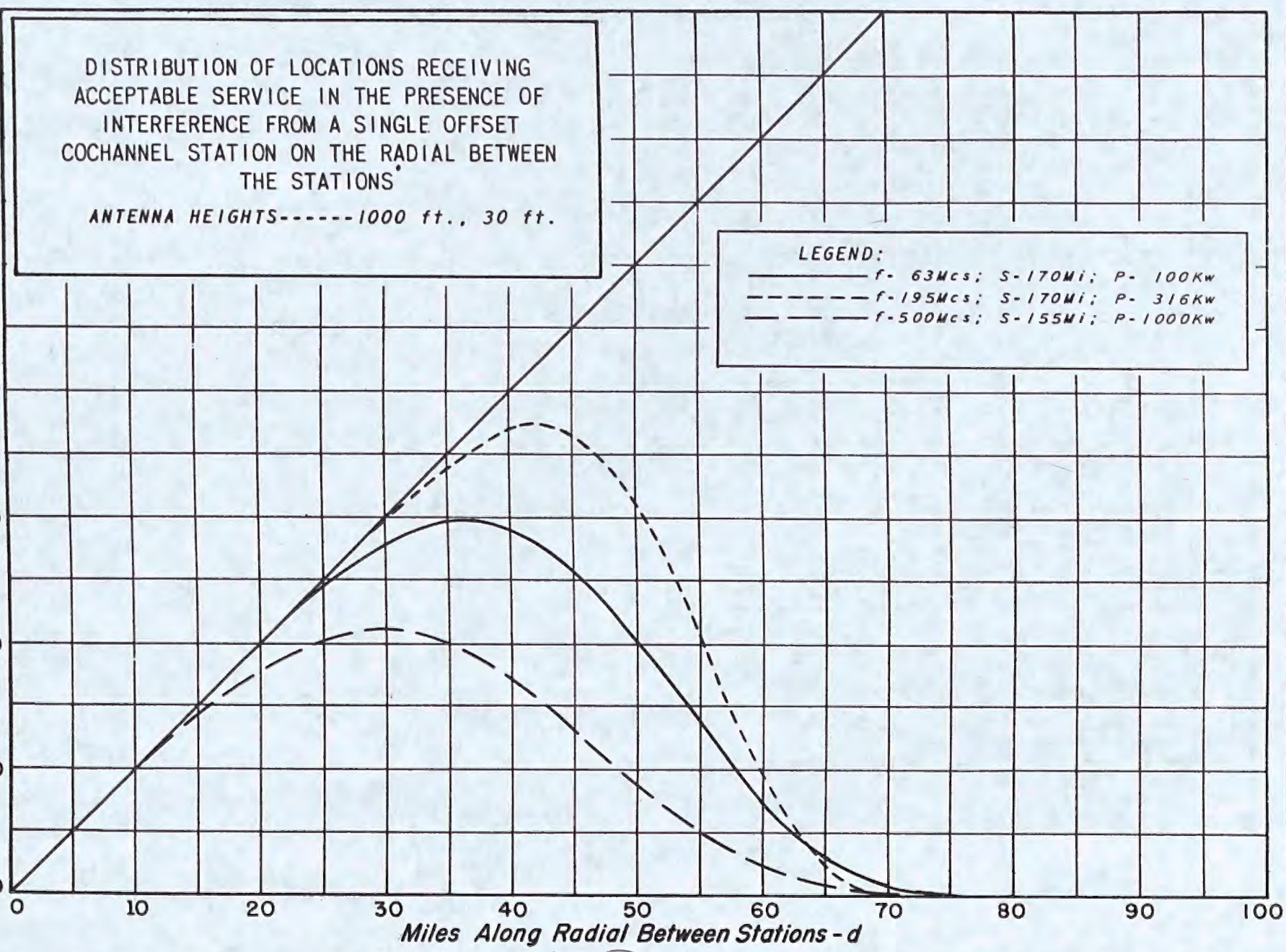
$$\text{"A" Efficiency} = \frac{200A_A}{\sqrt{3} \cdot S^2} = 30.5\%$$

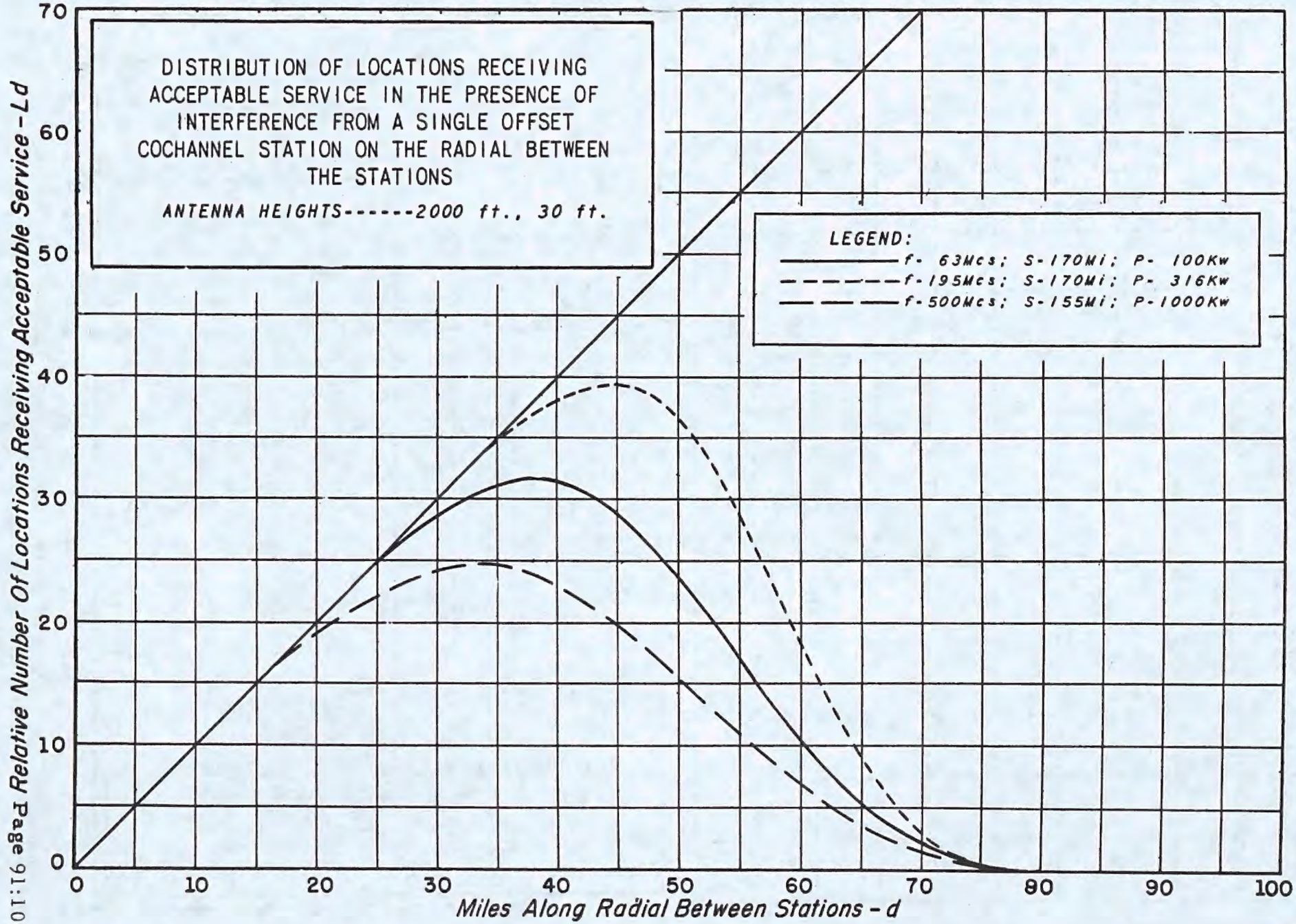
$$\text{"B" Efficiency} = \frac{200A_B}{\sqrt{3} \cdot S^2} = 37.4\%$$

A = Service Area

S = Cochannel Spacing


DISTRIBUTION OF LOCATIONS RECEIVING ACCEPTABLE SERVICE IN THE PRESENCE OF INTERFERENCE FROM A SINGLE OFFSET COCHANNEL STATION ON THE RADIAL BETWEEN THE STATIONS
ANTENNA HEIGHTS-------500 ft., 30 ft.
LEGEND:
f- 63Mcs; S-170Mi; P- 100Kw
f-195Mcs; S-170Mi; P- 316Kw
f-500Mcs; S-155Mi; P-1000Kw
Page Relative Number-Of Locations Receiving Acceptable Service - Ld
0
10
20
30
40
50
60
70
80
90
100
Miles Along Radial Between Stations - d


DISTRIBUTION OF LOCATIONS RECEIVING ACCEPTABLE SERVICE IN THE PRESENCE OF INTERFERENCE FROM A SINGLE OFFSET COCHANNEL STATION ON THE RADIAL BETWEEN THE STATIONS
ANTENNA HEIGHTS------1000 ft., 30 ft.
LEGEND:
f- 63Mcs; S-170Mi; P- 100Kw
f-195Mcs; S-170Mi; P- 316Kw
f-500Mcs; S-155Mi; P-1000Kw
Relative Number Of Locations Receiving Acceptable Service - Ld
Miles Along Radial Between Stations - d
0
10
20
30
40
50
60
70
80
90
100


DISTRIBUTION OF LOCATIONS RECEIVING ACCEPTABLE SERVICE IN THE PRESENCE OF INTERFERENCE FROM A SINGLE OFFSET COCHANNEL STATION ON THE RADIAL BETWEEN THE STATIONS
ANTENNA HEIGHTS------2000 ft., 30 ft.
LEGEND:
f- 63Mcs; S-170Mi; P- 100Kw
f-195Mcs; S-170Mi; P- 316Kw
f-500Mcs; S-155Mi; P-1000Kw
Relative Number Of Locations Receiving Acceptable Service - Ld
Miles Along Radial Between Stations - d
0
10
20
30
40
50
60
70
80
90
100

DISTRIBUTION OF LOCATIONS RECEIVING ACCEPTABLE SERVICE IN THE PRESENCE OF INTERFERENCE FROM A SINGLE OFFSET COCHANNEL STATION ON THE RADIAL BETWEEN THE STATIONS

ANTENNA HEIGHTS-------500 ft., 30 ft.

LEGEND:

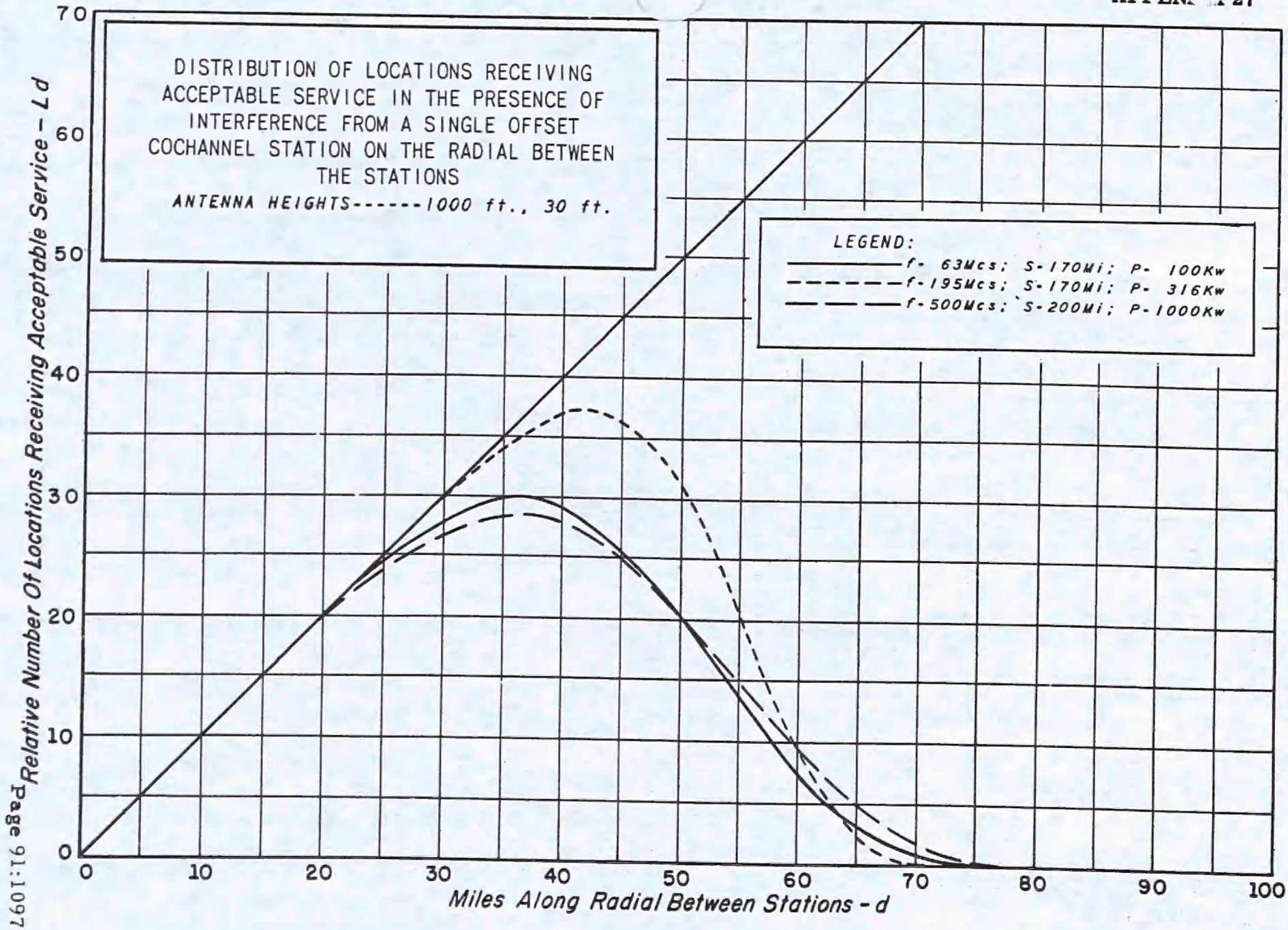
- ——— *f- 63Mcs; S-170Mi; P- 100Kw*
- – – – – *f-195Mcs; S-170Mi; P- 316Kw*
- — — — *f-500Mcs; S-200Mi; P-1000Kw*

Relative Number Of Locations Receiving Acceptable Service - Ld

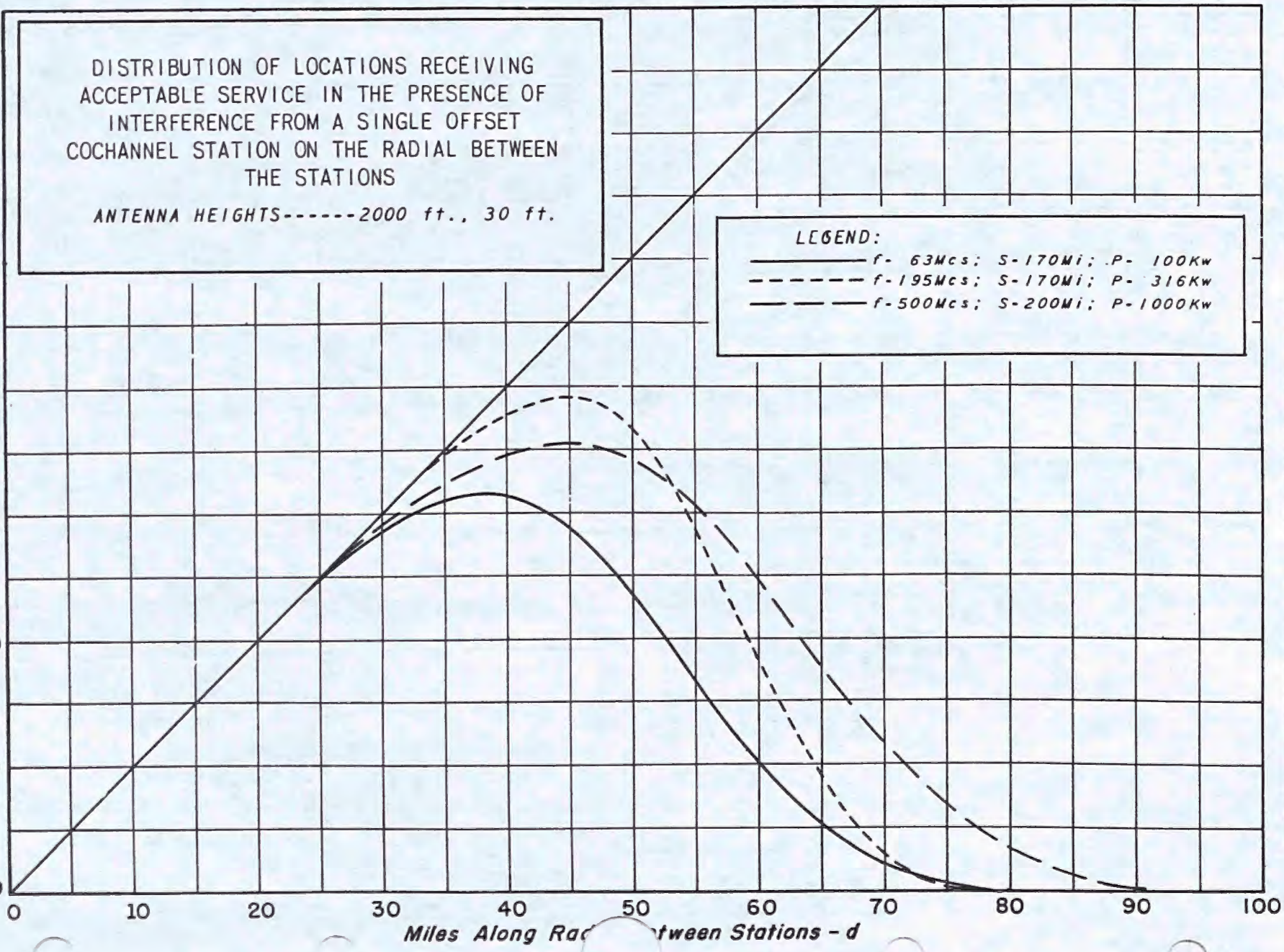
0 10 20 30 40 50 60 70

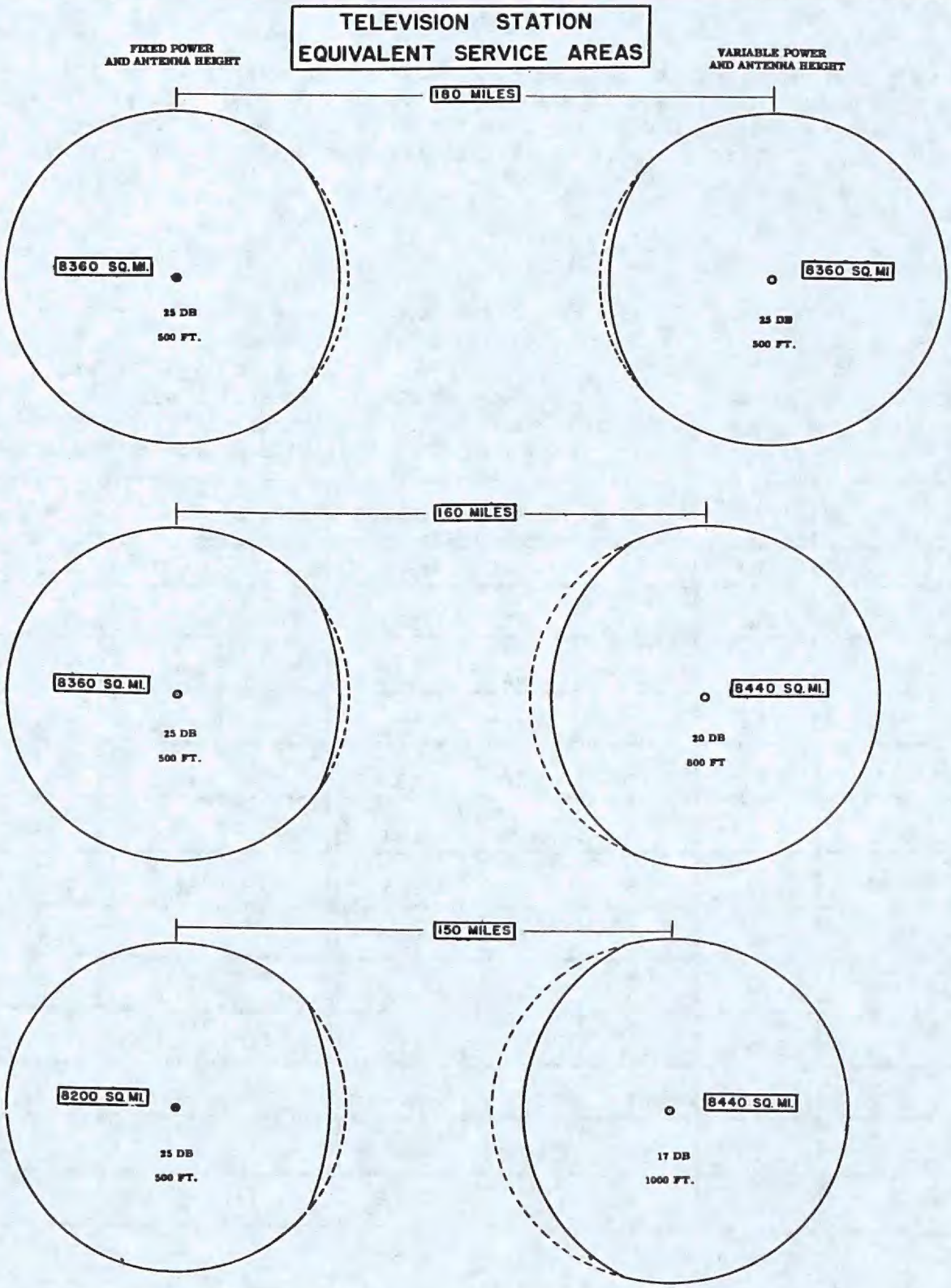
0 10 20 30 40 50 60 70 80 90 100

Miles Along Radial Between Staticns - d


DISTRIBUTION OF LOCATIONS RECEIVING ACCEPTABLE SERVICE IN THE PRESENCE OF INTERFERENCE FROM A SINGLE OFFSET COCHANNEL STATION ON THE RADIAL BETWEEN THE STATIONS
ANTENNA HEIGHTS------1000 ft., 30 ft.
LEGEND:
f- 63Mcs; S-170Mi; P- 100Kw
f-195Mcs; S-170Mi; P- 316Kw
f-500Mcs; S-200Mi; P-1000Kw
Relative Number Of Locations Receiving Acceptable Service - Ld
Miles Along Radial Between Stations - d
0
10
20
30
40
50
60
70
80
90
100

APPENDIX 28


DISTRIBUTION OF LOCATIONS RECEIVING ACCEPTABLE SERVICE IN THE PRESENCE OF INTERFERENCE FROM A SINGLE OFFSET COCHANNEL STATION ON THE RADIAL BETWEEN THE STATIONS
ANTENNA HEIGHTS------2000 ft., 30 ft.
LEGEND:
f- 63Mcs; S-170Mi; P- 100Kw
f-195Mcs; S-170Mi; P- 316Kw
f-500Mcs; S-200Mi; P-1000Kw
Relative Number Of Locations Receiving Acceptable Service - L d
Miles Along Radial Between Stations - d
0
10
20
30
40
50
60
70
80
90
100



NOTE: Diagrams above portray television station interference free "B" service areas for channels 7-13 (solid lines) based on standard interference and separations of 150, 160 and 180 miles, including offset carrier operation. Essentially equivalent service areas are obtained by varying the parameters - antenna height, power and station separation. Dotted lines show potential coverage without co-channel interference.

APPENDIX 30

Power, Transmitting Antenna Height, and Spacing Combinations to Give Same Grade B Service Contours As For Standard Spacing, Transmitting Antenna Height, and Power, Assuming Standard Power and Antenna Height For Offset Carrier Co-channel Interfering Station

TABLE II A

Frequency - 63 Mc/s
Standard H_t = 500 ft.; H_r = 30 ft.
Standard Power = 20 dbk
Standard Spacing = 170 mi.
Grade B Contour = 41.5 mi.

P_1 (dbk)	H_1 (Ft.)	S(Miles)
20	500	170
15	840	170
10	1320	170
20	340	190
15	630	190
10	1000	190
20	750	150
15	1200	150
10	1750	150
20	1210	130
15	1820	130
10	2500	130

TABLE II B

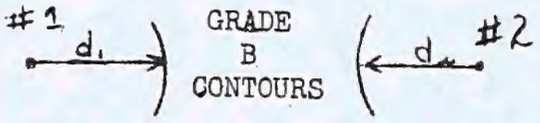
Frequency - 195 Mc/s
Standard H_t = 500 ft.; H_r = 30 ft.
Standard Power = 25 dbk
Standard Spacing = 170 mi.
Grade B Contour = 47.5 mi.

P_1 (dbk)	H_1 (Ft.)	S(Miles)
25	500	170
20	720	170
15	1010	170
25	575	190
20	540	190
15	790	190
25	660	150
20	940	150
15	1370	150
25	1180	130
20	1640	130
15	2270	130

TABLE II C

Frequency-500 Mc/s
Standard H_t = 500 ft.; H_r = 30 ft.
Standard Power = 30 dbk
Standard Spacing = 155 mi.
Grade B Contour = 33.5 mi.

P_1 (dbk)	H_1 (Ft.)	S(Miles)
30	500	155
25	820	155
20	1280	155
30	250	175
25	450	175
20	750	175
30	900	135
25	1400	135
20	2150	135



APPENDIX 31

63 Mcs
H_2= 500'
P_2= 20 dbk

TABLE IA

DISTANCES TO GRADE B SERVICE CONTOURS IN MILES

P_1	H_1	SPACING (MILES)											
dbk	Ft.	110		130		150		170		190		210	
		d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2
20	500	26	26	32	32	37	37	41	41	45	45	49	49
20	1000	32	22	40	29	46	36	50	41	54	45	58	49
20	2000	40	16	48	22	55	28	62	35	66	41	71	47
15	500	22	30	28	37	32	43	35	47	39	51	43	55
15	1000	27	26	34	33	40	40	44	47	48	51	52	55
15	2000	35	19	42	26	49	33	55	40	59	46	63	52
10	500	18	35	23	42	27	48	31	53	34	57	38	57*
10	1000	23	30	30	37	35	45	39	52	42	57	46	57*
10	2000	29	23	38	30	44	37	49	44	53	51	58	57

* Limited by Noise

APPENDIX 31

195 Mcs
H_2= 500'
P_2= 25 dbk

TABLE IB

DISTANCES TO GRADE B SERVICE CONTOURS IN MILES

P_1	H_1	SPACING (MILES)											
dbk	ft.	110		130		150		170		190		210	
		d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2
25	500	31	31	39	39	44	44	47	47	51	51	51*	51*
25	1000	38	25	46	33	53	40	57	46	61	50	64	51*
25	2000	45	18	54	25	62	33	69	40	73	45	78	50
20	500	27	35	35	42	40	48	43	51	46	51*	46*	51*
20	1000	33	29	42	37	48	44	53	50	56	51*	58*	51*
20	2000	41	21	50	29	58	37	64	44	68	49	72	51*
15	500	23	38	30	46	35	51*	39	51*	41*	51*	41*	51*
15	1000	29	32	38	41	44	48	48	51*	51	51*	53*	51*
15	2000	37	25	46	33	54	41	59	47	63	51*	67	51*

* Limited by noise

APPENDIX 31

#1 d_1 → GRADE B CONTOURS ← d_2 #2

500 Mcs
H_2 = 500'
P_2 = 30 dbk

TABLE IC

DISTANCE TO GRADE B SERVICE CONTOUR IN MILES

P_1	H_1	SPACING (MILES)											
dbk	ft.	115		135		155		175		195			
		d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2	d_1	d_2		
30	500	22	22	28	28	34	34	40	40	46	46		
30	1000	29	21	35	27	41	33	47	40	53	44		
30	2000	36	17	43	23	50	30	56	37	63	44		
25	500	18	27	23	33	29	39	35	45	40*	47*		
25	1000	24	25	30	32	36	38	42	44	48	47*		
25	2000	31	20	38	28	44	35	51	42	57	47*		
20	500	15	32	19	38	24	44	30	47*	33*	47*		
20	1000	20	30	25	36	31	43	37	47*	43	47*		
20	2000	25	24	32	32	39	39	45	46	52	47*		

* Limited by noise

APPENDIX 32

Expected Field Strength in DB Exceeded at 50 Percent of the Potential Receiver Locations for at Least 50 Percent of the Time at a Receiving Antenna Height of 30 Feet

Low VHF

500 Feet	1,000 Feet	2,000 Feet	Transmitter to Receiver Miles
66.5	72.6	78.3	10
53.5	60.4	66.9	20
45.2	52.6	60.0	30
38.7	46.0	54.3	40
31.7	39.1	48.1	50
24.9	33.0	42.0	60
18.5	26.8	36.2	70
12.5	20.4	30.6	80
6.8	14.1	24.9	90
3.1	8.0	18.7	100
1.0	3.5	13.0	110
-0.7	0.3	7.2	120

High VHF

500 Feet	1,000 Feet	2,000 Feet	Transmitter to Receiver Miles
68.7	75.2	80.1	10
57.2	64.3	71.5	20
49.8	57.7	66.0	30
42.0	51.0	61.0	40
32.5	42.2	54.0	50
23.2	33.8	46.7	60
14.5	25.7	39.0	70
5.3	16.2	31.0	80
-2.0	8.0	22.9	90
-6.6	0.0	14.3	100
-8.8	-5.0	6.3	110
-10.7	-8.1	0.3	120

APPENDIX 32 (Continued)

Expected Field Strength in DB Exceeded at 50 Percent of the Potential Receiver Locations for at Least 50 Percent of the Time at a Receiving Antenna Height of 30 Feet

UHF

500 Feet	1,000 Feet	2,000 Feet	Transmitter to Receiver Miles
66.5	72.6	78.3	10
53.5	60.4	66.9	20
45.2	52.6	60.0	30
38.7	46.0	54.3	40
31.7	39.1	48.1	50
24.9	33.0	42.0	60
18.5	26.8	36.2	70
12.5	20.4	30.6	80
6.8	14.1	24.9	90
3.1	8.0	18.7	100
1.0	3.5	13.0	110
-0.7	0.3	7.2	120

APPENDIX 33

Expected Field Strength in DB Exceeded at 50 Percent of the Potential Receiver Locations for at Least 10 Percent of the Time at a Receiving Antenna Height of 30 Feet

Low VHF

500 Feet	1,000 Feet	2,000 Feet	Transmitter to Receiver Miles
27	33	41.3	70
23	28.5	36.5	80
19	24	32.3	90
15.5	19.9	28.2	100
13.2	16	23.8	110
11.8	13	19.7	120
10.0	10.5	15.5	130
8.4	8.4	12.5	140
6.8	6.8	10	150
5.0	5.0	7.5	160
3.1	3.1	4.7	170
1.5	1.5	2	180
-0.1	-0.1	-0.1	190
-2	-2	-2	200
-5.1	-5.1	-5.1	220
-8.2	-8.2	-8.2	240
-11.1	-11.1	-11.1	260
-14.3	-14.3	-14.3	280
-17.6	-17.6	-17.6	300

High VHF

500 Feet	1,000 Feet	2,000 Feet	Transmitter to Receiver Miles
26	34	44.3	70
20	28.2	38.5	80
15	22.6	33	90
11.2	16.3	27.2	100
9	12.5	22	110
6.8	9	16.9	120
5.2	5.8	13.5	130
3.5	3.8	9.9	140
1.8	1.8	6.5	150
0.0	0.0	3.5	160
-1.5	-1.5	0.0	170
-3.2	-3.2	-3.0	180
-5.0	-5.0	-5.0	190
-6.4	-6.4	-6.4	200
-9.3	-9.3	-9.3	220
-12.8	-12.8	-12.8	240
-16.1	-16.1	-16.1	260
-19.2	-19.2	-19.2	280
-22.3	-22.3	-22.3	300

APPENDIX 33 (Continued)

Expected Field Strength in DB Exceeded at 50 Percent of the Potential Receiver Locations for at Least 10 Percent of the Time at a Receiving Antenna Height of 30 Feet

UHF

500 Feet	1,000 Feet	2,000 Feet	Transmitter to Receiver Miles
31	34	41.5	70
28	30	37	80
24.8	26.5	32.5	90
21.8	23	28.3	100
18.6	19.5	24	110
15.8	16.3	20	120
12.8	13.2	15.9	130
10	10.3	12	140
7	7	8.3	150
4.1	4.1	4.7	160
1.0	1.0	1.0	170
-1.9	-1.9	-1.9	180
-4.5	-4.5	-4.5	190
-7.5	-7.5	-7.5	200
-13.2	-13.2	-13.2	220
-19	-19	-19	240
-25	-25	-25	260
-30.5	-30.5	-30.5	280
-36.1	-36.1	-36.1	300

June 19, 1952

Honorable David L. Lawrence
Mayor of Pittsburgh
Pittsburgh, Pennsylvania

Dear Mayor Lawrence:

The Commission has your letter of June 10, 1952 stating that you are disturbed by what seems to you to be the unfair treatment the City of Pittsburgh has received in the assignment of television channels and in the procedure established for the processing of television applications. You contend that while Pittsburgh is the 8th largest metropolitan market area, it has, "to all intents and purposes" been assigned only 2 commercial channels; and you urge that VHF channels 4 and 9 should be added to the Pittsburgh assignments as had been proposed by several parties in the recent television proceedings. Finally, you complain that Pittsburgh has been ranked "23rd from the bottom of the list of all of the some 1,276 cities in the United States and its possessions" for purposes of establishing priority in the processing of applications for new television stations.

We wish to assure you that we are aware of your very deep concern with the status of television in your community and appreciate the spirit in which you have written this Commission.

On June 6, 1952, Matta Broadcasting Company filed a petition for reconsideration of the Commission's denial of its counterproposal requesting the assignment of Channel 4 to Braddock, Pennsylvania, which is of course in the Pittsburgh area. Oppositions to this petition for reconsideration have been filed by the Dispatch Printing Company, licensee of Television Station WBNS-TV located in Columbus, Ohio, and Crosley Broadcasting Corp., licensee of Television Station WLWC, in Columbus, Ohio. Some of the problems you raise are involved in the petition for reconsideration filed by Matta Broadcasting Company. Further, on June 11, 1952, WWSW, Inc., Pittsburgh, Pennsylvania, and on June 13, 1952, Matta Broadcasting Company filed appeals in the Court of Appeals from the decision of the Commission in so far as the decision related to assignments, proposed by parties in the recent television proceedings, for Pittsburgh and Braddock.

In view of the pendency of these matters, we believe it inappropriate to comment at this time on our decision with respect to the assignments made to the City of Pittsburgh and in the Pittsburgh area. We believe, however, that an examination of the facts as indicated by our decision will show that Pittsburgh has received fair and reasonable treatment comparable to that accorded all other very large communities in the country. For your information we are enclosing a copy of our decision in the television proceedings.

We are, however, in a position to discuss the processing procedure established for the handling of new television applications. You state in your letter that Pittsburgh ranks "23rd from the bottom of the list of all of the some 1,276 cities in the United States and its possessions." The following information will, we think, clear up the misapprehensions that appear to exist with respect to alleged discrimination against Pittsburgh in connection with the procedure established on April 14, 1952 in our final decision in the television proceedings for the processing of applications for new television stations.

As you are well aware, when the processing of applications commences on July 1, the Commission will be faced with a large number of applications all pending at the same time. The Commission was obligated to establish some processing procedure which would be fair and equitable. The Commission's processing procedure was adopted with a view to making television service available to the greatest number of people in the shortest period of time. Priority, of course, was given to communities without any television service at all. At the same time, the Commission recognized that communities which now receive some service are also entitled to receive at the earliest possible moment either their first or additional local television service. For this reason the Commission divided the applications for new television stations into two groups. Group A contains applications from cities not presently receiving service and Group B contains applications with respect to cities presently receiving some service. Pittsburgh falls within Group B since it presently receives local service from one station. On July 1, 1952, the Commission will commence the processing of Group A and Group B applications simultaneously.

Pittsburgh is the 180th city in Group B. Ahead of Pittsburgh in Group B are, for the most part, those cities which have no local television station. Many of these cities are, however, very small and there will probably be no applications filed in many of these cities at this time. Comparing the top 25 cities in the United States, we think it is clear that Pittsburgh has not been discriminated against in terms of when applications for Pittsburgh stations will be processed. The following is a list of the top cities in the United States together with the order in which these stations appear in Group B. Denver, of course, is in Group A since it has no television service at all. The Group B cities are as follows:

City	Processing Order No.
Dallas	B-155
Philadelphia	B-160
Detroit	B-161
Baltimore	B-162
Cleveland	B-163
Cincinnati	B-164
Chicago	B-167
Washington, D. C.	B-168
New York	B-169
Los Angeles	B-170
St. Louis	B-179
Pittsburgh	B-180
Buffalo-Niagara Falls	B-181
Milwaukee	B-182
Houston	B-183
New Orleans	B-184
Seattle	B-185
Kansas City, Mo.	B-186
Indianapolis	B-187
Memphis	B-188
Minneapolis-St. Paul	B-207
Boston	B-208
San Antonio	B-209
San Francisco-Oakland	B-212

From this tabulation, we think you will agree that Pittsburgh has not been discriminated against in the processing procedure which has been established. In addition it should be pointed out that Channel 13 has been reserved in Pittsburgh for non-commercial educational purposes. Since applications to build non-commercial educational stations will, under the Commission's temporary processing procedure be processed separately from commercial applications in the order such applications are filed, it would appear that an application to make use of Channel 13 in Pittsburgh would bring a second television station into operation in your community at an early date.

By Direction of the Commission

Paul A. Walker
Chairman

Released: June 20, 1952

SEPARATE VIEWS OF COMMISSIONER JONES:

The Commission today specifically amends the merits of its processing procedures to render the great majority of the A-2 Group to places inferior to all B Groups and moving Pittsburgh, the eighth market in the nation, from 1237th place. It will still be the 21st city in Pennsylvania to be processed under this concept instead of the 32nd city.

The Commission's letter to the Mayor emphasizes that Groups A and B will be processed simultaneously. Since the B Group is much smaller than the A Group, some cities will get their 8th, 7th and 6th service before Pittsburgh gets its 2nd local television service and before many cities get their first. This means that all B groups, a total of 212 cities, are now, in fact, in the A processing line under the amendment. The A-2 Group of cities, numbered from 1 to 212, plus the B Group (B-1, B-2, B-3, B-4, B-5, 212 cities) under amended procedure priorities, should now be renumbered and relisted in a new A-2 group and numbered from 1 to 424. In such a new group, Pittsburgh would be the 360th or the 359th city.

All cities in the former A-2 Group from the 213 city (Findlay, Ohio) to the 1013th town lose their Group A rating by the amended processing procedure. They will now, in fact, be in a new "B" processing line, even though a good many have no local television service and cannot get a television signal from any city.

This amendment to the processing line, announced in a letter to the Mayor of Pittsburgh, has made meaningless to the previous grouping of cities adopted as footnote 10 to Section 1.371 of the Commission's rules. The original purposes of separating the groups were unsound and inequitable in the first place, but now they are made absurd by the amendment. While the amendment improves the situation in Pittsburgh theoretically, New York and Los Angeles residents will get their 8th commercial service; Washington, and Chicago, their 5th; Cleveland, Columbus, Cincinnati, Philadelphia, Detroit and Baltimore, their 4th; Dayton, Birmingham, Dallas and Louisville, their 3rd, before Pittsburgh gets its 2nd local commercial television service.

Obviously, new criteria need to be applied in constructing a list of priorities by cities.

Even the 360th place for Pittsburgh in the processing line is a meaningless and temporary palliative to the Mayor which will not conceal for long the basic injustice to the people of Pittsburgh.

The Commission's concept of the merits involved in assigning VHF channels is arbitrary and unjust, to Pittsburgh in particular, and to other cities throughout the nation, and is at cross purposes with the applicable provisions of the Communications Act of 1934, as amended, particularly Sec. 307(b). This is true when the assignments to Pittsburgh are attempted to be rationalized in relation to the other first ten markets of the nation, as well as its relationship to other cities in the nation. For example, as I indicated in my dissent to the Sixth Report and Order, the failure to assign Channel 4 to the Pittsburgh area is unreasonable and arbitrary. Further, the maximum powers, the maximum antenna heights and the inordinately wide mileage separations for VHF channels employed in the Table of Assignments are unreasonable and arbitrary. The Commission's firm, fixed and final allocation plan has thus created an artificial scarcity of channels which already results in two court appeals involving TV channel assignments to the Pittsburgh area. The many applicants for the one remaining VHF channel which the Commission assigned to Pittsburgh will probably keep this channel from service to Pittsburgh residents for five years while the applicants litigate.

Meanwhile, the basic purpose of the Act, competition, has been defeated in Pittsburgh by the continued operation of a single television station.

ADDITIONAL VIEWS OF COMMISSIONER STERLING:

I must disagree vigorously with Commissioner Jones' separate views that, in the letter to the Mayor of Pittsburgh, the Commission has amended its processing procedures. The processing procedure described in the letter of the Commission today is exactly the same as the processing procedure adopted on April 14, 1952 in our final decision in the television proceedings and in no manner changes the standing of Pittsburgh. Any statement or suggestion that the Commission has today amended the procedure established on April 14, 1952 constitutes a complete misstatement of the facts as set forth in the Sixth Report of April 14, 1952.

¶53:608 International agreements.

In locating transmitters for United States television stations, station separations between such stations and Canadian or Mexican stations should be maintained as close as possible to the assignment separations which have been established. However, mileage separations need not be considered between United States television stations and Cuban television stations and assignments except in special cases. J. G. Rountree, 7 RR 1262 [1952].

Proposal which would require a change in the United States-Canadian television agreement will be rejected where agreement with Canada cannot be reached. Brockway Co., 9 RR 1381 [1953].

Grant of an application for authority to transmit television programs to a Mexican station which competes with United States stations is not a violation of the agreement with Mexico on channel assignments. American Broadcasting-Paramount Theatres, Inc., 13 RR 1248 [1956].

¶53:609(A) Changes in table of assignments.

NOTE: Section 3.609 originally dealt with changes in the Table of Assignments during the first year after its adoption. This section was revoked June 30, 1953. The present section, dealing with Zones, was added, effective January 2, 1956; formerly part of §3.610, infra.

See also ¶53:606, supra.

The only appropriate method of making changes in the allocation of television channels in §3.606 is by rule-making proceedings. A petition for change in allocation will not be consolidated with a pending hearing on applications for use of television channels already assigned to another city, one of which channels petitioner wishes reassigned. A petition for reassignment is insufficient which contains no evidence of the technical feasibility of the requested amendment or that such a change would be in the public interest. Yankee Network, Inc., 12 FCC 751, 4 RR 164 [1948].

A hearing on applications for television facilities in Hartford, Connecticut, was continued to a later date where it appeared that another party was about to file a petition requesting reallocation of television channels in the area. The applicant had relied on the assignment to Hartford of two channels, one of which might be taken away under the requested reallocation, and it would be unjust to require it to proceed to hearing before the allocation of channels had been finally determined. Travelers Broadcasting Service, 4 RR 407 [1948].

A claim that discrimination and hardship result from the fact that a person who wishes to apply for a television channel at a place other than one prescribed in the rules must resort to rule-making proceedings to secure reallocation of the channel is without substance. The hardship is merely that of proceeding in accordance with the rules as they stand. Yankee Network, Inc., 12 FCC 1043, 4 RR 412a [1948].

The Commission will not advise an applicant on the weight to be accorded to various possibly relevant factors in a complicated rule-making proceeding involving reallocation of television channels. Yankee Network, Inc., 12 FCC 1043, 4 RR 412a [1948].

¶53:609(A) Changes in table of assignments (Continued)

The contention that the Commission may provide for a fair, efficient and equitable distribution of radio facilities only through licensing proceedings and may not do this by the promulgation of rules and regulations is without merit. Yankee Network, Inc., 12 FCC 1043, 4 RR 412a [1948].

Deletion of a channel from the television allocation table after a public hearing cancels authority previously granted to a permittee under a construction permit and extension of completion date will be denied. Broadcasting Corp. of America, 4 RR 1424 [1949].

Application for special temporary authority to construct and operate a television station will be dismissed where the channel requested has been assigned to another community, and a partial hearing has been had on applications for construction permits in that community, in which proceeding the present applicant was not a party. Since the applicant is not entitled to comparative consideration with these pending applications the application will not be placed in the pending file during the television "freeze." Broadcasting Corp. of America, 4 RR 1424 [1949].

The Commission may adopt rules and regulations which delineate elements of the public interest in advance of individual proceedings and thus remove certain issues from these proceedings, and this does not deprive an applicant of his right to a hearing. This is true of a television allocation table made on a geographical basis since such a table would be applicable generally to all persons wishing to establish a station in any given community. Inclusion of reasonable provisions limiting the time within which repetitious requests for changing the table will be considered, does not affect the validity of such a table. Validity of Television Allocations, 7 RR 371 [1951].

The one-year restriction on petitions to amend the table of television assignments and the rules relating to separations was adopted for good reasons and will not be lifted. Robert R. Thomas, Jr., 8 RR 266 [1952].

The one-year waiting period on petitions to amend the table of television assignments will not be waived, to permit a petition to be filed to add a channel to a community on the theory that this would permit the establishment of television stations in the community at an early date by eliminating a conflict in applications. There is no assurance that other applicants would not file, nor that the channel would necessarily be assigned to that community instead of some other in the area. The Commission in its table of assignments was not attempting to make every assignment that could conceivably have been made under its standards. American-Republican, Inc., 8 RR 333 [1952].

During the one-year waiting period on petitions for changes in television channel assignments, the Commission will make changes in assignments only on its own motion or on timely petitions for reconsideration where necessary to correct errors in the Sixth Report. Changes will be kept to a minimum. Proposals for additional changes will not be entertained where such changes are not necessary to correction of an admitted error. Channel Assignment to Lafayette, Louisiana, 8 RR 335 [1952].

¶53:609(A) Changes in table of assignments (Continued)

The one-year waiting period on petitions to amend the table of television assignments will not be waived. Owensboro On the Air, Inc., 8 RR 465 [1952]; Sparton Broadcasting Co., 9 RR 91 [1953].

The one-year limitation on petitions to amend the table of television allocations is reasonable and does not violate Section 4 of the Administrative Procedure Act. Daily Telegraph Printing Co., 8 RR 645 [1952].

Petition for reallocation of television channels cannot be considered where a reassignment of present allocations would be involved and the one-year waiting period has not expired; no specific proposal is advanced and compliance with the minimum spacing requirements is not shown. Key Broadcasting System, Inc., 8 RR 809 [1952].

The one-year waiting period for amendment of the television allocation table will not be waived in order to add a second channel in a city and thus possibly obviate a hearing on two mutually exclusive applications for the single channel originally assigned. Stark Broadcasting Corp., 8 RR 850 [1953].

The one-year waiting period for amendment of the television allocation table is not invalid as in conflict with Section 4(d) of the Administrative Procedure Act but is a reasonable exercise of the Commission's authority. Stark Broadcasting Corp., 8 RR 850 [1953].

Contention that assignment of a particular channel to a particular community would not make the most efficient possible use of the available channels was rejected where it was not shown that the assignment of any other channel, consistent with the Rules, would permit greater flexibility in the assignment of UHF channels in the general geographic region involved. American-Republican, Inc., 9 RR 199 [1953].

A proposal for allocation of a television channel, clearly falling within the exception to the one-year rule, will not be denied because it is in conflict with a proposal which is clearly precluded from present consideration by that rule. One reason for the one-year rule was to prevent larger communities from preempting the available channels to the exclusion of smaller communities. American-Republican, Inc., 9 RR 199 [1953].

Decision with respect to assignment of a television channel to a particular community must be determined on the basis of the needs of the persons in the area for television service and the competing needs of other communities for television service. Contention that the site proposed by one applicant for the channel in another community might have to be relocated in the event the channel is assigned to the community in question and that if so relocated the use of high antenna heights might be precluded will not be given weight. That a site proposed by a particular applicant may fall short of the minimum separation to a proposed assignment is not a relevant consideration in a rule-making proceeding, nor is possible objection by aeronautical authorities to utilization of a particular site with specified height which an applicant may propose. WCAE, Inc., 9 RR 202 [1953].

¶53:609(A) Change in table of assignments (Continued)

A community with no television channel, which is eligible for consideration under the one-year rule, will not be denied an assignment because of its effect upon possible future assignments in a community which already has a channel. WCAE, Inc., 9 RR 202 [1953].

The one-year rule on petitions to amend the television allocation table is not a violation of the Administrative Procedure Act. WCAE, Inc., 9 RR 202 [1953].

Hearing in a television proceeding was continued pending expiration of the one-year period prescribed in §3.609 of the Rules, so that one of the parties might file a petition for assignment of an additional channel to the city, the other party having consented and the Chief of the Broadcast Bureau having interposed no objection. Brush-Moore Newspapers, Inc., 9 RR 207 [1953].

The Commission will not waive the one-year waiting period on changes in the table of television allocations. Jacob A. Newborn, Jr., 9 RR 225 [1953].

Assignment of a channel to a community not listed in the Table of Assignments was rescinded where the original action of the Commission had been taken on the basis of representations by a petitioner that there was a need for television service in the community but that petitioner, less than a month after the assignment, had filed application for a different community within 15 miles of the assigned community but which could not itself receive an assignment within the one-year rule. Petitioner's request for assignment of the channel to the latter community had been denied because of the one-year rule. Daily Telegraph Printing Co., 9 RR 382 [1953].

A petition to amend the Table of Assignments cannot be considered if it fails to comply with the minimum co-channel station and assignments separations. Where communities are listed in combination, the proposed assignment must conform with the required separation based on the reference point in the combined cities which results in the lowest separation. Head of the Lakes Broadcasting Co., 9 RR 916 [1953].

¶53:609(B) Zones.

The zone in which the transmitter of a television station is located or proposed determines the applicable rules with respect to co-channel mileage separations and maximum antenna heights and powers for VHF stations, where the transmitter is located in a different zone from the city to which the channel employed by the station is assigned. Location of Television Transmitters, 8 RR 255 [1952].

Boundaries of Zone III corrected so as to place Jackson, Mississippi outside of Zone III and include it in Zone II. Lamar Life Insurance Co., 8 RR 340 [1952].

In delineating the line separating Zone I and Zone II in the television channel assignment plan, the Commission used two bases — population density and concentration of cities of more than 50,000 population. The line was predicated on the existence of large contiguous areas with substantially higher density of population and concentration of cities compared to all other contiguous areas of comparable size. Absent an error in the delineation of the line, zone line shifts are inappropriate as a method of accommodating particular assignments. An area will not be added to Zone I which contains no cities of 50,000 population,

¶53:609(B) Zones (Continued)

only one with population more than 20,000 and only two in excess of 10,000, the spacings between cities being much greater than in the existing Zone I portion of the state. Nor will an area be added to Zone I which contains only one city of 50,000 population for every 9750 square miles, as compared to 2560 square miles in the present Zone I, and which has a population density of 71.5 persons per square mile as compared with 222.1 for the present Zone I. Daily Telegraph Printing Co., 9 RR 1104a [1953].

The assignment table has been determined on the basis of communities, not metropolitan areas, and the mere fact that a portion of a metropolitan area extends into a different zone is of no significance. Zone lines will not be shifted merely to accommodate particular channel assignments. Logansport Broadcasting Corp., 9 RR 1157 [1953].

Changes in television zone lines will not be made in order to accommodate particular assignments. Zone lines will not be changed unless it can be shown that the original line was in error. Part of a state will not be included within a different zone by dividing it so as to include the only three large cities in the state in a different zone, especially where two of them are close to the present zone lines. American Broadcasting Corp., 11 RR 1552 [1954].

Established zone lines will not be changed on a case-to-case basis merely because a particular area could be found which would meet minimum criteria used in locating areas in Zone I or in any other zone in the establishment of the nationwide zone lines. Accommodation of particular assignments will not be taken into account in considering proposals to change zone lines. Such rezoning proposals must stand or fall on a showing of error or unreasonableness in the established zone lines. Zone line will not be changed to include a part of Kentucky within Zone I since with the exception of two small areas the population of northern Kentucky is much more comparable to that of areas in Zone II than to adjacent areas in Zone I. American Broadcasting Corp., 11 RR 1556a [1955].

Zone lines will not be changed to include all of New Hampshire and Vermont in Zone II in the absence of a showing of error or unreasonableness. Desire of a station to improve its competitive position is not justification for changing the established zone lines. The Commission's decision in the general television allocation proceeding does not contemplate change of zone lines on a piecemeal basis for the benefit of particular licensees or communities. Television Zone Lines in New Hampshire and Vermont, 14 RR 1557 [1956].

The Commission will not order changes in the television zone lines merely for the purpose of accommodating particular channel assignments. Zone line in the Gulf Coast area will not be changed where the only purpose of the proposal is to obtain an additional VHF assignment in New Orleans. Loyola University, 14 RR 1569 [1956].

Zone lines will not be changed merely for the purpose of accommodating particular channel assignments or authorizations, but a change in a reference point to a point about five miles from its present location can be ordered where the reference point would still be 17 miles farther north from the outermost extremity of the Gulf Coast than any other reference point and the boundary of Zone III would more closely approximate the outline of the shore. New Orleans Deintermixture Case, 15 RR 1603 [1957].

¶53:610 Separations

Whether or not an experimental television station is required to comply with minimum separation requirements if power and antenna height are so much less than the permissible maxima that the station causes no more interference than it would if all requirements were met, the Commission erred in granting without hearing an application of a UHF station to operate simultaneously on a VHF channel where separation requirements would not be met and an existing station claimed that it would suffer interference and made allegations tending to show that a bona fide experimental operation was not proposed. Capital Broadcasting Co. v. FCC, 103 U.S. App. D.C. 252, 257 F.(2d) 630, 17 RR 2043 [1958].

The minimum mileage separations of television channels must be met on a city-to-city as well as on a transmitter site basis and where the minimum separation is not met it is immaterial that proposed transmitter sites are available which would be separated by more than the minimum distance. Chesapeake Television Broadcasting, Inc., 8 RR 125 [1952].

The minimum mileage separations of television channels must be met on a city-to-city as well as on a transmitter site basis and where the minimum separation is not met it is immaterial that proposed transmitter sites are available which would be separated by more than the minimum distance. Polan Industries, 8 RR 130 [1952].

The reference point for determining mileage separations between television channel assignments was properly made the main post office or the reference point set forth in the Department of Commerce publication "Airline Distances between Cities in the United States." Utilization of proposed antenna sites for this purpose would be wholly impractical. WCAE, Inc., 8 RR 247 [1952].

The Commission will not authorize operation of a television station at a substandard separation which precludes the station from qualifying for operation with maximum power and height. Low power operation and the operation of satellite or booster stations may be authorized in the future when more complete data on propagation characteristics of the television signal are available. WCAE, Inc., 8 RR 247 [1952].

Where a transmitter was in existence by reason of a Commission authorization, that transmitter site was made the appropriate reference point for determining minimum separations in assigning television channels. Channel 5 was incorrectly assigned to Nashville, Tennessee, where the distance between Nashville and the existing transmitter site of a Memphis station which was being shifted to Channel 5 was less than the prescribed 190 miles. Footnote 4 to §3.610, permitting continuance of certain substandard separations, applies only where existing stations are involved at both ends of the substandard separation. Memphis Publishing Co., 8 RR 268 [1952].

Minimum separation requirements for television stations were properly prescribed. Hearst Radio, Inc., 8 RR 634 [1952].

Petition for reallocation of television channels cannot be considered where a reassignment of present allocations would be involved and the one-year waiting period has not expired; no specific proposal is advanced, and compliance with

¶53:610 Separations (Continued)

the minimum spacing requirements is not shown. Key Broadcasting System, Inc., 8 RR 807 [1952].

Assignment of a television channel to a community will not be refused on the ground that the person requesting it intends to circumvent the Commission's Rules by applying for the channel in a neighboring community where assignment is precluded by §3.610, since assignments are not made for individual petitioners but for the communities involved, and since an applicant for the channel in the neighboring community would have to meet the spacing requirements. Daily Telegraph Printing Co., 9 RR 1104a [1953].

Mileage separation requirements for television stations are an integral part of the allocation plan and will not be waived to permit use of transmitter sites for two stations in Puerto Rico operating on adjacent channels where it appears that there are channels which could be reassigned so as to avoid adjacent channel operation. Department of Education of Puerto Rico, 9 RR 1111 [1953].

The assignment spacing requirements in the Commission's Rules apply to spacings between stations in the United States and stations in Canada or Mexico. KIT, Inc., 10 RR 46 [1954].

Television station assignments below the minimum spacings will not be made on the ground that the midpoint falls in one of the Great Lakes and thereby the effect of greater spacing is obtained. Assignment of Television Channel to Parma-Onondaga, Michigan, 10 RR 71 [1954].

Proposals to allocate VHF channels at less than the present minimum separations will not be considered, either as an interim or as a long-range proposal. Southern Connecticut and Long Island Television Co., Inc., 13 RR 1598 [1956].

Assignment of VHF stations at short spacings would not further the Commission's objective of a nationwide television system. Channel Assignments at Sub-Standard Spacings, 13 RR 1599 [1957].

The Commission had discretion to waive the separation requirements of its rules to permit temporary operation on a VHF channel from the existing site of a UHF station whose channel had been deleted and it was not required to condition the temporary authorization so as to limit service on the VHF channel to that provided under the UHF operation. Springfield Deintermixture Case, 22 FCC 318, 15 RR 1539 [1957].

Assignment of Channel 8 to Davenport-Rock Island-Moline complies with the Commission's rules and standards even though minimum spacing requirements can be met only by locating the transmitter site outside of those communities, in Zone I. A Channel 8 station in Des Moines cannot complain of interference or request that the transmitter of a Davenport-Rock Island-Moline station be located at least 190 miles from the Des Moines station. Nor will the Des Moines station be given blanket future authority to move its transmitter site a "reasonable distance" east of its present site. The propriety of any such

¶53:610 Separations (Continued)

move can only be determined on the basis of an application for change of transmitter site. Peoria Deintermixture Case, 15 RR 1562a [1957].

Television stations are not protected against interference except by the rules as to minimum separations and maximum power and antenna heights. Greater separations will not be required because the path between two areas lies largely over water. Norfolk Drop-In Case, 22 FCC 1227, 15 RR 1630 [1957].

Where the distance between an existing station on Channel 2 in St. Louis and the proposed site for the same channel at an existing television antenna farm in Terre Haute is less than the minimum required separation, motion for declaratory ruling is granted waiving the requirements because the difficulty is the result of a reassignment of television channels in the public interest and of cooperation with aeronautical agencies, making equitable relief appropriate. Wabash Valley Broadcasting Corp., 16 RR 1015 [1958].

The Commission will not assign television channels at substandard mileage separations, especially where operation with low power and a directional antenna would be required. Channel Assignments in San Antonio, Texas, 16 RR 1610 [1958].

The Commission's technical rules and standards will not be waived to permit applicants to propose a transmitter site at a so-called antenna farm which would not comply with allocation requirements as to minimum co-channel separations, minimum signal required over the principal city to be served, and the use of directional antennas, no justification for such a departure from the rules being shown. Oklahoma Television Corp., 17 RR 718 [1958].

A recommendation of the Airspace Panel that an antenna over 308 feet in height in the area meeting minimum separation requirements would be a hazard to air navigation is not enough in itself to justify a waiver of the minimum separation rules. The ultimate determination of the issue is made by the Commission, not the Airspace Panel. Oklahoma Television Corp., 17 RR 722 [1958].

There is no right to a hearing on a request for waiver of Commission rules relating to minimum separation requirements for television stations and related engineering standards. Oklahoma Television Corp., 17 RR 722 [1958].

Waiver of §3.610(b) of the Rules to permit location of a Channel 10 transmitter on the Tampa antenna farm for a Largo, Florida station will not be granted in the absence of a showing that the channel can not be satisfactorily utilized in the area to which it is allocated without such a waiver. Such a waiver could not be granted by declaratory ruling in view of the rights and interests of a Miami station operating on Channel 10 from a transmitter site 185 miles from the proposed Tampa site. Florida Gulfcoast Broadcasters, Inc., 17 RR 871 [1958].

¶53:611 Reference points and distance computations

Petition for reconsideration of television channel assignments will not be entertained on the basis of allegations that petitioner had not been afforded notice of the methods of computing mileage separations adopted in the Sixth

¶53:611 Reference points and distance computations (Continued)

Report and Order, since the question of the method of measuring assignments and facilities separations was squarely put in issue in the proceedings. Petitioner had not requested that the method of measurement be revised or amended or suggested or proposed a different or alternative method of measurement. Western Broadcasting Co., 8 RR 264 [1952].

A television channel will not be assigned to a particular transmitter site but only to a community. Mount Mitchell Broadcasters, Inc., 8 RR 709 [1952].

A site proposed by an applicant in another community is not the appropriate measuring point in an assignment proceeding. WCAE, Inc., 9 RR 202 [1953].

Television channels will not be assigned to communities on the basis of specified transmitter sites or on the basis of an area outside the community where transmitter sites could be established. Chemical City Broadcasting Co., 9 RR 356 [1953].

The reference points mentioned in §3.611 of the television rules apply only to assignment spacings and in applying the 15 mile rule of §3.607(b) transmitter sites are not to be considered. The reference to §3.611 in §3.607 relates only to the method of measurement to be used and not the reference points to be used. In any event, it could not be contended that a community was not within 15 miles of a listed community because all existing stations in the listed community had transmitter sites more than 15 miles away, if one channel remained unassigned. Lawrence A. Harvey, 9 RR 378 [1953].

A petition to amend the Table of Assignments cannot be considered if it fails to comply with the minimum co-channel station and assignments separations. Where communities are listed in combination, the proposed assignment must conform with the required separation based on the reference point in the combined cities which results in the lowest separation. Head of the Lakes Broadcasting Co., 9 RR 916 [1953].

Rules relating to separation of television transmitter sites will not be amended to provide a 5-mile tolerance in making new assignments available to communities where the community does not meet the required assignment spacings to existing transmitter sites in other communities. Changes in assignment principles which would affect the television assignment structure and the basis for a nationwide television service should be undertaken only where compelling circumstances dictate the necessity for revision, at least until further information and experience are available. Logansport Broadcasting Corp., 10 RR 17 [1954].

Amendment of channel assignment rules so as to make an assignment available to other communities located within 15 miles of a listed community regardless of whether or not there are assignments in these other communities, or to provide a 5-mile tolerance in the spacing requirement rule, or to reserve the only assignment in a city for non-commercial educational use so that parties in that city could apply for an assignment in a nearby city, will be denied in the absence of any showing of compelling reasons for their adoption. Jackson Broadcasting and Television Corp., 10 RR 1259 [1954].

¶53:611 Reference points and distance computations (Continued)

Rule 3.611 amended to relax mileage separation requirements so as to make assignments possible to communities when transmitter sites are available which meet all technical requirements on minimum spacings and principal city coverage. The relaxation need not be limited to 5 miles nor to cases where an authorized transmitter site is available for use as a reference point in the communities to which measurements must be made. Television Transmitter Spacings, 14 RR 1513 [1956].

Channel 21 will be assigned to Fort Wayne, Indiana, where this can be done in accordance with relaxed rules as to transmitter spacing. Assignment to the smaller communities of Huntington or Roanoke would not be in the public interest or in accord with the Commission's objective of improving the opportunities for effective competition among a greater number of stations in many areas since these communities are so near to Fort Wayne and so much smaller that a station located in either of them would include Fort Wayne in its coverage and service area and would be at a competitive disadvantage in competing with Fort Wayne stations. The channel will not be made available exclusively for applicants for Channel 69 in a pending proceeding. Channel Assignment in Fort Wayne, Indiana, 14 RR 1517 [1956].

Assignment of Channel 8 to Davenport-Rock Island-Moline complies with the Commission's rules and standards even though minimum spacing requirements can be met only by locating the transmitter site outside of those communities, in Zone I. A Channel 8 station in Des Moines cannot complain of interference or request that the transmitter of a Davenport-Rock Island-Moline station be located at least 190 miles from the Des Moines station. Nor will the Des Moines station be given blanket future authority to move its transmitter site a "reasonable distance" east of its present site. The propriety of any such move can only be determined on the basis of an application for change of transmitter site. Peoria Deintermixture Case, 15 RR 1562a [1957].

¶53:612 Protection from interference

Whether or not an experimental television station is required to comply with minimum separation requirements if power and antenna height are so much less than the permissible maxima that the station causes no more interference than it would if all requirements were met, the Commission erred in granting without hearing an application of a UHF station to operate simultaneously on a VHF channel where separation requirements would not be met and an existing station claimed that it would suffer interference and made allegations tending to show that a bona fide experimental operation was not proposed. Capitol Broadcasting Co. v. FCC, 103 U.S. App. D.C. 252, 257 F. (2d) 630, 17 RR 2043 [1958].

Petition by permittee of a television station for leave to intervene in the proceedings on applications of other parties in the same area will be denied where the proposed stations would cause interference only to the 3.5 mv/m contour of petitioner's station since metropolitan television stations are not protected beyond the 5 mv/m contour. New England Television Co., 3 RR 2000 [1948].

Mileage separation requirements for television stations are an integral part of the allocation plan and will not be waived to permit use of transmitter sites for

¶53:612 Protection from interference (Continued)

two stations in Puerto Rico operating on adjacent channels where it appears that there are channels which could be reassigned so as to avoid adjacent channel operation. Department of Education of Puerto Rico, 9 RR 1111 [1953].

A proposed assignment meeting the minimum spacing requirements will not be denied because of adjacent channel interference to existing stations. Existing stations are not entitled to more protection from interference from proposed assignments than from other existing stations. Brockway Co., 9 RR 1381 [1953].

A proposed assignment which complies with the minimum spacing requirements will not be denied because of claimed interference to adjacent channel or co-channel stations. Hearst Corp., 9 RR 1383 [1953].

Alleged adjacent channel interference to a television station does not give standing to protest a grant where the purported showing of interference is based on assumptions that Grade B contours of particular stations can be determined through use of the Commission's field intensity curves, that adjacent channel interference can be said to exist where the ratio of wanted to unwanted service is less than 1 to 1, and that any adjacent channel interference which might be caused will not fall in an area within which the protestant already receives interference. Grade A and Grade B contours are not intended to depict service. In the absence of actual measurements it is not possible to state where Grade B contours or any other contours of a station will in fact fall. Congress in permitting protests to be filed on the basis of "interference" meant that only such interference as is recognized by the Commission's rules should be adequate to confer standing. Television stations are not protected against interference as such. A protestant cannot claim standing based on economic injury in order to gain protection against electrical interference which the rules do not protect against. Gross Telecasting, Inc., 13 RR 442c [1956].

Television stations are not protected against adjacent channel interference from other stations operating in conformity with the Commission's Rules, and such interference will be given no consideration. WJR, The Goodwill Station, Inc., 25 FCC 159, 13 RR 763 [1958].

A VHF channel will be assigned to an area with no operating stations and no VHF assignments within 50 miles if this can be done in accordance with the Rules and Standards. Interference caused to the Grade B contour of an existing station operating on the channel will not be taken into account. Channel Assignment to Nashaquitsa, Massachusetts, 14 RR 1501 [1956].

Television stations are not protected from interference which may be caused by the grant of other stations in compliance with the Commission's allocation requirements. Elmira Deintermixture Case, 22 FCC 307, 15 RR 1515 [1957]; Peoria Deintermixture case, 22 FCC 342, 15 RR 1550c [1957]; Channel Assignment to Ainsworth, Nebraska, 15 RR 1617 [1957]; Charleston Drop-In Case, 22 FCC 1231, 15 RR 1634 [1957]; Miami Drop-In Case, 22 FCC 1238, 15 RR 1637 [1957].

Assignment of Channel 8 to Davenport-Rock Island-Moline complies with the Commission's rules and standards even though minimum spacing requirements

¶53:612 Protection from interference (Continued)

can be met only by locating the transmitter site outside of those communities, in Zone I. A Channel 8 station in Des Moines cannot complain of interference or request that the transmitter of a Davenport-Rock Island-Moline station be located at least 190 miles from the Des Moines station. Peoria Deintermixture Case, 15 RR 1562a [1957].

Television stations are not protected against interference except by the rules as to minimum separations and maximum power and antenna heights. Greater separations will not be required because the path between two areas lies largely over water. Norfolk Drop-In Case, 22 FCC 1227, 15 RR 1630 [1957].

Allegations of interference will not be considered in opposition to a proposed assignment of a television channel which is in compliance with the Commission's allocation requirements. Channel Assignment to Columbia, South Carolina, 15 RR 1682 [1957].

A channel assignment meeting the separation requirements of the Rules will not be rejected because of allegations of interference to an existing station. Channel Assignment to Wausau, Wisconsin, 15 RR 1741 [1957].

An existing station may not object to assignment of the same channel in another area on the ground of interference, if the assignment complies with the Commission's rules and regulations and allocation requirements. Channel Assignments in Carbondale-Harrisburg, Ill., 16 RR 1617 [1958].

Waiver of §3.610(b) of the Rules to permit location of a Channel 10 transmitter on the Tampa antenna farm for a Largo, Florida station will not be granted in the absence of a showing that the channel can not be satisfactorily utilized in the area to which it is allocated, without such a waiver. Such a waiver could not be granted by declaratory ruling in view of the rights and interests of a Miami station operating on Channel 10 from a transmitter site 185 miles from the proposed Tampa site. Florida Gulfcoast Broadcasters, Inc., 17 RR 871 [1958].

An area will not be deprived of a needed television channel assignment meeting all allocation requirements on the basis of a claim of interference to existing co-channel stations. A station has no legal right to protection from interference which the Commission's rules do not protect it against, nor to a hearing on the question of modification of license on the basis of a claim of interference not recognized in the Rules. Harrisburg Drop-In Case, 17 RR 1629 [1958].

Assignment of Channel 13 to Florence, S. C. will not be denied because of allegations of interference to a Channel 13 station in Asheville, N. C., since the assignment would meet all allocation requirements and the engineering methods used in computing the alleged interference are questionable. Channel Assignments in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

THE NEXT PAGE IS PAGE M-3749

¶53:613 Main studio location.

The term "principal community" as used in §3.613 of the Rules means the city, town, village or other political subdivision or entity which a television station proposes to serve. The main studio must be located within the corporate boundary of such city, town, etc. "Community" does not mean metropolitan district. Where the principal community to be served does not have specifically defined political boundaries, applications will be considered on a case-to-case basis. Exceptions from this rule may be made in cases of severe and undue hardship. Connecticut Broadcasting Co., 7 RR 1265 [1951].

The Commission's television assignment plan contemplates not only the transmission of a television signal to individual communities but also the availability of a local television facility to the community. The location of the main studio of a broadcast station is directly related to the manner in which a station fulfills its obligation to serve the needs and interests of the community which it is licensed to serve. However, the main studio rule will be amended to permit establishment of the main studio of a television broadcast station outside the principal community to be served where an adequate showing is made that there is good cause for so locating the main studio and that to do so would not be inconsistent with the operation of the station in the public interest. WSIX Broadcasting Station, 8 RR 216 [1952].

A television channel will not be assigned to a particular transmitter site but only to a community. Mount Mitchell Broadcasters, Inc., 8 RR 709 [1952].

While the main studio of a television station must be located in the principal community to be served, and the word "community" does not mean "metropolitan district," applicant was in compliance with this requirement whose main studio would be located in the city to be served. The facts that the applicant proposed to originate film programs from its transmitter, located outside the city, and that it had moved the main studio location of its standard broadcast station from a down town location to the transmitter, gave no reason to conclude that applicant's compliance with the rule was technical or temporary or not in good faith. Mount Scott Telecasters, Inc., 9 RR 499 [1953].

Location of main studio of a television station outside the city limits was permissible where the proposed studio location was only 3/8 of a mile outside the city limits and was adjacent to city streets and use of a combined studio-transmitter building would result in savings to the benefit of program service. John Poole Broadcasting Co., 9 RR 547 [1953].

Assignment of television channels to two "hyphenated" communities does not mean that the channels are intended for joint use of both communities. Operation on the assigned channel in either city will afford service to the other city and the applicant by selection and location of its main studio indicates which community is to be considered as the principal community to be served. Tribune Co., 9 RR 719 [1954].

Location of the main studio of a television station is a matter for comparative determination as to which of competing applicants is to be preferred. A fundamental purpose of the assignment plan is the furnishing of television service to individual communities and the availability of a local television facility to the community is equally important with the availability of the signal transmitted. The accessibility of a main studio is important in determining the

¶53:613 Main studio location (Continued)

extent to which the station can participate in community activities and can enable members of the public to participate in programs and to present complaints or suggestions. Where each of several applicants proposes to locate its main studio in compliance wit §3.613 and such location is not detrimental to the implementation of its program proposal, a particular location in the principal community is not ordinarily a comparative factor, but where one site is clearly not comparable with sites proposed by other applicants because of its inaccessibility the factor must be given consideration. Tribune Co., 9 RR 719 [1954].

There was no violation of the Rules in selecting a transmitter site for a Muskegon, Michigan station which while furnishing a signal of the required intensity to Muskegon, would also serve Grand Rapids, where it could not be said that the number of "local" programs devised to meet the needs of Muskegon was abnormally small, considering its size; where it did not appear that applicant had planned or arranged for any programs, the interest in which would be confined to Grand Rapids; and where specific shows utilizing persons and topics of interest in Muskegon had been planned. The facts that applicant had taken pains to insure a high grade of service to Grand Rapids, that the transmitter site could be utilized for a Grad Rapids station, that the applicant had offered to share the transmitter site with the Grand Rapids Board of Education if that body should apply for the non-commercial educational channel allocated to that city, and that certain key personnel would reside in Grand Rapids and commute to Muskegon were not sufficient to require a different conclusion. Versluis Radio and Television, Inc., 9 RR 1123 [1954].

An application will not be dismissed because it requests a main studio location outside the principal community to be served. Grant of such a request does not constitute a reassignment of the particular channel involved. Applicant would still have to furnish a signal of the required strength to the community to which the channel is assigned and the proposed main studio location is a matter for comparative consideration at the hearing. Independent Television, Inc., 10 RR 510 [1954].

Where the proposed operation of a television station will comply with the main studio rule and will furnish more than a minimum signal over the principal city, the fact that the transmitter will be so located as to render a signal to another city which is well above the minimum or even greater than in the principal city does not mean that there has been any change in the allocation plan. The allocation plan permits flexibility in the location of transmitters as long as the requirements for proper service to the principal community are complied with. Nothing in the Sixth Report or the Commission's Rules indicates that other cities should be deprived of service from a station located in one city. Spartan Radiocasting Co., 10 RR 587 [1954].

A television permittee is only required to notify the Commission of a change of main studio location within its principal city. However, where permittee has chosen to include change of studio location in application for modification of permit, and a sufficient showing for such modification is made, hearing will not be ordered on petition of competing applicant in the original proceedings. Tribune Co., 11 RR 1068 [1955].

¶53:613 Main studio location (Continued)

Waiver of requirements of §3.613 of the Rules will be granted so as to permit location of main studio of a television station outside the city limits where the advantages of space, both for the contemplated building and for expansion, constitute good cause for the waiver, and the location would not be inconsistent with operation of the station in the public interest. Richmond Newspapers, Inc., 11 RR 1234 [1955].

Where television channel was assigned to Parma-Onondaga, Michigan, two small communities (pop. 680 and 400, respectively), proposal of state university applying for Onondaga as its station community to locate its main studio in East Lansing, 20.5 miles away, was proper. The fifteen-mile limitation in §3.607(b) of the Rules is inapplicable. Triad Television Corp., 11 RR 1307 [1955].

A permittee may not move its main studio outside the principal community in which it is located without prior Commission consent, but it is free to change the location of the main studio within the principal community, conditioned only upon prompt notice to the Commission, and it may establish auxiliary studios without any additional authorization from the Commission. Where a station opens a second studio it will be presumed that it is not the main studio; this presumption may be rebutted by facts showing that the second studio is in fact the main studio. No specific percentage of programs is required to be originated from the main studio of a television station, and the matter will be resolved on a case-to-case basis. Where a station produces approximately 93% of its total hours and 82% of its non-network hours from its original studio, it cannot be said that this studio is not the main studio. The matter will not be determined on the basis of the station's wholly-live programs, although a station may not present all its wholly-live programs from a studio other than the main studio; but in any event, 46% of the station's wholly-live programs were presented from its original studio and it had never refused sustaining time to a public service organization of its principal city nor refused to sell time to a local advertiser. The fact that the second studio may have been superior in various respects did not show that it was the main studio where it did not appear that programming from the original studio had suffered because of any inadequacy of facilities used or because of shifts of equipment and personnel. Gulf Television Co., 12 RR 447 [1956].

Waiver of the requirement that the main studio shall be located in the principal community to be served is warranted where the studio would be located 3-1/2 miles beyond the city limits of a city of 62,000, the site is easily accessible by highway, and the applicant considered the proposal the best of the available alternatives. WORZ, Inc., 22 FCC 1254, 12 RR 1157 [1957].

Construction of an auxiliary studio under flexible plans whereby if the Commission should grant a pending application for modification to change the main studio location to the auxiliary studio site the auxiliary studio would be enlarged and would become the main studio is not an unauthorized change in the location of the main studio under §3.613(b) of the Commission's Rules. WWSW, Inc., 14 RR 587 [1956].

Move of a television station's main studio from one community to another within the service area of the station is not a reassignment of the station to the latter community so as to require rule-making proceedings. Approval without hearing of move of studio from Mesa to Phoenix, Arizona, was not a violation of the

¶53:613 Main studio location (Continued)

Rules where the station would continue to operate and identify itself as a Mesa station and the reason for the move, among other things, was to eliminate interference from a standard broadcast transmitter. It was not shown that transportation between Mesa and Phoenix was so inadequate that Mesa residents would not have easy access to the Phoenix studio. Since there was no reassignment involved, considerations of fair, efficient and equitable distribution of facilities were not presented. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

Grant of an application to change main studio of a Mesa, Arizona station to a site within the city limits of Phoenix, Arizona, would not be contrary to the priorities set forth in the Commission's Sixth Report and Order nor inconsistent with §§3.606 and 3.607 of the Rules. The provisions of §3.613 for "waiver" of rule as to main studio location are not inconsistent with §§3.606 and 3.607. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

Maintenance of a main studio outside the principal community to be served is not a violation of the rules or assignment plan since §3.613 expressly provides for this situation. The fact that the studio is to be located in a separate community which is separately listed in the table of assignments does not prevent approval of such an application or amount to a reassignment of the channel. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

That the licensee of a Mesa, Arizona studio opposed an attempt of a Phoenix station to move its transmitter site for reasons of self-interest does not show that its later application to move its main studio to Phoenix, while still serving the needs of Mesa, was not filed in good faith. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

Service to all the markets within an area is coupled with a right to seek revenues from said markets, and where a station advertises truthfully and no facts are shown to indicate that the needs of the principal community to be served are being neglected from either the local programming standpoint or in serving local advertisers or organizations, there is nothing wrong with the establishment of an auxiliary studio in another city to which the station provides a Grade A signal and efforts to serve that city as well as the community to which it is allocated. No facts were alleged which would establish that the station had in fact operated in such manner as to establish within the purview of the Commission's Rules or policy that its auxiliary studios were in fact its main studios, and mere allegations of superiority of the auxiliary studios and employment of a larger staff would not in themselves establish that fact. A primary test in determining whether an auxiliary studio is in fact a main studio is whether the station is in fact meeting the local needs of the community to which the station is allocated, and no facts were presented as to program origination practices or to demonstrate that any organization or advertiser in the community to which the station is allocated had been refused use of the facilities of the station. William E. Walker, 15 RR 177 [1957].

¶53:613 Main studio location (Continued)

Section 307(b) of the Act does not preclude the authorization of stations to serve, maintain studios in and identify themselves in station identification announcements with more than one principal community. Main Studios and Station Announcements, 22 FCC 1567, 15 RR 1613 [1957].

It would not be administratively feasible or desirable to adopt broad amendments to the Rules embodying criteria which would automatically qualify a television station for authorization to include more than one city in announcements of station identification required by §3.652(a), nor has justification been shown for a general or widespread departure from the established system under which television stations are required to identify themselves officially with a single principal community to which their channel is assigned. However, the Commission will consider requests for authorization to include the name of more than one city in station identification announcements on a case-by-case basis. Main Studios and Station Announcements, 22 FCC 1567, 15 RR 1613 [1957].

Record in a comparative case will not be reopened after final decision nor will hearing be ordered on an application for modification of construction permit where the changes in the proposal of the permittee do not affect any of the bases of preference in the comparative case nor affect the Commission's findings that the permittee was superior on the factor of effectuation of proposals. While the permittee proposed a temporary main studio location, it was not alleged that it did not intend to construct its permanent studios as proposed at the hearing. The permittee was not required to disclose the nature of the programming from the temporary studios, their size and description, or the duration of their use in the modification application. No application for modification of construction permit is necessary for a change of main studio within the community. A permittee is entitled to some latitude in the early phases of operation. No unauthorized construction or concealment of plans was shown. Indianapolis Broadcasting, Inc., 23 FCC 582, 16 RR 36 [1957].

There was no violation of §3.613(b) of the Rules in a change by a permittee of its studio plans without promptly notifying the Commission, where the permittee had not previously "located" its studio. WJR, The Goodwill Station, Inc., 25 FCC 196, 16 RR 321 [1958].

Section 307(b) considerations are not controlling in deciding between various applications for a channel allocated to two communities by a hyphenated assignment, where the allocation contemplated an area-wide service, the main studio of each applicant is reasonably accessible to its station community and for area-wide expression opportunities, and each of the applicants proposes area-wide expression opportunities. The scattered locations of the main studios does not change this conclusion. The principal community to be served by an applicant is not determined by the location of the main studio but is determined under §3.607 of the Rules. Each of the applicants had been granted a waiver of the main studio requirements of §3.613. Triad Television Corp., 25 FCC 848, 16 RR 501 [1958].

¶53:614 Power and antenna height requirements

Adoption of a policy permitting interim operation of a metropolitan television station with facilities substantially below those specified in the outstanding construction permit would not be in the public interest where operation at lower power would not provide satisfactory service to the entire metropolitan district and surrounding rural area whereas operation as specified in the construction permit would. Permission to proceed with construction of a television station with a 500 watt transmitter temporarily in lieu of 5 kw was denied. Florida Broadcasting Co., 5 RR 69 [1949].

The zone in which the transmitter of a television station is located or proposed determines the applicable rules with respect to co-channel mileage separations and maximum antenna heights and powers for VHF stations, where the transmitter is located in a different zone from the city to which the channel employed by the station is assigned. Location of Television Transmitters, 8 RR 255 [1952].

Request for waiver of rules as to power-height requirements in order to allow the height specified in the original construction permit but not permitted under subsequent amendment to rules was denied without hearing, Chairman McConnaughey and Commissioner Lee filing dissenting statement. WBEN, Inc., 11 RR 459 [1954].

Proposed change in rules to require use of a transmitter with a minimum rated power of 5 kw for channels 14-83 was withdrawn as not in the public interest. Amendment of Rule on Television Transmitter Power, 11 RR 1549, [1954].

Rules amended to permit maximum power on television channels 2-13, with antenna heights up to 1250 feet above average terrain. Increase in height of 250 feet was a compromise in Zone I which would permit stations to improve their service with the least impact on other stations and with negligible effect on problems relating to air hazard. However, this amendment was subsequently rescinded in order that the questions presented might be considered in the general rule-making proceeding on television allocations and related matters. Maximum Power on Television Channels, 12 RR 1576 [1955].

That an amendment to a rule affects only one television station does not render it arbitrary or capricious if the amendment otherwise serves the public interest. Nor does the fact that the station was granted an authorization under the condition that it was subject to rules subsequently adopted, preclude the Commission from subsequently amending its rules to correct inequities and avoid hardships not necessitated by the public interest. Maximum Power on Television Channels, 12 RR 1586c [1956].

Exemption to the 1000 foot limitation on use of maximum power in Zone I will not be broadened to apply to a station which received its authorization for an antenna above 1000 feet well before issuance of the Third Notice of Proposed Rule Making and which employs a supporting structure only 175 feet above ground. WJAC, Inc., 12 RR 1586e [1956].

Maximum power and antenna height for VHF television stations in Zone I will not be altered at the present time, nor will stations operating on Channels 2-6 in Zone II be authorized to operate with maximum power of 100 kw irrespective

¶53:614 Power and antenna height requirements (Continued)

of antenna height. Maximum power of UHF stations is increased from 1000 kw to 5000 kw, Second Report on Deintermixture, 13 RR 1571 [1956].

Increase in maximum authorized power of UHF stations from 1000 kw to 5000 kw was in the public interest and will not be reconsidered. Maximum Power of UHF Stations, 13 RR 1597 [1956].

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¶53:607 Availability of channels

Where a television channel had been assigned to New Castle, Pa., and a construction permit issued for operation of a station in that city, subsequent reassignment of the channel to New Castle, Pa.-Youngstown, Ohio as a hyphenated assignment does not give applicants for use of the channel in Youngstown a right to a comparative hearing with the New Castle permittee where the Commission finds, on the basis of substantial evidence, that the station is actually a New Castle station and not a Youngstown station. While the station's transmitter and antenna had been moved to Youngstown, its main studio remained in New Castle and there was no evidence that this was a sham or that it was in reality a Youngstown station, even though it did serve Youngstown and competed with Youngstown stations for audiences, networks and advertisers. Community Telecasting Co. v. FCC, 103 U.S.App.D.C. 139, 255 F.(2d) 891, 17 RR 2029 [1958].

Where the court had found that a modification of construction permit, changing transmitter site of a television station, would result in a curtailment of service which, unless outweighed by other factors, was not in the public service, and had remanded the case to the Commission for further consideration, the Commission's subsequent order again approving the change was not supported by findings that the availability of a network affiliation at the new location assured the community that the permittee would actually commence operation, and that as a result of the modification many persons in the area would receive programs of a particular network for the first time and others would receive them on a stronger signal. Hall v. FCC, 103 U.S.App.D.C. 248, 257 F.(2d) 626, 17 RR 2038 [1958].

Application for special temporary authority to construct and operate a television station will be dismissed where the channel requested has been assigned to another community, and a partial hearing has been had on applications for construction permits in that community in which proceeding the present applicant was not a party. Broadcasting Corp. of America, 4 RR 1424 [1949].

Assignment of a single television channel to a community and the reservation of that channel exclusively for noncommercial educational use should not preclude the availability to that community of other television channels which would otherwise be available to it under the fifteen-mile provision of §3.607(b) of the Rules. South Jersey Broadcasting Co., 8 RR 214 [1952].

The "fifteen-mile rule" in §3.607(b) applies only where a channel is assigned to a community within 15 miles of an unlisted community. Assignment of Television Channel to Irwin, Pennsylvania, 8 RR 453 [1952].

Reservation of a particular channel for an educational station is tantamount to deletion of the channel in so far as commercial applicants are concerned. The channel is as effectively removed from availability for commercial operation as if it did not appear in the assignment table at all. Hearst Radio, Inc., 9 RR 145 [1953].

No special consideration will be given to an applicant for television facilities or the 20-day cut-off rule applied to it because it had been through hearing prior to the "freeze" and had always requested a specific channel which was still assigned to the community, although reserved for educational use, and

¶53:607 Availability of channels (Continued)

because the community had only one television station in operation. The public interest must prevail over the equities of a particular applicant's individual position. Other applicants would have a right to apply for the channel even if the educational reservation was removed. There was no discrimination against the applicant in reserving the particular channel for educational use. Hearst Radio, Inc., 9 RR 145 [1953].

There is no necessity for amending the rules on television channel assignments to provide that an application will not be accepted for filing if the proposed station would render a signal of greater intensity to another city listed in the Table of Assignments than to the city whose channel is requested except on a showing that because of terrain peculiarities or other justifiable circumstances, the proposed site provides the optimum coverage to the city specified as the studio location. Music Broadcasting Co., 9 RR 353 [1953].

The reference points mentioned in §3.611 of the television rules apply only to assignment spacings and in applying the 15 mile rule of §3.607(b), transmitter sites are not to be considered. The reference to §3.611 in §3.607 relates only to the method of measurement to be used and not to the reference points to be used. In any event, it could not be contended that a community was not within 15 miles of a listed community because all existing stations in the listed community had transmitter sites more than 15 miles away, if one channel remained unassigned. Lawrence A. Harvey, 9 RR 378 [1953].

Television channels assigned to Portland, Oregon are also available for a station located in Vancouver, Washington, a community not listed in the Table of Assignments and located eight miles north of Portland. Mount Scott Telecasters, Inc., 9 RR 499 [1953].

There was no violation of the Rules in selecting a transmitter site for a Muskegon, Michigan station which while furnishing a signal of the required intensity to Muskegon, would also serve Grand Rapids, where it could not be said that the number of "local" programs devised to meet the needs of Muskegon was abnormally small, considering its size; where it did not appear that applicant

¶53:607 Availability of channels (Continued)

had planned or arranged for any programs, the interest in which would be confined to Grand Rapids; and where specific shows utilizing persons and topics of interest in Muskegon had been planned. The facts that applicant had taken pains to insure a high grade of service to Grand Rapids, that the transmitter site could be utilized for a Grand Rapids station, that the applicant had offered to share the transmitter site with the Grand Rapids Board of Education if that body should apply for the non-commercial educational channel allocated to that city, and that certain key personnel would reside in Grand Rapids and commute to Muskegon were not sufficient to require a different conclusion. Versluis Radio and Television, Inc., 9 RR 1123 [1954].

An application for a television channel in a city to which it is not assigned is not eligible for consideration and is not entitled to comparative consideration with an application for use of the same channel in a city to which it has been assigned. Wabash Valley Broadcasting Corp., 10 RR 6 [1953].

Where the proposed operation of a television station will comply with the main studio rule and will furnish more than a minimum signal over the principal city, the fact that the transmitter will be so located as to render a signal to another city which is well above the minimum or even greater than in the principal city does not mean that there has been any change in the allocation plan. The allocation plan permits flexibility in the location of transmitters as long as the requirements for proper service to the principal community are complied with. Nothing in the Sixth Report or the Commission's Rules indicates that other cities should be deprived of service from a station located in one city. Spartan Radiocasting Co., 10 RR 587 [1954].

The Commission is not required to grant enlargement to add an issue as to Section 307(b) of the Act in a case involving a community located within 15 miles of the community to which the channel has been assigned, nor does enlargement mean that the section is to be considered the determinative issue in the proceeding, but an issue will be added upon a proper showing permitting a determination whether the section is applicable and if so, whether a choice can reasonably be based thereon. This does not mean that evidence on comparative coverage must be considered. St. Louis Telecast, Inc., 10 RR 1000 [1954].

Amendment of channel assignment rules so as to make an assignment available to other communities located within 15 miles of a listed community regardless of whether or not there are assignments in these other communities, or to provide a 5-mile tolerance in the spacing requirement rule, or to reserve the only assignment in a city for non-commercial educational use so that parties in that city could apply for an assignment in a nearby city, will be denied in the absence of any showing of compelling reasons for their adoption. Jackson Broadcasting and Television Corp., 10 RR 1259 [1954].

The concept of "community," as used in Section 307(b) of the Act, connotes at least three ideas: (1) a group of people; (2) common organization or interests; (3) a definite location. "Greater Endicott," New York cannot be regarded as a separate community where it has not been defined except by the Chamber of Commerce, and there is no common organization or common interests among the people living in Greater Endicott. Southern Tier Radio Service, Inc., 11 RR 143 [1954].

¶53:607 Availability of channels (Continued)

Where television channel was assigned to Parma-Onondaga, Michigan, two small communities (pop. 680 and 400, respectively), proposal of state university applying for Onondaga as its station community to locate its main studio in East Lansing, 20.5 miles away, was proper. The fifteen-mile limitation in §3.607(b) of the Rules is inapplicable. Triad Television Corp., 11 RR 1307 [1955].

The Commission in assigning channels to communities did not intend to confine signals to the communities to which the channels involved had been assigned, or to limit the availability of stations to the people living within such communities. Maximum channel utilization was sought to be achieved. The fact that a station, operating from a particular site, would render a slightly higher signal strength to another city than to the city to which the channel is assigned does not create a violation of the Rules, if a principal city signal is furnished to the latter city and the station is meeting the programming needs of that city. Nor is any violation of the principles of the Sixth Report and Order present in such a situation, even though the station could render a principal city signal to the latter city from sites closer thereto. Gulf Television Co., 12 RR 447 [1956].

A television station authorized to operate on a channel assigned to Petersburg, Virginia, which has a transmitter site 8.5 miles from Petersburg and 12 miles from Richmond and provides a principal city signal to Richmond as well as Petersburg, violates no rule or policy of the Commission in seeking sponsorship and advertisers on the basis of such service or preparing and distributing advertising and promotional geared to such an operation. Nor is preparation of advertising and promotion material stressing Richmond any violation of the rule on station identification announcements. No misrepresentation or false holding-out was involved nor had the licensee circumvented or violated §§3.606 or 3.607 of the Commission's Rules. Petersburg Television Corp., 12 RR 1395 [1955].

Protests by licensees of television stations in Greenville and Anderson, South Carolina, against modification of construction permit of a Spartanburg station to change the transmitter site to a point nearer to Greenville and Anderson, were denied in the absence of a showing that the Commission had not given proper consideration to §§3.606 and 3.607 of the Rules, that the allocation of the channel to Spartanburg would not effect a fair, efficient and equitable distribution of facilities or that any monopoly of service would result. The station would furnish a signal in excess of the intensity required by the Rules to all of the city of Spartanburg and 87% of its trading area would be within the Grade A contour. No significant change in contours would result from the change as far as service to Greenville and Anderson was concerned. The Commission will not afford existing licensees relief from losses in revenue due to competition from new services which are required in the public interest and in any event the evidence did not show that the protestants would suffer economic losses from operation of the station as proposed. Spartan Radiocasting Co., 12 RR 1415 [1955].

¶53:607 Availability of channels (Continued)

The prime purposes of the Sixth Report and Order were to assure that as many communities as possible would have receivable television signals and local outlets for expression and that the public generally would receive the most and best service possible. Signals are not to be confined to the communities to which the channels involved have been assigned, or the availability of stations limited to people residing within such communities. The Sixth Report and Order permits of flexibility in the location of transmitters, as long as the requirements for proper coverage of the principal city are complied with. While a transmitter is generally required to be located at the "most central point," this does not mean that the transmitter must be located in, or in close proximity to, the principal city to be served. Modification of construction permit of a Spartanburg, South Carolina station to change the transmitter site to a point nearer to Greenville and Anderson, South Carolina was not required to be set aside on protests by UHF licensees in Greenville and Anderson where it appeared that satisfactory service would continue to be rendered to Greenville. Spartan Radiocasting Co., 13 RR 589 [1956].

Even if a loss of service would be caused by change of transmitter site of a television station from a previously authorized location, which had never actually been used by the permittee, to a new location, the change being brought about by the desire of the permittee to obtain a network affiliation and the necessity to avoid overlap with another affiliate of the same network, this was outweighed by the importance of bringing network programming to the area, the bringing of a third network service to three cities served with a city grade service, and bringing the programming of the particular network to a substantial area. While some areas and persons would be deprived of service which they would otherwise have received from the proposed station, or the quality of their service would be diminished, all these areas were at considerable distances from the principal city to be served and received a number of other services. Spartan Radiocasting Co., 23 FCC 106, 13 RR 610a [1957].

There is no violation of television channel assignment principles or of Section 307(b) of the Act in licensing of a station which will not only serve the city to which it is allocated but will also provide competition for stations assigned to other communities. The Commission's primary policy is to assure a nationwide competitive television service and it cannot do this without allowing a degree of overlap of service areas. The fact that a proposal complies with §§3.610 and 3.685 of the Rules creates a strong presumption that the site selected is acceptable. WJR, The Goodwill Station, Inc., 25 FCC 159, 13 RR 763 [1958].

Grant of an application to change main studio of a Mesa, Arizona station to a site within the city limits of Phoenix, Arizona, would not be contrary to the priorities set forth in the Commission's Sixth Report and Order nor inconsistent with §§3.606 and 3.607 of the Rules. The provisions of §3.613 for "waiver" of rule as to main studio location are not inconsistent with §§3.606 and 3.607. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

Move of a television station's main studio from one community to another within the service area of the station is not a reassignment of the station to the latter community so as to require rule-making proceedings. Approval without hearing of move of studio from Mesa to Phoenix, Arizona, was not a violation of the Rules where the station would continue to operate and identify itself as a Mesa station and the reason for the move, among other things, was to eliminate interference

¶53:607 Availability of channels (Continued)

caused by a standard broadcast transmitter. It was not shown that transportation between Mesa and Phoenix was so inadequate that Mesa residents would not have easy access to the Phoenix studio. Since there was no reassignment involved, considerations of fair, efficient and equitable distribution of facilities were not presented. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

Use of the modification procedure under Section 316 of the Act is inappropriate where a channel on which a station is operating is shifted from one community to a larger nearby city on the petition of the permittee of the station. Permittee may apply for authority to operate as a station of the latter city under §3.607(a) of the Rules. Channel Assignment to Fort Wayne, Indiana, 14 RR 1571 [1956].

Channel 13 was reassigned from Warner Robins to Macon, Georgia after adoption of new minimum separation rules. Licensee operating on the channel was not ordered to show cause why its authorization should not be modified to specify operation at Macon, since the amendment was effectuated on its petition. The licensee could apply for authority to operate as a Macon station under §3.607(a). Channel Assignment to Macon, Georgia, 14 RR 1581 [1957].

Rule which provides that application may be filed to construct television broadcast stations on assigned channels, clearly refers only to unoccupied channels. Where a construction permit has been granted, the specified channel is for all practical purposes deleted from the Table of Assignments and it is not available for application unless the construction permit is surrendered or revoked or the license comes up for renewal. WKST, Inc., 15 RR 120 [1957].

Where channel previously assigned to community A was made a hyphenated assignment to communities A and B by amendment of the Table of Assignments, authorization previously issued to operate a station on the channel was not affected nor any new channel allocation created. Permittee authorized to operate on the channel could be granted change in transmitter site from A to B and no other applicant had a right to be heard in a comparative proceeding. WKST, Inc., 15 RR 919 [1957].

Section 307(b) of the Act does not preclude the authorization of stations to serve, maintain studios in and identify themselves in station identification announcements with more than one principal community. Main Studios and Station Announcements, 22 FCC 1567, 15 RR 1613 [1957].

Change of transmitter site of a Daytona Beach television station to a point nearer to Orlando, a larger city, is not contrary to the provision of Section 307(b) of the Act where operation from the new site will result in service to increased areas and populations, will provide a stronger signal to those areas receiving A and B service from the original site, and will cause no loss of service to any areas served from that site. No violation of §§3.606 or 3.607 of the Rules is involved as long as the station remains a Daytona Beach station and there was no evidence of an intent to change its operation in this regard. While the Commission gives careful consideration to a proposed transmitter move away from a principal community toward some larger city, there is no conclusive presumption that such move is in derogation of §§3.606 and 3.607. Nor does the fact that the move is in part motivated by a desire to obtain a network affiliation make it improper. Telrad, Inc., 24 FCC 191, 16 RR 231 [1958].

¶53:607 Availability of channels (Continued)

Section 307(b) considerations are not controlling in deciding between various applications for a channel allocated to two communities by a hyphenated assignment, where the allocation contemplated an area-wide service, the main studio of each applicant is reasonably accessible to its station community and for area-wide expression opportunities, and each of the applicants proposes area-wide expression opportunities. The scattered locations of the main studio does not change this conclusion. The principal community to be served by an applicant is not determined by the location of the main studio but is determined under §3.607 of the Rules. Each of the applicants had been granted a waiver of the main studio requirements of §3.613. Triad Television Corp., 25 FCC 848, 16 RR 501 [1958].

Proposal to add a third VHF channel in the Providence, Rhode Island area by substituting Channels 8 and 13 for Channel 12 will not be adopted. The channels could be used only at sites widely separated from each other and at substantial distances from Providence and from the existing Channel 10 site, so that the competitive situation would not be effectively improved. Nor could it be determined with any certainty whether aeronautical hazards and limitations would preclude utilization of any particular antenna sites for Channels 8 and 13 in the areas south and east of Providence which would conform with minimum separation requirements and permit the use of antenna towers of sufficient height to furnish a city grade signal to Providence. For the same reason the channels will not be assigned to Providence on the theory that sites might be found which could be used in communities within 15 miles of Providence. Channel Assignment in Providence, R. I., 17 RR 1725 [1958].

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REPLY BY COMMISSION TO QUESTIONS OF SENATE INTERSTATE COMMERCE COMMITTEE

Honorable Edwin C. Johnson
Chairman
Senate Committee on Interstate and Foreign Commerce
United States Senate
Washington, D.C.

My dear Mr. Chairman:

[¶91:18] This is in reply to your letter of February 15, 1949, asking a series of questions about television. Your letter has been fully discussed by the Commission. The reply was approved at a meeting of the Commission held on February 25, 1949 at which Commissioners Coy, Hyde, Webster, Jones and Hennock were present; Commissioners Walker and Sterling were absent from the city at the time. The views expressed are those of the above five Commissioners with the exceptions stated in the body of the letter itself.

Question (a) Has consideration been given to a plan of television frequency allocation which will insure the use on a broad commercial scale of every improvement in the art, including the use of color?

This question can be answered with a categorical "yes". Such an answer is not complete without an account of the consideration which has been given to an allocation plan which would insure the use of every improvement in the art, including the use of color.

Television developed in the late 1920's and early 1930's as a black and white system. Experimental operations continued for a period of years and there was a beginning of a commercial operation just prior to the war. Right at the end of the war the Commission had an allocation proceeding in which it allocated to television 13 channels (subsequently reduced to 12) ranging from 44 megacycles to 216 megacycles, each of these channels being 6 megacycles wide. Obviously, television did not occupy all the space between 44 and 216 megacycles because of its being allocated to or in use by other services. At that time the Commission fixed the standards for television which are in effect today. The standards were substantially the same as those in existence before the war.

In late 1946 and early 1947 the Commission considered the proposal of the Columbia Broadcasting System to fix standards for a color television system. The color system advocated by Columbia had been developed in its laboratories and at that time was demonstrated to the Commission and the public. The Commission in March 1947 adopted a report denying the Columbia petition and setting forth its reasons therefor. A copy of that report is attached.

On May 5, 1948 a public notice was issued for the purpose of considering again questions involved in the best utilization of the 475 to 890 megacycle band for television. This band had been allocated to television in the 1945

proceeding. At that time the Commission pointed out that the 475 to 890 megacycle band would have to be used for television if this country were to have a nationwide competitive system of television. By this statement the Commission in 1945 recognized that the 13 channels then available would be insufficient for a nationwide competitive system. In its notice of May 5, 1948, asking for proposals for the utilization of the 475 to 890 megacycle band, the Commission particularly referred to color and high definition black and white systems to indicate that full consideration would be given in the September 20 hearing to any testimony seeking to utilize this portion of the spectrum for any system of television.

The hearing was held beginning September 20, 1948. The hearing resulted in fairly general agreement among those who testified that the 475 to 890 megacycle band should be used for black and white television on the present standards — namely, a continuance of the present system of television. It was felt that while some improvement in definition of present black and white pictures was desirable, engineering developments could make these improvements possible within the framework of the present standards and that, therefore, no greater band width should be utilized for black and white television. It is an accurate generalization to say that there was agreement among the witnesses at this hearing that color was still not ready, that more laboratory work and experimental operations were needed with respect to color and that we needed more channels for the present system of television in order to provide a sufficient number of channels for competition in the metropolitan communities and cities and towns throughout the United States.

It was the consensus of those who testified that a portion of the 475 to 890 megacycle band should be reserved for further experimentation with color television and that the entire band should not now be allocated for the present system of television.

It should be pointed out that the Commission in evaluating this testimony, is aware of the fact that this evidence coming from the broadcasting industry as it did, was in accordance with the present interests of those who testified. In other words, all of those who testified for the continuance of the present system are either in the business of manufacturing transmitters and receivers or in the broadcasting business utilizing the present system of television or wanting badly to get into it.

The Commission has not yet reached a determination with respect to the above matters. In disposing of the questions raised in this proceeding the Commission must face the important policy questions involved in determining the future of television in this country. A decision must be made on the question of utilizing the UHF frequencies for high-definition black and white, color, the present black and white system or any other system.

Additional Views of Commissioner Jones

I am distressed that the inventor of the color television art does not now have the enthusiasm consistent with the zeal ordinarily growing from such a discovery as 6 megacycle color television.

There are TV broadcasting stations in only 33 metropolitan areas of the 140 areas provided for by 12 VHF channels. One million receiving sets of the

present models are in the service areas of the 55 TV licensees in those 33 areas. The manufacturers have not been able to supply the demand for television receivers in these 33 areas during the freeze period. At least tube manufacturers have been a bottleneck, according to all the available information I have, to supply this market. There is no reason why this market should not continue in the metropolitan areas like New York, Chicago, etc., where all available VHF channels are assigned. I do not think we are obligated to consider the private interest of any of these 55 licensees or the manufacturers who are tooled up for black and white transmission and receiver production. Our interest is only the public interest and how much worse the public will be hurt when receivers of the price range of television receivers are distributed in 140 metropolitan areas. Would the manufacturers care when the market is glutted with television receivers in these 140 areas if they had recovered their investment or if they had made a profit from the investment in black and white television and then were ready to move to color or some other new development of the art? I think not. While there were many dislocations when the automobile factory replaced the horse collar factory, it is my opinion the public benefited by the invention and development of the automobile. How much more so should a regulatory agency be the first to provide standards for orderly development of color television and let the investing and listening public decide what it wants.

In my opinion color television can be provided for now. Every day the problem of changeover becomes more severe. The modification of black and white transmitters and receivers is minor compared to the other considerations involved. This modification of receivers should not cost more than converters for present TV receivers to receive signals in the UHF band if and when UHF bands are opened to commercial broadcasting.

I believe television will not be a full-grown industry until color is provided. Color excites one of our most responsive senses. A travelogue in color, an oil painting reproduced in color, an advertisement for colorful clothing in color — what a difference in enjoyment the TV viewer would get. If we think in terms of opening the UHF in 6000 kc band width per channel so that licenses may be granted and licensees may operate TV broadcast stations in small markets where FM and AM broadcasters now serve the public interest, color is almost a must to cut down operating expenses. For example, black and white TV has to depend largely upon action (movement) which becomes a rather expensive type of program to produce. The enjoyment of color alone would necessitate less action. Possibly the industry has been too wrapped up in the fact that TV is such an effective advertising medium, giving the viewer such an indelible impression of the broadcast. This is a two-edged sword. The indelible impression not only makes repetition less necessary but also <u>more objectionable</u>. One might listen to the same identical record of music hundreds of times over a long period but he would not enjoy such repetition of the same movie. This factor is a major one in TV and can be expected to become more crucial as the novelty wears off. Color will provide a whole new dimension in programming.

I have stated my views more fully because I do not think 1,000,000 receivers now should impair the whole future television system.

Question (b) Has consideration been given to the prevention of the element of monopoly control both in the manufacture of the equipments used for transmission and reception of television as well as in the broadcast of the programs?

This question is really two questions — the first has to do with the element of monopoly control in the manufacture of transmitters and receivers — the second has to do with the element of monopoly control in the broadcast of television programs.

The Commission has no control over manufacturers as such. However, with reference to manufacturers who are either licensees or applicants for licenses, the Commission can and does consider their activities with respect to any monopolistic patent control they may exercise or any activities which constitute restraint of trade or unfair competition within the meaning of the Sherman or Clayton Act in order to determine the qualifications of such persons to operate a radio station in the public interest. The authority of the Commission in this regard has been sustained by the Supreme Court in National Broadcasting Company v. United States, 319 U.S. 190. The Court in that opinion stated (pp.222-224):

> A totally different source of attack upon the Regulations is found in §311 of the Act, which authorizes the Commission to withhold licenses from persons convicted of having violated the anti-trust laws. Two contentions are made — first, that this provision puts considerations relating to competition outside the Commission's concern before an applicant has been convicted of monopoly or other restraints of trade, and second, that, in any event, the Commission misconceived the scope of its powers under §311 in issuing the Regulations. Both of these contentions are unfounded. Section 311 derives from §13 of the Radio Act of 1927, which expressly commanded, rather than merely authorized, the Commission to refuse a license to any person judicially found guilty of having violated the anti-trust laws. The change in the 1934 Act was made, in the words of Senator Dill, the manager of the legislation in the Senate, because "it seemed fair to the committee to do that." 78 Cong. Rec. 8825. The Commission was thus permitted to exercise its judgment as to whether violation of the anti-trust laws disqualified an applicant from operating a station in the "public interest." We agree with the District Court that "The necessary implication from this (amendment in 1934) was that the Commission might infer from the fact that the applicant had in the past tried to monopolize radio, or had engaged in unfair methods of competition, that the disposition so manifested would continue and that if it did it would make him an unfit licensee." 47 F. Supp. 940, 944.
>
> That the Commission may refuse to grant a license to persons adjudged guilty in a court of law of conduct in violation of the anti-trust laws certainly does not render irrelevant consideration by the Commission of the effect of such conduct upon the "public interest, convenience, or necessity." A licensee charged with practices in contravention of this standard cannot continue to hold his license merely because his conduct is also in violation of the anti-trust

laws and he has not yet been proceeded against and convicted. By clarifying in §311 the scope of the Commission's authority in dealing with persons convicted of violating the anti-trust laws, Congress can hardly be deemed to have limited the concept of "public interest" so as to exclude all considerations relating to monopoly and unreasonable restraints upon commerce. Nothing in the provisions or history of the Act lends support to the inference that the Commission was denied the power to refuse a license to a station not operating in the "public interest," merely because its misconduct happened to be an unconvicted violation of the anti-trust laws.

Alternatively, it is urged that the Regulations constitute an ultra vires attempt by the Commission to enforce the anti-trust laws, and that the enforcement of the anti-trust laws is the province not of the Commission but of the Attorney General and the courts. This contention misconceives the basis of the Commission's action. The Commission's Report indicates plainly enough that the Commission was not attempting to administer the anti-trust laws:

"The prohibitions of the Sherman Act apply to broadcasting. This Commission, although not charged with the duty of enforcing that law, should administer its regulatory powers with respect to broadcasting in the light of the purposes which the Sherman Act was designed to achieve. . . .While many of the network practices raise serious questions under the antitrust laws, our jurisdiction does not depend on a showing that they do in fact constitute a violation of the antitrust laws. It is not our function to apply the anti-trust laws as such. It is our duty, however, to refuse licenses or renewals to any person who engages or proposes to engage in practices which will prevent either himself or other licensees or both from making the fullest use of radio facilities. This is the standard of public interest, convenience or necessity which we must apply to all applications for licenses and renewals. . . We do not predicate our jurisdiction to issue the regulations on the ground that the network practices violate the antitrust laws. We are issuing these regulations because we have found that the network practices prevent the maximum utilization of radio facilities in the public interest." (Report, pp. 46, 83, 83 n. 3.)

We conclude, therefore, that the Communications Act of 1934 authorized the Commission to promulgate regulations designed to correct the abuses disclosed by its invesitgation of chain broadcasting.

At the present time the Commission is conducting a study of the patent situation in the radio field and also the practice of companies in buying patents which they do not themselves own for licensing to others in order to determine whether such practices are inconsistent with the Sherman Act. Appropriate action under the above interpretation of law may result from this study.

It should be pointed out that the above interpretation of law is applicable not only to radio equipment manufacturers but also to licensees or applicants who engage in any activity which constitutes a restraint of trade or unfair competition within the meaning of the Sherman or Clayton Act whether or not such

activity is in the field of radio manufacturing. In this connection there is presently pending before the Commission the question whether certain movie companies whose conduct has been found by the Supreme Court to be in violation of the Sherman Act are qualified to be licensees.

In promulgating Standards of Good Engineering Practice — and particularly Transmission Standards — the Commission must be particularly alert to avoid giving any particular company an unwarranted advantage over its competition by virtue of its patent position. In writing such standard we make a real effort to show no favoritism to any particular manufacturing company. However, we believe that our duty under the Communications Act requires us to adopt these standards which will result in the optimum radio service to the public. If it should turn out that any one company or group of companies are in a position to acquire or exercise monopoly control in the industry as a result of patents held by them, we would refer the matter to the Department of Justice for appropriate action under the anti-trust laws, or, if the manufacturer were a licensee, or an applicant for a license, the Commission would consider such facts in determining whether the manufacturer was qualified to operate a radio station in the public interest. Or the Commission could take both steps. We believe that in this manner the best system of television broadcasting is made possible for the American people while at the same time the maximum protection is afforded against the development or maintenance of monopoly.

The second part of your question deals with the element of monopoly control insofar as programs are concerned. The Commission in 1938 did conduct a very extensive investigation concerning this problem so far as programs in the standard broadcast field were concerned. At that time the Commission looked into such problems as contractual relationship between the networks and their affiliates, ownership of stations by networks, ownership by the same company of more than one network, relationship between the networks and the talent bureaus, relationship between the networks and record companies, and many other related problems. As a result of this investigation the Commission in 1941 issued a report and promulgated its chain broadcasting regulations. In brief, these regulations forbade any one organization from owning more than one network, prohibited the ownership by networks of stations in certain types of communities, and prescribed detailed regulations governing the contractual relationship between the networks and their affiliates. No action was taken with respect to the relation between the networks and the talent companies or the relation between the networks and recording companies. At about the same time the Commission also adopted regulations forbidding the ownership of more than six FM stations or five television stations by any one person or company. In addition, as a matter of practice, no group has been permitted to own more than seven standard broadcast stations. These rules apply to networks as well as to other licensees.

No comprehensive network investigation has been undertaken since 1941. The Commission has long felt that such an investigation is necessary not only to determine how the regulations are working with respect to standard broadcasting but also to reexamine some of the problems concerning the relationship of the networks to talent bureaus and recording companies and also to examine carefully the effect of the regulations in the FM and television field. The chain broadcasting regulations themselves were carried over almost bodily into the FM and television field without a separate

investigation. It is entirely possible that the conditions in FM and television are sufficiently different from AM that other or additional regulations are needed in this field in order to protect against monopoly.

In this connection it should be pointed out that the authority of the Commission to deal with networks is rather limited. The Commission has no jurisdiction over networks as such and the Commission does not have the authority to license or regulate networks. In attempting to cover problems which arise out of the relation of the networks to affiliates, the Commission cannot enact regulations which apply directly to the networks. Our regulations are applicable to the stations, who are licensees, even though in most instances the practice at which the regulation is directed is against the interest of the licensee who engages in such practice not of choice but because of the practical economic necessity of having a network affiliation.

It is true, of course, that most of the networks do own radio stations and the networks allege that the ownership of such stations by networks is indispensable to their successful operation. The Commission can and does consider the qualification of the networks in passing upon applications for renewal of license of their stations. And the Commission would be warranted in refusing a renewal of license on the ground of lack of qualifications if a network compelled its affiliates to violate the network regulations. However, this is a clumsy method of enforcing regulatory policy. Since denial of renewal of license is a death sentence, proof must be full that the network did compel disobedience by the affiliates. This is a very difficult matter to prove even when it exists since the pressures of the network on the affiliates are subtle and indirect and the affiliates are unwilling to testify that their conduct is coerced for fear of losing both their license and network affiliation.

Question (c) To what extent, if any, would the permanent assignment of the very-high-frequencies presently used for television, militate against or prevent rapid development and use of the ultra-high-frequencies when and if ultra-high is made available for commercial licensing?

The 12 television channels in the very high frequency band are part of the Commission's Rules. These assignments, like any assignments, are subject to change in whole or in part pursuant to proper notice in accordance with the Administrative Procedure Act. There is no outstanding notice proposing to delete any of the 12 channels.

Turning specifically to your question, it seems obvious that if the Commission should authorize the use of a portion of the ultra-high-frequencies for the present television system there would be a rather rapid development of that part of the spectrum. This opinion is based on the fact that tremendous interest has been shown in television broadcasting and that the 12 channels presently available for television are not nearly enough to take care of the demand. With the present 12 channels many populous communities are unable to have any television stations of their own and still other cities are restricted to one or two stations. If television channels were added in the UHF band, it would be possible to add stations in communities where television today is not possible and additional stations could be authorized in those communities where there is an inadequate number of stations under the present allocation.

The testimony at the hearing indicated that there were no insuperable obstacles to the development or production of equipment under the present engineering standards capable of operating in the ultra-high-frequency band at a fairly early date.

A recent development highlights this point. At the September 20th hearing, many of the manufacturers urged the Commission so far as possible not to mix VHF and UHF television assignments in the same city. The Commission is in receipt of a letter dated February 18, 1949, from the Radio Manufacturers Association. All of the major radio manufacturers are members of this Association. The Association recommends that the Commission provide for black and white television on the UHF utilizing the present standards. It also urges that the Commission assign sufficient UHF channels so that cities capable of supporting television should be able to have a minimum of four stations. The Association recommends that UHF and VHF assignments be so made as to provide a minimum of overlap. However, since it is not possible for most cities to have four television stations in the VHF band, the result will be that in some instances both VHF and UHF television stations will be assigned in the same city.

Thus far we have been discussing the development there would likely be in the UHF band if the Commission were to authorize stations on the basis of the present standards. On the other hand, if the Commission were to authorize the use of the ultra-high-frequencies for color only or for wide-band black and white only, it seems apparent that the development of the ultra-high-frequency band would proceed at a fairly slow pace. This is due to the fact that much of the equipment needed for such broadcast service has not yet been developed even in the laboratory, nor has such equipment been field tested. Obviously, none of the manufacturers are tooled up to produce such equipment. Accordingly, since the public would not be able to buy television receivers for such television system, there would not be much incentive for applicants to invest the large sums of money necessary for such television service in the ultra-high band. Instead, applicants would be inclined to invest their funds in VHF television where there is a possibility of return on their investment. This would tend to put great pressure on the Commission to make a nationwide television system out of the present 12 VHF channels, an obviously impossible situation.

In pointing out these facts to you we desire to reiterate that we are aware that there are important vested interests who would like to see the present standards in the VHF band transposed to the UHF band so that there would be a minimum disruption to their interests. On the other hand, we are equally aware that there are other vested interests that would like to see new standards imposed in the UHF band if for no other reason than that the disruption which such new standards would cause to television in general would make it possible for these vested interests to postpone for as long as possible the necessity of investing additional sums in order to enter television.

The Commission cannot afford to neglect considering these conflicting interests in aiding it to evaluate the evidence which is presented at hearings. Our duty, however, under the Communications Act is clear — we should adopt the best possible system of television and not be influenced by any private interests, but only by the public interest.

Additional Views of Commissioner Jones

Commissioner Jones is of the opinion that while the first two paragraphs on this page may be a correct analysis of the situation, he personally feels that if the UHF bands are opened for commercial television broadcasting, television equipment in that band will develop more rapidly than is indicated in those paragraphs.

Question (d) To what extent, if any, would such continued use of present television frequencies have the practical effect of denying entry into television operation by the large majority of present-day smaller operators of AM radio stations?

If additional channels are not made available for television, most of the present day operators in the aural radio field will not have an opportunity to become television broadcasters. This is true because, with 12 VHF channels, it will not be possible for some cities and towns which have standard broadcast facilities to have any television channels. Moreover, in practically all other cities where there will be some television service, there will be far fewer television stations than there are standard broadcast stations. Thus, as a matter of arithmetic, most of the standard broadcast licensees will not be able to enter television if there are only 12 channels assigned. The only way that a large majority of present day operators in the aural broadcasting field will have opportunity to get into television will be by action of the Commission making available more channels for the television service.

Question (e) What study, if any, has been given to the potentially monopolistic features of the so-called "stratovision" television scheme of broadcast?

Question (f) Would the "stratovision" system be used solely for relaying nation-wide television programs, thus serving as a common carrier with rates strictly regulated and service available to all comers, or would the system be used as a television broadcast medium whereby a single operator, or two or three operators, would be granted licenses to serve the entire United States with their own television programs?

At the present time "stratovision" is operating experimentally under an experimental license issued by the Commission. In the June 1948 allocation proceedings, a proposal was made by Westinghouse that one of the VHF channels at Pittsburgh be available to Westinghouse for the "stratovision" system of television. This petition was ruled inadmissible in that proceeding because an inadequate showing had been made as to its effect upon the allocation plan. There is no other proposal before the Commission for the utilization of "stratovision" in the VHF frequencies. However, Westinghouse proposed in the hearing on September 20, on utilization of the ultra-high frequencies that a number of frequencies in that band be made available for "stratovision".

The Commission is watching the "stratovision" experiment with great interest. If the system works, it could mean television service to extensive rural

areas which would otherwise be outside the range of any television station utilizing a land-based antenna. Thus, "stratovision" would do for UHF television what clear channels were designed for standard broadcasting and very high power stations are authorized to do in the FM field. The Commission feels that it must be concerned about getting television service to all the people of this country and not simply to those living in suburban areas.

Of course, in considering the question of "stratovision" that concern must be balanced by consideration of the economic and social problems involved in the licensing of a single broadcaster to serve an extremely large area, perhaps embracing within its service area as much as the combined service area of several television stations with land-based antenna. Please be assured that the Commission in considering the problems of "stratovision" will give earnest and sincere consideration not only to the technical problems but to the economic and social problems which are implicit in the system. In this connection, if "stratovision" should prove feasible the Commission would give very careful consideration to the matter set forth in Question (f) as to whether the system should be restricted to relay functions only, or whether the operators of a "stratovision" station should be required to assume the obligations of a common carrier.

Of course, if the Commission should ultimately license "stratovision", very careful safeguards would be imposed with respect to the ownership of more than one station by the same group. Thus, while the owner of a "stratovision" station would have important business competitive advantages over the operators of stations utilizing land-based antennas, from the point of view of control of program sources, his power would be much less than that of any of the existing networks. Even today, the networks have control over the programs that reach virtually all people of the United States. If "stratovision" were authorized, the Commission would give careful consideration to the question as to whether networks should be precluded from owning any such stations and, indeed, whether such stations should be permitted to be affiliated with any of the networks. In this manner "stratovision" stations might serve as a very useful antidote to the power presently held by the networks over programs heard by the American people.

Additional Views of Commissioner Jones

Commissioner Jones believes that stratovision should be considered in the light of a method of getting service to the widest areas possible, rural, urban and metropolitan. Although Westinghouse has been the proponent of the system and has experimental licenses, and on one occasion at least NBC broadcast from planes over Washington, Cleveland and New York, apparently utilizing the stratovision principle, I don't think the discussion of the subject should be related to particular companies when the consideration of standards for the system are being considered.

Stratovision like most other major scientific achievements offers possibility of both good and evil depending on how we choose to use the tools given us. One possibility is to refuse to use the tool and the other is to use it for mankind's benefit. The biggest question raised against stratovision is the tremendous economic power that would be available to a licensee or licensees of the stratovision broadcasting planes, or the monopolistic possibilities of blanketing the nation by the use of the system. I think this question of

economic empire in the broadcast field should be viewed in the light of the facts as they might be in the television broadcasting industry if it should develop that the Commission must adopt standards upon the patent claims of one manufacturer, and a subsidiary of that manufacturer is one of the large networks and by affiliation contracts with other licensees will provide network programs over a considerable portion of the country by coaxial cable tielines. If that manufacturer also purchases from other owners of patents the right to license others to manufacture under such patents, stratovision might be the only means of providing competition to such company or companies controlled by such company.

Stratovision system of operations appears at the present state of the art to offer the only possibility for the thinly populated areas of the country to generally receive satisfactory TV signals. When the 140 channels are all assigned it does not appear likely that the thinly populated areas of the country will generally receive satisfactory TV signals from stations operating on the ground. Many more densely populated areas cannot expect service by coaxial relay and land operated stations for a number of years, if ever. In many smaller cities only one TV frequency is available and economics might well limit the smaller cities to one station regardless of frequencies available. With regard to this point, much wishful thinking has gone on with comparison of TV with the regular broadcast service. Television is a tremendously more expensive operation and the economics might not permit as many stations as AM and FM broadcast stations. Although we might get competition in the larger cities by a larger number of stations some other means of insuring competition is needed for the general solution of the problem. One thing which definitely seems undesirable is the present allocation with some cities with seven stations, others with one. Most everyone agrees that most television programming must be done on a chain basis but how can seven, six, five, four, three or even two chains be supplied to the TV viewer in the one-station community?

Stratovision offers a means of supplying broadcast TV signals over the large areas in addition to supplying the relaying of program material. The stratovision station should be located to supply the large areas principally and the highly populated areas incidentally. We should not permit a situation to develop as in the case of our present clear channel stations which are used primarily to supply large cities. Stations on the ground could still provide service to the larger cities and within those cities should be able to provide the higher signal intensities generally required together with program items of local interest.

On the other hand, if stratovision as a licensee or as a license system seems undesirable, certainly stratovision transmission should be considered seriously as a common carrier. This concept of common carrier places the competition at the program level rather than at the station level.

If three broadcasting channels were provided for each stratovision plane, three separate programs would be available over all the large areas. In addition the same and other programs could be available in the larger cities. No chain or group would necessarily have exclusive use of any stratovision facility. Undoubtedly this poses many regulatory problems, but the residents of large areas whose very isolation makes TV most important to them may go without TV service unless stratovision is employed or some other development of the art is established.

* * * *

Finally, your letter states:

> Also, we are concerned deeply with respect to the marketing of television sets. Television-set manufacturers and spokesmen for some broadcasters have repeatedly declared that present-day sets will not be outmoded in the near future. Nevertheless, it appears obvious to us that when and if licensing is authorized in the ultra-high-frequencies and television develops in those frequencies, television sets being manufactured today will be obsolescent. While it is contended that an attachment can be made which will meet such a contingency, in part, we are not greatly impressed with the efficacy of similar attachments for FM frequency shifts. We note that no purchaser of a television set today is warned or advised that such an attachment may be necessary or, in fact, that in a matter of a few months or years, the set for which he is paying $200 to $1,000 may be junk. We wonder, therefore, if some action cannot be taken by the Federal Communications Commission which would result in set-manufacturers making clear to such buyers that caveat emptor should not enter into the purchase of such a highly complex and intricate mechanism as a television set.
>
> We understand that the Federal Communications Commission has no present legal authority to compel such action. If the Commission is of this opinion also, or that suggestions to television manufacturers to correct this practice may fall on deaf ears, we would appreciate recommendations for legislation to meet this problem. The public requires protection.

At the outset, it should be pointed out, that television sets presently being purchased will not be rendered entirely obsolete by developments unless the Commission deletes the present 12 channels entirely. As was pointed out earlier, no proposal has been made to the Commission nor is there any notice pending to delete any of the present 12 channels.

Of course, if ultra-high channels are added, there will be some obsolescence. To be sure, converters can readily be made which will alleviate the matter somewhat but as is recognized in your letter, converters are not as satisfactory as regular receivers.

It is not possible to measure accurately the degree of partial obsolescence that might result from adding ultra-high channels. No official census exists concerning ownership of television receivers by the public. However, a rather comprehensive survey made by Television Magazine shows that there were slightly more than 1,000,000 television sets installed as of February 1, 1949. Of this number only 69,700 — or less than 7% — were in cities in which fewer than four television stations have been allocated. Only 27,000 — or less than 3% — were in cities to which only one station has been allocated. Thus, on the basis of present distribution of receivers, most of the owners of TV sets could get a great deal of usefulness from their sets even if ultra-high channels are added.

Moreover, as is stated in your letter, the Commission at the present time has no authority to require manufacturers to notify prospective purchasers

concerning possibly obsolescence of television receivers. You ask our opinion as to whether legislation is desirable on this point.

This question poses a fundamental problem of the proper scope of the federal government in protecting consumers against the purchase of possible obsolete equipment. This would be a problem not only for this Commission but also for other government agencies. In our field the task would be extremely difficult. Radio broadcasting is but a quarter of a century old and already developments have occurred which in other fields would have taken a century. In the space of a quarter of a century not only has standard broadcasting been developed but in addition two new services — FM and television — have gotten off to a healthy start and facsimile broadcasting appears to be ready to make its debut. Moreover, developments occur so fast that there is no assurance that some revolutionary development will not emerge from the laboratory that will make present systems obsolete because the public advantage to be gained from its adoption outweighs the public burden incident to partial or complete obsolescence of equipment.

The radio industry is an empirical industry. Its rapid development has resulted from the vision of its leaders and inventors. New developments cannot be scheduled and therefore, it is extremely difficult, if not impossible, to determine when any piece of radio receiving equipment may become obsolete. We are unable, therefore, to make any recommendation regarding obsolescence of equipment now being manufactured and sold, unless some arbitrary rule is invoked in order to prevent obsolescence. The Commission is of the opinion that no such rule can be drawn which can be applied with equity under all circumstances. It prefers to reach a decision upon the balance of the public interest, convenience and necessity as determined by each situation.

Additional Views of Commissioner Hennock

Although the Commission believes that the ultimate decision must be made by the consumer and that he must bear the risk of obsolescence in this regard as he does with many other purchases, I firmly believe that his determination should be based on the fullest information possible. As is implicit in your letter, the possibilities of obsolescence of television equipment in a very short time are much greater than for any other type of broadcast equipment. Even with the advent of different methods of aural broadcasting, present standard broadcast receivers will be of considerable value for some time to come since there is little, if any, foreseeable possibility that this system will be discarded. However, in those cities in which a deletion of the present VHF television frequencies may occur with a consequent allocation of UHF, present television receivers may be rendered only as valuable as the converters designed for them are efficient, and their use would, of course, involve an additional expense.

It would seem desirable to make clear to the public the uncertainties inherent in the purchase of any particular television receiver. Any risk taken by the public would then be a calculated one. To that end, a requirement that manufacturers of such equipment indicate plainly of just what components the set is composed, what functions it and they will serve and, based on public notices issued frequently and regularly by the Federal Communications Commission, whether there are under consideration any changes in frequency allocation or Standards for such equipment which would, if adopted, render such equipment

less valuable, would be a salutary one. In connection with such statement the manufacturer would also provide the latest information furnished by the Commission with regard to possible adapting equipment which might minimize the possible loss due to obsolescence.

At the present time, the Federal Communications Commission has, as you pointed out in your letter, no authority to compel a disclosure of such information by television receiver manufacturers. However, legislation designed to effect this result, possibly through the jurisdiction of the Federal Trade Commission working in close harmony with the Federal Communications Commission, might prove feasible.

* * * *

Members of the Federal Communications Commission are available at any time singly or severally to discuss the problems which you have raised in your letter of February 15 with you or with members of the Senate Committee on Interstate and Foreign Commerce.

By direction of the Commission

Wayne Coy
Chairman

TABLE OF REPORTS AND NOTICES

¶		Page
91:10	Report of the Commission in the Matter of Petition of Columbia Broadcasting System, Inc., for Changes in Rules and Standards of Good Engineering Practice concerning Television Broadcast Stations (Color Television)	91:31
91:11	Report of the Commission with Respect to Frequency Service-Allocations to Non-Government Fixed and Mobile Services between 960 mc and 2100 mc.	91:51
91:12	Report of the Commission with Respect to Frequency Service-Allocations to the Non-Government Fixed and Mobile Services between 1000 mc and 13200 mc.	91:55
91:13	Report of the Commission in the Matter of Amendments to the Commission's Rules and Regulations Governing Sharing of Television Channels and Assignment of Frequencies to Television and Non-Government Fixed and Mobile Services (Docket No. 8487).	91:65
91:14	Report on Promulgation of Rules and Transmission Standards Concerning Facsimile Broadcasting	91:75
91:15	Report on Abolition of Special Temporary Authorizations	91:81
91:16	Statement on Allocation of Television Channels	91:91
91:17	Report of the Commission on Rules Relating to Contracts Providing for Reservation of Time upon Sale of Station	91:121
91:18	Reply by Commission to Questions of Senate Interstate Commerce Committee	91:125
91:19	Report on Calculation of Groundwave Signal Intensity	91:139
91:20	Report of the Commission on Revision of Rules and Frequency Allocations, Non-Broadcast Services	91:143
91:21	Report on Editorializing by Broadcast Licensees	91:201
91:22	Report of the Commission on Rules Governing Broadcast of Lottery Information	91:231
91:23	Report of the Commission on Operators of Ship Radar Stations	91:251

¶		Page
91:24	First Report of the Commission on Color Television Issues	91:261
91:25	Report on Television Auxiliary Broadcast Station Rules	91:431
91:26	Second Report of the Commission on Color Television Issues	91:441
91:27	Frequency Assignments in Domestic Public Land Mobile Services	91:445
91:28	Report on Promulgation of Rules and Regulations concerning the Origination Point of Programs of Standard and FM Broadcast Stations	91:465
91:29	Report on Rules Concerning the Construction, Marking and Lighting of Antenna Towers and/or their Supporting Structures	91:471
91:30	Report on Amendment of Rules Governing Amateur Radio Service	91:481
91:31	Report on Disaster Communications Service Rules	91:491
91:32	Report on Establishment of Uniform Policy in Connection with Violations by an Applicant of Laws of the United States	91:495
91:33	Report on Amendment of FM Rules and Standards Pertaining to Facsimile Broadcasting	91:507
91:34	Report on Amendment of Rule Relating to Separate Operation of Aural and Visual Transmitter of Television Stations	91:521
91:35	Report on Amendment of Rules Relating to Time of Filing of Renewal Applications and License Periods	91:531
91:36	Third Report of the Commission on Television Allocations	91:535
91:37	Report on Revision of Maritime Service Rules	91:541
91:38	Fourth Report of the Commission on Television Allocations (Allocation of the 470-500 mc Band)	91:551
91:39	Report on Rule Relating to Applications for Permission to Use Lesser Grade Operators	91:561

¶		Page
91:40	Fifth Report of the Commission on Television Allocations (Partial Lifting of Freeze)	91:565
91:41	Memorandum Opinion and Order on Joint Petition of Radio Commission of the Southern Baptist Convention and the Executive Board of the Baptist General Convention of Texas	91:571
91:42	Report on Licensing of Relay Stations in the Industrial and Land Transportation Radio Services	91:575
91:43	Report on Amendment of Rule Relating to Remote Pickup Broadcast Stations	91:585
91:44	Report on Radiolocation Service Rules	91:589
91:45	Sixth Report of the Commission on Television Allocations (Final Report)	91:599
91:46	Second Report on Coastal and Marine Relay Services and Ship Service	91:1121
91:47	Report on Amendment of Rebroadcasting Rules	91:1131
91:48	Report on Radio Amateur Civil Emergency Service Rules	91:1141
91:49	Report on Incorporation of 540 kc in the Standard Broadcast Band	91:1151
91:50	Report on Amendment of Deposition Rules	91:1155
91:51	Report on Ship Station Frequencies	91:1161
91:52	Report on Coast Station Frequencies	91:1171

In the Matter of

Amendments to the Commission's Rules and Regulations Governing Sharing of Television Channels and Assignment of Frequencies to Television and Non-Government Fixed and Mobile Services

Docket No. 8487

REPORT AND ORDER

By the Commission: (Commissioner Webster not participating; Commissioner Jones dissenting in part)

[¶91:13] This proceeding arose on a Notice of Proposed Rule Making issued August 14, 1947, relating to frequency allocations in the bands 44 to 88 megacycles and 174 to 216 megacycles, Pursuant to the terms of the notice and at the request of interested persons a hearing and oral argument was held before the Commission en banc on November 17 to 21, 1947. The decision herein is based upon the testimony and exhibits introduced at that hearing.

There are three principal problems in this proceeding which the Commission must decide. They are:

(1) Sharing of Television Channels

(2) Allocation of the band 72-76 megacycles

(3) Deletion of a Television Channel

These subjects will be considered in the above order.

1. Sharing of Television Channels

Under the present allocation, all of the television channels except No. 6 are shared with other services. Television channels 1 through 5 and 9 through 13 are shared with non-government fixed and mobile services and channels 7 and 8 are shared with government fixed and mobile services. Under the Notice of Proposed Rule Making it was proposed to eliminate sharing on all television channels except 7 and 8. At the opening of the hearing, it was announced that the Interdepartment Radio Advisory Committee had advised the Commission that sharing on channels 7 and 8 could also be deleted if the Commission deleted the sharing requirements on the other television channels.

The evidence introduced at the hearing by both the Commission and private parties showed beyond any doubt that the shared use of television channels was not feasible. Destructive interference would be caused to television reception over large areas from either fixed or mobile stations operating on the same or adjacent channels. An attempt was made to show that some shared use of these channels would be possible on the basis of an engineered assignment plan. The difficulty with this proposal is that an engineered plan presupposes a freezing of the entire television allocation plan so that it would prove extremely difficult to make any alterations in the plan

necessary to meet changing conditions. Moreover, even an engineered assignment plan would not make possible joint use of the same spectrum space in the congested areas where the real need for frequencies is the greatest.

For the foregoing reasons, the Commission is convinced that sharing of all television channels should be abolished. The revised allocations showing this change are contained in Attachment A.

II Allocation of the Band 72-76 megacycles.

The band 72 to 76 megacycles, except for the guard band around the 75 Mc marker, is presently allocated to non-government fixed and mobile services. It is in between television channel No. 4 (66 to 72 Mc) and No. 5 (76 to 82 Mc) and hence is a source of potential adjacent channel interference to each channel. The evidence showed that at least so far as mobile operations are concerned, operation in this band is not feasible since destructive interference to television reception is inevitable. However, the evidence did show that some use can be made of these frequencies with no interference to television on the basis of careful engineering and the formulation of engineering and interference standards. The establishment and application of such standards appear to be capable of solution for the fixed service. They do not appear to be practical in the case of the land mobile service whose requirements are most acute in the same areas which require either television channels 4 or 5, or both. Accordingly, the Commission has determined that the frequencies 72 to 76 megacycles should be assigned only to the fixed service on an engineered basis and on condition that no adjacent channel interference will result to the reception of television stations which may be authorized or provided for in the Commission's Rules. The Commission recognizes that this allocation does remove some of the flexibility in the television allocation table but this is restricted to television channels 4 and 5 and not all the television channels, as would be the case if assignments were made for shared use of television channels on an engineered basis. Moreover, if the band 72 to 76 megacycles is not to be used by the fixed service on an engineered basis, it would be difficult to assign any service therein. This would constitute a waste of frequencies.

The Commission recognizes that some stations in the land mobile service were authorized in the 72-76 Mc band before the Notice of Proposed Rule Making in this proceeding was issued. As to these stations, it is the Commission's intention, as set forth in the Notice of Proposed Rule Making in this proceeding, to permit their continued operation for a period of five years from the date of this report in order to provide for the amortization of existing equipment. No new stations in the land mobile service will be authorized in this band except where it can be shown that additional stations are required for the satisfactory operation of a system already authorized for operation in the 72-76 Mc band and that no adjacent channel interference will result to the reception of television stations which may be authorized or provided for in the Commission's Rules. These additional stations, however, will be permitted to operate on frequencies 72 to 76 megacycles only until five years from the date of this report.

III. Deletion of a Television Channel

As can be seen, the action of the Commission eliminating shared use of television channels and restricting the use of the band 72 to 76 megacycles to

fixed circuits on an engineered basis results in a marked diminution in the number of frequencies available for the fixed and mobile services. In order to provide for the needs of these services, the Commission's Notice of Proposed Rule Making proposed the deletion of a television channel and its allocation to the fixed and mobile services.

Representatives of the television industry objected to the deletion of one of their channels, but admitted that 12 exclusive television channels were preferable to 13 channels, 12 of which were subject to sharing. As has already been pointed out, the Commission does not believe that sharing is feasible. In order to meet the needs of the other radio services, the Commission is of the opinion that television must surrender a channel so that provision can be made for the needs of these other services which were to have been accommodated in the band 72 to 76 megacycles and on a shared basis in the television channels. The Commission appreciates the fact that this action does make more difficult the establishment of a nation-wide television system on frequencies below 300 megacycles. However, the Commission is convinced that, on an overall basis, a generous allocation has been made for broadcasting, including television, and that the needs of the fixed and mobile services cannot be overlooked. The Commission reiterates its opinion as expressed in its May 25, 1945, Allocations Report* that there is insufficient spectrum space below 300 megacycles to make possible a truly nation-wide and competitive television system and that such a system must find its lodging higher in the spectrum where more space exists.

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* The Report reads as follows (pp. 99-100):

> As was pointed out in the proposed report, the Commission is still of the opinion that there is insufficient spectrum space available below 300 megacycles to make possible a truly nation-wide and competitive television system. Such a system, if it is to be developed, must find its lodging higher up in the spectrum where more apace exists and where color pictures and superior monochrome pictures can be developed through the use of wider channels. In order to make possible this development of television, the Commission has made available the space between 480 and 920 megacycles for experimental television. The time which may elapse before a system can be developed to operate on wider channels on these ultra-high frequencies is primarily dependent upon the resourcefulness of the industry in solving the technical problems that will be encountered. In this portion of the spectrum it is contemplated that the Commission will license the entire band between 480 and 920 megacycles for experimental television and will not designate any particular channels. Applicants desiring to operate in this portion of the spectrum should consult with the Chief Engineer as to the exact frequency band they should utilize.
>
> The Commission repeats the hope expressed in its proposed report that all persons interested in the future of television will undertake comprehensive and adequate experimentation in the upper portion of the spectrum. The importance of an adequate program of experimentation in this portion of the spectrum cannot be over-emphasized, for it is obvious from the allocations which the Commission is making for television below 300 megacycles that in the present state of the art the development of the upper portion of the spectrum is necessary for the establishment of a truly nation-wide and competitive television system.

In the Commission's Notice of Proposed Rule Making the television channel proposed for deletion was No. 1. At the hearing the American Radio Relay League recommended that Channel No. 2 be deleted. The League based this recommendation on the fact that the harmonics of an amateur band and industrial, scientific and medical devices would fall in Channel No. 2 and largely destroy its usefulness. The League further pointed out that improvements in receiver design can obviate or minimize adjacent channel problems but that no change in receiver design will eliminate the effects of harmonics; the harmonics must be suppressed. The arguments advanced by the League have considerable merit and have been carefully considered. The Commission has concluded that no perfect solution exists. On the whole many of the problems in this portion of the spectrum are the result of the interspersed nature of the frequency allocations. If television channel No. 1 is deleted, channels 2 through 6 are substantially one block. If television channel No. 2 is deleted, and channel No. 1 is retained, there will be boundary problems for two channels; channel No. 1 will have adjacent channel interference on two sides and channel No. 3 will have it on one side. Viewing all factors the Commission finds that a better allocation will result if television channel No. 1 is deleted. Representatives of the television industry were also of the same opinion.

The Commission is aware of the fact that this decision, meaning as it does that every effort will have to be made to suppress harmonics as much as possible, will cause some misgivings to the amateurs operating in the 28-29.7 Mc band whose harmonics may cause interference to television channel 2. The Commission believes that harmonic interference problems are to be expected generally throughout the upper spectrum and Commission Rules requiring harmonic suppression will be equitable in their application to the several services. Moreover, a degree of harmonic suppression will not be required of amateurs which is unrealistic or not applicable to other services, considering the peculiarities of each such service.

There remains for decision the question as to the service to be allocated to the deleted television channel. In the Notice of Proposed Rule Making, it was proposed to assign the band to the fixed and mobile services. At the hearing, representatives of the FM industry urged that it should be utilized for FM purposes. As the Commission understands this contention, no request is made in any way to change the basic allocation of 88 to 108 megacycles for FM broadcasting. Although a request was made for a permanent FM assignment in the 50 megacycle band -- and as to this request the Commission strongly reiterates its previous decision concerning FM allocation -- the contention that was advanced with most earnestness and seriousness relates to the use of the band 44-50 Mc for relay purposes in order to facilitate network programming.

The public welfare and national security necessitate arriving at an allocation at the earliest possible date for the fixed and mobile services engaged in safety and protective activities. Hence, it is essential that FM stations dependent upon certain other FM stations in the 44-50 Mc band as a program relay facility must look to other facilities for program relaying. Therefore, the band 44-50 megacycles is allocated to the fixed and mobile service.* The specific allocations in this band are set forth in a Notice of Proposed Rule Making adopted today.

So far as network programming of FM stations is concerned, the Commission believes that, in general, common carrier facilities will be used for this purpose. Moreover, as in the case of television, the Commission is proposing a modification of its rules so as to permit intercity relaying of FM programs on frequencies allocated for FM STL purposes, 940-952 Mc. Finally, it should be pointed out that nothing in the Commission's Rules prevents FM stations in the band 88-108 Mc from rebroadcasting the programs of other FM stations as is presently being done.

The Notice of Proposed Rule Making contained a revised table showing how the 12 remaining television channels would be assigned to the metropolitan districts in the United States. Upon further consideration of this matter, the Commission is of the opinion that other changes appear necessary in the table which should be the subject of proposed rule making. Since these changes may have some bearing on the particular assignments contained in the Notice of Proposed Rule Making in this proceeding, it is believed that the fairest and most efficient procedure would be to incorporate all of these proposed changes in the assignment table into one Notice of Proposed Rule Making. Such a notice is being issued simultaneously with the release of this report.

Accordingly, IT IS ORDERED this 5th day of May, 1948, that the allocation table and rules and regulations be amended as set forth in Attachment A, effective June 14, 1948.

Released: May 6, 1948

DISSENTING OPINION OF COMMISSIONER JONES

I agree that a need has been shown for the allocation of more frequencies for the use of the safety and special services in that portion of the spectrum below 300 megacycles.

However, it seems to me that the time has come when the Commission should provide more than a temporary home for not only those services but for the FM service and the television service and other services incidental thereto.

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*After the close of the hearing, Major Edwin H. Armstrong on December 31, 1947, filed a petition to re-open the hearing so that he could further cross examine Commission witnesses in connection with the accuracy and reliability of Exhibits 52 and 52A in order to investigate further any differences between the measurements conducted by Major Armstrong at West Hampton Beach and the field tests of the Federal Communications Commission. The Commission is of the opinion that it is not necessary to reopen the hearing on this issue since the decision to allocate 44 to 50 Mc to the non-government fixed and mobile services is not based upon any comparison of measurement data concerning coverage of FM stations in the band 44-50 Mc or in the band 88-108 Mc but rather on the basis of the urgent need of additional frequencies by the non-government fixed and mobile services. Accordingly, the petition is dismissed.

Since the end of the last war a great portion of the frequency spectrum, theretofore unused, has been opened, due largely to wartime developments. The Commission has held a number of frequency allocation hearings in attempts to determine what frequencies should be allocated to which services. After allocations of frequencies have been made, problems have been recognized and major allocation changes have been ordered. This has not resulted in the stability necessary for the proper promotion of the new services. Particularly has FM and television been adversely affected. Public benefits have been unnecessarily delayed and confusion has arisen.

In view of the history of allocation decisions and changes during the past several years, I am convinced that while it might be expedient, it nevertheless would be unwise now to make any sub-allocation of the 44-50 megacycle band until a thorough and careful hearing is held and a determination reached regarding the interference problems that may be experienced on all of the frequencies below 300 megacycles. Only after such hearings and findings should the Commission make the necessary comparative determinations looking to long range rather than temporary frequency allocations for all of the services involved.

ATTACHMENT A

REVISED TABLE OF FREQUENCY ALLOCATIONS
44-88 and 174-216

Band Mc	United States Service-Allocation	Remarks
44-50 (Note A)	Non-Government (a) Fixed (b) Mobile	
50-54	Amateur	
54-72	Non-Government 54-60 Mc Television Broadcasting Channel 2 60-66 Mc Television Broadcasting Channel 3 66-72 Mc Television Broadcasting Channel 4	Aeronautical markers to remain on 75 Mc as long as required or until moved to another suitable frequency
72-76 (Notes, B, C)	Non-Government (a) Fixed	
76-88	Non-Government 76-82 Mc Television Broadcasting Channel 5 82-88 Mc Television Broadcasting Channel 6	
174-216	Non-Government 174-180 Mc Television Broadcasting Channel 7 180-186 Mc Television Broadcasting Channel 8 186-192 Mc Television Broadcasting Channel 9 192-198 Mc Television Broadcasting Channel 10 198-204 Mc Television Broadcasting Channel 11 204-210 Mc Television Broadcasting Channel 12 210-216 Mc Television Broadcasting Channel 13	

Note A. Continued temporary operation of the FM broadcasting stations listed below may be authorized until December 31, 1948, or until a sub-allocation of this band to the fixed and mobile services has been made final and effective by the Commission, whichever date is earlier.

Station	Location	Temporary Frequency
WTIC-FM	Hartford, Connecticut	45.3
WDRC-FM	Hartford, Connecticut	46.5
WGNB	Chicago, Illinois	45.9
WEFM	Chicago, Illinois	45.1
WOWO-FM	Ft. Wayne, Indiana	44.9
WABW	Indianapolis, Indiana	47.3
WMNE	Portland, Maine	45.1
WBZ-FM	Boston, Massachusetts	46.7
WBZA-FM	Springfield, Massachusetts	48.1
WGTR	Worcester, Massachusetts	44.3
WWJ-FM	Detroit, Michigan	44.5
W2XMN	Alpine, New Jersey	44.1
WNBF-FM	Binghamton, New York	44.9
WQXR-FM	New York, New York	45.9
WABF	New York, New York	47.5
WHFM	Rochester, New York	45.1
WBCA	Schenectady, New York	44.7
WELD	Columbus, Ohio	44.5
WFIL-FM	Philadelphia, Pennsylvania	45.3
KDKA-FM	Pittsburgh, Pennsylvania	47.5

NON-COMMERCIAL FM BROADCAST STATION IN OPERATION ON OLD BAND

KALW	San Francisco, California	44.5
WBEZ	Chicago, Illinois	44.5
WBKY	Lexington, Kentucky	44.5
WBOE	Cleveland, Ohio	44.5

Note B. Future assignments to be limited to fixed circuits which, as a result of an engineering study, may be expected to operate in this band on a non-interference basis to the television service.

Note C. Aeronautical Marker Beacons are centered on 75.0 Mc with a guard band 74.6 to 75.4 Mc from which other services are excluded.

REPORT ON RULE RELATING TO APPLICATIONS FOR PERMISSION TO USE LESSER GRADE OPERATORS

In the Matter of	)	
	)	
Amendment of Part I of the	)	
Commission's Rules and Regulations	)	Docket No. 9937
to add new Section 1.334.	)	

REPORT AND ORDER

[¶91:39] This proceeding was instituted on April 4, 1951 by the issuance of a Notice of Proposed Rule Making, FCC Mimeo No. 61587 which proposed that Part I of the Commission's Rules and Regulations be amended by the addition of a new §1.334.

The new section was designed to describe the procedure to follow and the information required to be submitted to the Commission by licensees of Standard and FM broadcast stations on applying for permission to operate such stations with operators holding lesser grades of licenses than required by the Commission's Rules.

Comments concerning the proposal in the Notice of Proposed Rule Making herein were duly filed by the National Association of Radio and Television Broadcasters; Radio Broadcast Technicians and Engineers, International Electrical Workers, Local Union 253, Birmingham, Alabama; Caribbean Broadcasting Corporation, Arecibo, Puerto Rico; Louis Hennes and William H. Carman. Upon careful consideration of the above comments, the Commission has considered that the public would be served by the adoption of this section with certain modifications therein which take into account the principal objection to the proposed rule as reflected by the comments, and which also make certain editorial changes or clarifications in the rules as proposed.

While the IBEW Local Union 253 favored the adoption of the proposed rule, Messrs. Hennes and Carman, who commented individually as radio operators, alleged that the apparent shortage of operators is not sufficiently acute to warrant relaxation of operator requirements. Actually the rule under consideration is not a relaxation of present operator requirements, but a codification of the procedure to be followed by broadcast station licensees when operators cannot be obtained and relief is requested under existing §0.151 of the Rules.

The principal objection advanced with respect to the rule is the period for which permission would be granted, i.e., 30 days. It was urged by the Caribbean Broadcasting Corp. that this period be increased to as much as six months. However, the length of time suggested by the National Association of Radio and Television Broadcasters appears more realistic. It was suggested that the proposed rule be amended to provide that permission may be granted for a period not to exceed 120 days and to require the station to which permission to use a lesser grade operator was granted to file a showing at the end of a 60-day period with respect to continuing efforts being made to secure the required grade of operator. This proposal appears

meritorious since it would relieve administrative problems for the Commission's field offices and similarly reduce the burden to station licensees while at the same time the procedure would adequately perpetuate surveillance by the Commission to prevent reduction of operating standards. The proposed rule, therefore, has been amended accordingly.

In addition, subsection 1.334(c)(5) has been modified to include a provision which would permit a station licensee to show the reasons an available operator was not employed or the reasons a prospective operator refused to accept employment as an alternative to a showing that an operator could not be obtained. This change does not appear to warrant further notice of proposed rule making since it only clarifies the language of the proposed rule to express an implied alternative method of reporting this aspect of the problem.

Further, subsection 1.334(d) has been modified to provide specifically that the certificate required by this subsection of the rule to be filed by the chief operator of the employing station will include the name of the lesser grade operator and the license number of the license held by him. This change does not appear to warrant further notice of proposed rule making for the reason that it does not involve any matter of substance and will lead to a clearer understanding of the rule and will aid in its administration.

In view of the foregoing it is ordered, that effective September 1, 1951, that §1.334 of Part I of the Commission's Rules and Regulations be amended to include a new §1.334 as set forth in the attached appendix.

Adopted: July 11, 1951

Released: July 13, 1951

In the Matters of	)	
	)	
Amendment of Section 3.606 of the Commission's Rules and Regulations	)	Dockets Nos. 8736 and 8975
	)	
Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service	)	Docket No. 9175
	)	
Utilization of Frequencies in the Band 470 to 890 mcs. for Television Broadcasting	)	Docket No. 8976

FOURTH REPORT OF COMMISSION AND ORDER

(Allocation of the 470-500 mc. Band)

By the Commission: (Commissioner Hennock not participating, Commissioner Walker dissenting).

History of the Proceeding

[¶91:38] On May 6, 1948, the Commission issued certain Notices of Proposed Rule-Making relating to the allocation of frequencies in various portions of the spectrum, including the band 450-460 mc. (Dockets Nos. 8965, 8972, 8973 and 8974). The proceeding relating to that band was identified as Docket No. 8974 — "Allocation of Frequencies Between 450-460 mc." All the proceedings were interrelated and dealt with frequencies to be allocated to various nonbroadcast radio services, including one which is now identified as the "Domestic Public Land Mobile Radio Service" (See Part 6 of the Commission's Rules and Regulations). As an incident to such rule-making proceedings, interested parties were invited to file comments. In that connection, Bell Telephone Laboratories, Inc., the research and development subsidiary of the Bell System, filed a petition requesting the establishment of a multi-channel broadband common carrier frequency allocation of 40 megacycles somewhere in the spectrum between 400 and 500 mcs. This petition was associated with the proceedings in Docket No. 8974 for consideration in connection with any allocation which might be made of the frequency band 450-460 mc.

The subject petition was filed because the Bell System believed that the frequencies proposed to be allocated to the Domestic Public Land Mobile Radio Service in the frequency bands 35-44 mc., 152-162 mc. and 450-460 mc. would not be adequate for the anticipated future development and expansion of that Service.

In a Report and Order of the Commission, [¶91:20, supra], dated April 27, 1949, in Dockets Nos. 8658, et al. (including Docket No. 8974 and the related

dockets mentioned above), we said (14 Fed. Reg. pp. 2272-2273):

> " . . . . The solution to the problem of providing general mobile communications service on a common carrier basis, if any can be achieved, appears to be only in the development of a 'broad band' plan of some sort which will permit the derivation of many more communications channels than could be provided in the 152-162 mc band by present methods of operation. We propose to give our attention to this problem.
>
> * * * * *
>
> "While we have left this proposed allocation unchanged, we have not overlooked the petition of The Bell Telephone Laboratories, Inc., requesting the establishment of a multi-channel broad band common carrier allocation between 400-500 mc. As we have indicated in our comments with relation to Docket No. 8972 (quoted above), we are acutely aware of the necessity of providing for some form of broad band operation for the common carrier general mobile service, if that is possible. However, the Citizen's Radio Service is already established in the band 460-470 mc and we do not consider it feasible to move it. Likewise, the spectrum immediately below 450 mc is already assigned to the amateur service. Accordingly, there would appear to be no point in further delaying the finalization of the 450-460 mc allocation and thus delaying its development and exploitation. In view of this, the allocation is adopted without change.
>
> "Consideration of the basic merits of the Bell Laboratories' petition, which goes to the question of the desirability of establishing an allocation for broad band general mobile development, will be undertaken in connection with our proceeding regarding the allocation of spectrum space for UHF television service above 470 mc and the petition will be disposed of in that proceeding."

To carry out the Commission's decision with respect to the petition, as related above, the Commission adopted an Order, on May 25, 1949, "In the Matter of Utilization of Frequencies in the Band 470 to 890 mcs for Television Broadcasting" — Docket No. 8976, adding, as an issue to be considered in that proceeding, the following:

> "To receive evidence and data with respect to the question whether there should be an allocation of the band 470-500 mcs to multi-channel broadband common carrier mobile radio operation in lieu of television broadcasting."

The proceedings in Docket No. 8976 were thereafter consolidated with certain other related proceedings of the Commission dealing with the proposed establishment of television broadcasting services in the UHF portion of the spectrum, i.e., Dockets Nos. 8736, 8975 and 9175 (as indicated in the caption hereof).

Pursuant to the procedure established in a Commission Notice of Further Proposed Rule-making, adopted July 8, 1949, in Dockets Nos. 8736, 8975,

9175 and 8976, the issue raised by the petition of Bell Telephone Laboratories, Inc., was duly reached for hearing. Evidence bearing upon this issue was presented before the Commission en banc on various days during the period From June 5, 1950 to December 24, 1950 and is set forth in Volumes 63 through 73, inclusive, of the transcript in the consolidated proceeding relating to the aforementioned four television dockets. Evidence favoring the proposal was adduced on behalf of Bell Telephone Laboratories, Inc., and the Bell System, United States Independent Telephone Association and National Mobile Radio System. Mutual Telephone Company of Hawaii came forward with a request that the Commission defer making any firm allocation of 470-890 mcs in so far as the Hawaiian Islands are concerned, pending a review of the specific needs of that Territory for television broadcasting and consideration of the special needs of common carrier fixed service there. Opposition to Bell's proposal was adduced on behalf of Philco Corporation, Philco Television Broadcasting Corporation, Television Broadcasters Association and Allen B. DuMont Laboratories, Inc.

Although the frequency space in issue is now allocated to broadcasting, in deciding the question before us we are faced with the alternative of assigning the frequency spectrum space involved here to either the common carrier communication service or television broadcasting. Accordingly, we have undertaken to weigh and compare the relative needs of each of these services.

The Needs of the Common Carrier Communication Service

The primary use to which the subject frequency band would be put would be the rendition of land mobile communication service for hire. Such service is provided by a duplex operation which necessitates the use of one frequency for communication outward from the base station and a different frequency inward from the mobile unit. Thus, two frequencies comprise a single channel of communication and each allocated base station frequency has associated with it a predetermined mobile station frequency.

Although 12 channels in the band 35-44 mc have been made available for assignment to communications common carriers, the Commission has thus far found it impractical to repeat the use of these frequencies in widely separated areas because of skip type interference in that portion of the spectrum. The determination as to which channel may be used in any area is made according to an engineered zone plan which is set forth in §6.401(b) of the Commission's Rules.

Thus, the following usable frequency assignments are now available to this service in each service area:

For Telephone Companies

Base Station	Mobile Station
One frequency in the 35 mc Band	One frequency in the 43 mc Band
152.51 mc	157.77 mc
152.57 mc	157.83 mc
152.63 mc	157.89 mc
152.69 mc	157.95 mc
152.75 mc	158.01 mc
152.81 mc	158.07 mc

For Miscellaneous Carriers

Base Station	Mobile Station
152.03 mc	158.49 mc
152.09 mc	158.55 mc
152.15 mc	158.61 mc
152.21 mc	158.67 mc

Although 2 megacycles of space between 458 and 460 mc have also been allocated to this service, there has not yet been any implementation thereof chiefly because of the alleged inability of the communication common carriers to derive separate blocks of frequencies for base and mobile stations, respectively, with sufficient spectrum separation between such frequencies to permit interference-free operation.

As of May 23, 1950, we note the following statistics pertaining to the common carrier mobile service (see Exhibits 467, 468 and 469):

Bell System Companies offered service in 136 cities; having installed 235 base transmitters (exclusive of test and auxiliary equipment); and having been authorized to provide service to 15,324 mobile units.

172 miscellaneous carriers offered service in 154 cities; having installed 175 base transmitters (exclusive of test and auxiliary equipment); and having been authorized to provide service to 9,473 mobile units.

18 independent telephone companies offered service to 19 cities; having installed 23 base transmitters (exclusive of test and auxiliary equipment); and having been authorized to provide service to 1,223 mobile units.

A Bell witness stated that about 250,000 mobile calls are made each month on their facilities. In addition to the public mobile service, Bell has under contract about 5,000 mobile telephones on a private system basis for such users as police, power utilities, industrial users, etc., with 477 associated base stations. These contract facilities operate on the non-common carrier frequencies assigned to their use. It is urged by Bell that the requested frequency allocation might permit the expansion of the public facilities to absorb a substantial number of the "Private service" customers thus alleviating the pressure of demand for non-common carrier mobile frequency utilization.

Because of the nature of the major portion of the mobile service provided by Bell System and independent telephone company facilities, i.e., through message service by inter-connection with exchange land-lines, the peak loading of a channel (frequency pair) is reached at about 85 mobile units. The peak loading of the miscellaneous carriers, which are a third party relay dispatch service (not inter-connected to exchange land-lines and not affording direct through service), is generally regarded as being about 200 mobile units. Thus, where the phone companies can derive a maximum of seven channels (6 in the 152-162 mc band and 1 in the 35-44 mc band), they can serve a maximum of about 595 units. If all four miscellaneous carrier channels were also loaded to capacity, an additional 800 units could be served; or a total of about 1400 units. That capacity appears to be inadequate to serve the needs of cities like New York, Chicago, Los Angeles, Philadelphia, St. Louis, etc. Bell witnesses testified that, without advertising or pushing the sale of the service, the demand for telephone company service already exceeds available capacity in cities like New York, Chicago, and Los Angeles and there are waiting lists in some of the other larger metropolitan areas. Additionally, it was stated, new requests for telephone company service are received at the rate of about 65 per month. Moreover, in certain places, like New York and Los Angeles, it is not possible for the telephone companies to utilize all 7 channels in a single service area because of co-channel interference in adjacent service areas, e.g., New York-Newark, Los Angeles-Long Beach. As a consequence the channel usage has to be split between such areas.

Bell offered evidence to show that, by 1960, there would be a need for Bell service to about 95,000 mobile units on a national basis. Thus, it was expected that about 100 channels would be needed in each of the cities of New York, Chicago, Los Angeles, Philadelphia, Detroit, Boston and San Francisco; that about 22 other medium sized cities would need 20 to 50 channels; and almost every city over 300,000 population would require more channels than are now available.

Bell indicated that the system proposed would, in the 30 megacycles of spectrum space under consideration, yield approximately 100 channels. It has also been indicated by Bell that it is their opinion that the spectrum between 470-500 mcs is ideally suited to such development under the present state of the art, but that portions of the spectrum at or above 1000 mc would not be suitable, under the present state of the art, because of such factors as lack of tube development, excessive power requirements, inability to use conventional wiring (i.e., need for use of wave guides at those frequencies), etc.

The Bell petition has the endorsement, from the standpoint of a service allocation, of the independent telephone companies and the miscellaneous carriers, though it is recognized that there would later have to be worked out a basis for assignment and utilization of the space and facilities among the eligible carrier users.

If the expansion in this service is to take place, and if we do not make available the 470-500 mcs of space to common carrier service, the following alternatives are available:

(1) Requiring smaller separations between frequency assignments in the bands below 162 mc, i.e., 40 kc, 30 kc, or even 20 kc frequency separation.

(2) Development and use of more efficient techniques of operation such as single side band transmission, multiplex, etc.

(3) Utilization of geographic frequency sharing so as to obtain utilization of frequencies assigned to non-common carrier services in critical population centers where such non-common carrier frequencies are not required for local use.

The Needs of Television Broadcasting

In the ten years since its commencement, commercial television has had a phenomenal growth. Although it has not yet had an opportunity for its fullest growth, it is already one of the country's most important industries and an important medium not merely for public entertainment but also for the development of an informed public.

The Commission has long been aware of the urgent need for additional television facilities and, even in 1945, in connection with its overall allocation study in Docket 6651, it stated that the then available VHF television channels were insufficient to make possible "a truly nationwide and competitive" television broadcast system. In order to provide for the development of such a system, and to provide space for future expansion, the portion of the spectrum between 480 to 920 mcs was at that time made available for television experimentation. This band was subsequently limited to 475-890 mcs. As a result of technical developments in television broadcasting in the UHF band and of the rapidly growing need for additional facilities for television broadcasting, the question of utilization of the region of 470-890 mcs for television broadcasting on a regular basis was made part of the proceedings in Docket No. 8976.

By its Third Notice of Further Proposed Rule Making (Docket Nos. 8736, et al) adopted on March 21, 1951, the Commission proposed an assignment table which would make our television system truly nationwide by providing television channels to many communities of the country presently without provision for any television service. The Commission could accomplish this end only by making extensive use of UHF channels as well as VHF. In addition, the Commission in the Notice proposed to allocate to commercial television, at this time, all of the 470-890 mc band with the exception of the 30 mc (470-500 mcs) here at issue. The severe handicap facing the television service, particularly in congested areas of the country, is illustrated by the Commission's proposed new assignment Table. For example, in Connecticut, only two UHF assignments are proposed for Hartford, two for Bridgeport, and one for each of the other cities considered (including New Haven, New Britain and six others). Only two VHF assignments are proposed for the entire state. In New Jersey, two UHF assignments are proposed for Atlantic City; only one UHF assignment is proposed for Trenton, and one for each of five other cities. The one VHF assignment for New Jersey is already in use at Newark. Only four assignments each (including both VHF and UHF) are proposed for the entire states of Delaware and Rhode Island.

Although the Commission has discouraged the filing of applications for new television stations during the pendency of the current television proceedings, more than 400 such applications are now on file. And despite the utilization of the UHF band for this service in the future, a large number of these

applications could not be granted under the new Table because the demand in the various cities exceeds the number of proposed channels (VHF and UHF combined). The Commission has received approximately 1000 comments, oppositions and petitions from interested parties relating to the Notice of March 21, mentioned above. A substantial number of these pleadings propose changes and additions to the assignment Table in an attempt to obtain additional facilities in various communities.

Additional assignments, not specifically provided for in the Table could be achieved in many areas only by the use of the channels in the portion of the spectrum above 782 mc (UHF Channel 52), which the Commission has designated as flexibility channels — i.e., channels in which no city by city assignments have been proposed but whose use is provided for on a flexible basis. If 470-500 mcs is not available to television broadcasting, only 13 flexibility channels would be available. On the other hand, 18 such channels will be available if this portion of the spectrum is allocated to television. But even the exact number of assignments cannot now be determined because of the purposes for which the flexibility channels must be employed. One thing appears certain, however, the flexibility channels would soon be exhausted in congested areas. Moreover, such techniques as stratovision and polycasting would, as outlined in the Third Notice, be compelled to utilize the flexibility channels for additional experimentation and would have to find their eventual home in this portion of the spectrum. Both these techniques would of necessity require extensive spectrum space and each one, if authorized, would require a substantial number of the flexibility channels.

Thus, it appears that the entire space between 470 and 890 mcs is urgently needed to obtain full development of television broadcasting and that the loss of any of this space to other services would severely handicap the attainment of an adequate nationwide and competitive television system.

The Existing Allocation

At present the frequencies 470-475 mcs are allocated to facsimile broadcasting. The frequencies 475-500 mcs are allocated to broadcasting although the exact form of broadcasting is not specified in Part 2 of the Commission's Rules.

With respect to the 470-475 mc band, no one has objected to the deletion of facsimile broadcasting fromt his band. Further, the Commission believes that if facsimile broadcasting is to be conducted it will be accomplished on existing broadcast stations such as the FM broadcast stations in portions of the spectrum in which those stations are assigned. Accordingly, the Commission has concluded that facsimile broadcasting, as such, should no longer be permitted in the 470-475 mc band.

Provision for the use of the whole band 470-500 mcs is, therefore, made in accordance with our conclusions.

Conclusions

Upon consideration of the record in these proceedings, we have concluded that the allocation of the frequency band 470-500 mcs should be made to the television broadcasting service. In arriving at this conclusion we are forced

to resolve a conflict between two socially valuable services for the precious spectrum space involved. We find that the needs of each of the two services are compelling.

But while we find and conclude that there is, on the part of the common carrier mobile service, the need for further expansion of service beyond that already provided by our rules and regulations and by techniques now being employed, we do not conclude that the only available solution to the common carrier land mobile service lies in the utilization of the frequency band 470-500 mcs. As we have pointed out, the following alternatives are available:

(1) Requiring smaller separations between frequency assignments in the bands below 162 mc i.e., 40 kc, 30 kc, or even 20 kc. frequency separation.

(2) Development and use of more efficient techniques of operation such as single side band transmission, multiplex, etc.

(3) Utilization of geographic frequency sharing so as to obtain utilization of frequencies assigned to non-common carrier services in critical population centers where such non-common carrier frequencies are not required for local use.

Before considering step (3), however, it should be pointed out that it will be necessary to ascertain the relative need for frequencies in these areas by all services so as to apply the same type of analysis to other public needs.

We find and conclude that the television broadcasting service likewise requires an enlargement of its existing and exclusive frequency allocation — certainly to the extent of the 30 megacycles of spectrum space here at issue — to ensure that an adequate nationwide and competitive system of television broadcasting may be established. However, unlike the common carrier mobile service, a proper television broadcast service allocation cannot be achieved through the utilization of spectrum space at some other portion of the spectrum, or through the employment of similar techniques and alternatives available to the common carrier services. If the television service is to be expanded to the extent indicated, it must expand in that portion of the frequency spectrum immediately adjacent to and comprising part of the spectrum already set aside for its exclusive use, i.e., 500-890 mcs. It is for these reasons that we are forced to the conclusion that the allocation of the frequency band 470-500 mcs should be made to the television broadcasting service.

It is hoped that provision for the further growth and expansion of the common carrier land mobile service may be made by implementing steps (1) and (2) which are set forth above as alternatives to the proposed allocation of 470-500 mcs to such service. If, after the implementation of such steps, it still appears that the service cannot be sufficiently enlarged to take care of the needs of the public, step (3) may offer limited solutions in certain instances, after due consideration to the needs of other services.

In so far as the request of Mutual Telephone Company is concerned, it is noted that we have proposed to make an over-all allocation to the television service int he same manner as has been done in previous allocation actions

for other services, i.e., we do not propose, in this proceeding, to establish different allocations as between the continental United States and the territories and possessions. However, we are aware of the possible difference in certain instances in frequency service requirements in the continental United States and in the territories. We believe that proper attention to such matters can best be given in an appropriate separate proceeding.

ORDER

In view of the considerations and determinations related above, and pursuant to the authority contained in Sections 1 and 303 of the Communications Act of 1934, as amended, it is ordered this 11th day of July, 1951, that:

(1) The foregoing Report is adopted.

(2) Section 2.104 of Part 2 of the Commission's Rules — Frequency Allocations and Radio Treaty Matters; General Rules and Regulations, is amended as set forth in Appendix A attached hereto.

(3) The petition of Bell Telephone Laboratories, Inc., heretofore identified and considered in the proceedings in Docket No. 8976, is denied without prejudice to future action consistent with this Report.

(4) The rules and regulations herein adopted shall become effective August 27, 1951.

Adopted: July 11, 1951

Released: July 12, 1951

DISSENTING OPINION OF COMMISSIONER WALKER

In connection with the early proceedings of the Commission relating to the establishment of the common carrier mobile radio services (Dockets Nos. 8658, et al.) it became evident that (1) there was a genuine public demand and need for such service and (2) that the frequencies allocated to such service in those proceedings would not likely be sufficient to take care of the ultimate requirements of the service.

Point (1) above was recognized by the Commission in its action establishing the service on a regular basis. Point (2) was recognized by the Commission in its Report and Order of April 27, 1949 in Dockets Nos. 8658 et al by inclusion in such report of the language quoted therefrom in the majority opinion.

I am constrained to view the proposed alternatives suggested by the majority as inadequate. This inadequacy was partially recognized by the Commission in the Report already referred to, in the following words (14 Fed. Reg. p. 2272).

> "In the case of the general mobile service, we were confronted with numerous requests for the assignment of many more frequencies to the service. The Illinois Bell Telephone Company,

the New Jersey Bell Telephone Company and the New York Telephone Company each filed petitions requesting the shared use, with other services, of certain specific additional frequencies. The General Telephone Corporation requested 20 additional full duplex channels in 2 blocks 5 mc apart. We have carefully considered these proposals and have concluded that it would be impracticable to permit sharing because it is evident that, at least as to the proposed sharing of certain Forestry and industrial frequencies, the demands of the telephone companies for use of such frequencies in the urban areas involved is bound to conflict with a similar demand by the eligible industrial applicants. Moreover, we recognize clearly that the relief which might be afforded through this device, or through the provision of a few additional exclusive common carrier channels, could be only a stop-gap measure and the problem of providing for expansion would shortly confront us again."

Looking at the record in the instant case, I find nothing to persuade me that the statements contained in the Report and Order of April 27, 1949 are in any way in error. On the contrary, I find that the conclusions therein stated are clearly strengthened by the instant record, i.e., the need for an additional frequency allocation for the mobile common carrier services is reaffirmed and the technical feasibility of utilizing 470-500 mc band is reasonably established.

The majority opinion does not appear to contradict any of these conclusions.

It is my view that the public interest, convenience and necessity would be better served by the allocation of the 470-500 mc band to the common carrier mobile service than to TV broadcasting. The point of difference between myself and my colleagues, therefore, goes to the question of the relative needs of the television broadcasting service and the common carrier mobile service. I do not believe these needs are equal but believe the needs of the common carrier service are greater. On this point, it is my feeling that the majority are placing undue emphasis upon the needs of the television service. I do not believe that it is necessary, in order to establish an adequate nationwide and competitive system of television broadcasting, to allocate the 470-500 mcs portion of the spectrum to television broadcasting. For this reason, I dissent from the decision of the Commission.

5th Report.

In the Matters of	
Amendment of Section 3.606 of the Commission's Rules and Regulations	Dockets Nos. 8736 and 8975
Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service	Docket No. 9175
Utilization of Frequencies in the Band 470 to 890 Mcs. for Television Broadcasting	Docket No. 8976

FIFTH REPORT AND ORDER OF COMMISSION

[¶91:40] 1. On May 6, 1948, the Commission issued a "Notice of Proposed Rule Making" (FCC 48-1569) in the above entitled Dockets 8736 and 8975 designed to amend its Table of television channel assignments for the United States. During the hearing subsequently held by the Commission on its proposed Table, evidence was presented concerning tropospheric interference, directional transmitting antennas, increased power and mileage spacings between television stations. As a result of this evidence, an Industry-Commission Conference was held on September 13, and 14, 1948, on the following issue, among others:

> "If the standards are to be revised, what policy should be adopted with respect to applications now pending before the Commission."

At the conclusion of that Conference the Commission announced its plan to hold an engineering conference "to consider questions regarding revision of the Commission's Rules, Regulations and Standards with respect to the technical phases of television allocations".

2. On September 30, 1948, the Commission issued a "Report and Order" (FCC 48-2182), commonly referred to as the "freeze" order. By the terms of said Order, §1.371 of the Commission's Rules was amended by adding footnote 8a thereto, reading as follows:

> "8a/ Pending further consideration of the issues in Dockets Nos. 8975 and 8736, requests for television authorizations on channels 2 through 13 will be considered in accordance with the following procedure:
>
> (a) Applications pending before the Commission and those hereafter filed for permits to construct television stations on channels 2 through 13 will not be acted upon by the Commission but will be placed in the pending files.

"(b) Applications pending before the Commission and those hereafter filed for modification of existing permits or licenses will be considered on a case-to-case basis and Commission action thereon will depend on the extent to which they are affected by the issues to be resolved in the proceedings bearing Docket Nos. 8975 and 8736.

(c) No hearing dates will be scheduled with respect to applications for construction permits which have been designated for hearing, and in cases in which hearings have been commenced or completed but decisions have not been issued, no further action will be taken.

(d) This procedure does not apply to construction permits or other television authorizations heretofore issued by the Commission."

3. Pursuant to the provisions of subparagraph "(a)" above, no applications then pending or thereafter filed for construction permits for new television stations have been granted, and there are now on file with the Commission 420 such applications. Since December, 1948, in considering various applications before it for modification of outstanding construction permits, the Commission has clarified its intentions concerning the "case-to-case basis" specified in the subparagraph "(b)". In passing on these applications, the Commission has not granted applications for modification of construction permits where such grants would result in increased coverage over that resulting from the effective radiated powers and antenna heights specified in the applicants' authorizations outstanding on September 30, 1948, the date of the Commission's "freeze" order. It has granted requests for lower powers and increased antenna heights which would result in coverage not in excess of that existing on the "freeze" date. It has not granted increased powers and lower antenna heights since such increased power involved questions of increased tropospheric interference. It has issued partial grants in accordance with the above policy.

4. On March 22, 1951, the Commission issued its "Third Notice of Further Proposed Rule Making" (FCC 51-244) in which it provided in paragraph "10" thereof the following:

"10. The most important single factor which induced the issuance by the Commission of its 'freeze' order of September 30, 1948, was the desire to ascertain whether sufficient mileage spacing had been provided between assignments set forth in its table. On the basis of the data contained in the record of this proceeding the Commission is proposing the separations specified in the attached Appendix A. In the light of these separations the Commission proposes to take the following actions upon the expiration of the time specified in paragraph 12 herein for the filing of comments and oppositions thereto:

(a) The Commission will determine whether any issue has been raised which would prevent the lifting of the 'freeze' with respect to channel assignments in Alaska, Hawaiian Islands, Puerto Rico and Virgin Islands. These Territories are sufficiently removed from the continental United States so as not

"to be involved in the separations problems of continental United States and present no assignment problem with any neighboring countries. Separations have been maintained within the Territories which are in accordance with the Commission's proposals in Appendix A. Accordingly, in the absence of any issue with respect to these separations, the Commission proposes to lift the 'freeze' with respect to the above Territories without waiting to reach a final determination on all the assignments proposed in Appendix C.

(b) The Commission will determine whether any issue has been raised with respect to the Commission's proposed assignments in the UHF band. In the absence of such issue, and where serious procedural or practical objections do not exist, the Commission will consider lifting the 'freeze' on applications which specifically request a UHF channel.

(c) The Commission will determine whether any issue has been raised with respect to applications by existing television licensees and permittees to increase power in accordance with the proposals set forth in Appendix A. In the absence of such issue the Commission will consider lifting the 'freeze' so far as existing stations are concerned on a case-to-case basis where it appears that a grant of increased power not in excess of the maximum specified in Appendix A will not affect channel assignment proposals offered by the Commission or by interested parties and will not unduly restrict the Commission's flexibility in reaching final determinations with respect to assignments still in issue.

(d) Should the Commission take action in accordance with the views expressed in subparagraphs (a), (b), and (c) above, a reasonable period will be provided for the filing of appropriate applications."

5. In advancing the above proposals for a partial lifting of the "freeze" the Commission recognized that the factors which called for a continuance of the "freeze" on the construction of new VHF television stations in the United States were not the same, in all respects, as those relating to the Territories, the UHF band, and increased power for existing stations. The Commission was of the opinion that under certain conditions a partial lifting of the "freeze" might be effected in the three instances specified in paragraph "10" of the Third Notice. However, with respect to the construction of new television stations in the VHF band, it became evident that a change in a channel assignment in a particular city, or the retention of a particular assignment might have a chain reaction on assignments in areas hundreds of miles away. For example, assuming the mileage separations specified in Appendix A, if a channel were changed in City X, it might require a change in co-channel assignments within a 180 mile radius from City X, as well as in adjacent channel assignments within 70 miles of City X, and possible shifting of other channels. These channel changes might require corresponding shifting of channels located within a 180-mile radius from the

second group of channels. In the same way, if construction permits were issued for new stations in City X either on the existing channels or on the proposed channels, it might have the effect of freezing channel assignments within 180 miles, which, in turn, might freeze assignments within another 180 miles, and so on. It followed, therefore, that any crystallization of channel assignments resulting from the authorization and construction of new television stations in particular areas might remove the element of flexibility, an element which is essential if the Commission is to remain free to adopt an assignment table based on the soundest engineering principles.

6. On June 15, 1951, in a "Memorandum Opinion and Order" (FCC 51-635) the Commission designated for oral argument questions relating to its authority to issue a Table of Assignments as part of its Rules and to reserve channels for non-commercial educational stations. Thereafter, on June 21, 1951, the Commission issued its "Third Report of Commission" (FCC 51-640) [¶91:36] in which it explained why it could not, at that time effectuate the purposes of paragraph "10" of the Third Notice. In that Report the Commission pointed out that because of the existence of substantive and procedural objections it would take no action at that time to lift the "freeze" with respect to applications for UHF channels; and that, pending the above mentioned oral argument, it would take no action at that time to lift the "freeze" in the Territories and to permit existing stations to increase power. Subsequently, on July 13, 1951, the Commission issued its "Memorandum Opinion" (FCC 51-709) [7 R.R. 371] in which it concluded that it had legal authority under the Communications Act of 1934, as amended, to "(1) Prescribe as part of its rules and subject to change through rule making a table specifying the channels upon which television station assignments may be made in specified communities and areas; and (2) designate and reserve certain of the assignments provided in such table for use by non-commercial educational television stations." In view of these conclusions we have again considered the possibilities suggested in paragraph "10(a)" and "(c)" of our Third Notice. And we have concluded that it is now possible, consistent with the basic criteria set out in paragraph "10(c)" to take certain steps permitting some increase in power for existing stations. A separate further report will be issued with respect to the suggestion contained in paragraph "10(a)".

7. In suggesting the possibility, in the Third Notice, of permitting increased power for existing stations we recognized that this might be accomplished without encountering problems such as those which would arise if we permitted new stations to be constructed in areas having no service at present. Without prejudice to those areas not now having stations, we would be providing for a better service to the public from existing stations and would be creating a situation in which, as a general matter, existing stations could operate on a more nearly equal basis from the viewpoint of coverage — a condition which would contribute materially to the healthy development of the new television industry.

8. In paragraph "10(c)" of the Third Notice the criteria we enunciated were, in essence, that increases in power for existing stations would be permitted if, upon consideration of all comments, we could permit such increases on a "case-to-case" basis in a manner which would not affect channel assignment proposals offered by the Commission or by interested parties in this proceeding, and would not unduly restrict the Commission's flexibility in reaching

final determinations with respect to assignments still in issue. Out of approximately 700 comments filed by interested parties pursuant to the Commission's Third Notice, only two comments opposed the Commission's proposal to increase power of existing stations. Neither of the two opposing comments advanced a single reason as to why the proposal should not be effectuated. 1/ From a review of the many comments and oppositions heretofore filed in this proceeding we do not believe it to be advisable at this point in the proceeding to permit increases to the powers specified in Appendix A. However, the Commission is of the opinion that some action can be taken during this interim period to accomplish in part the basic purpose expressed in paragraph "10(c)" of that Notice. The Commission proposes to continue its present policy of considering applications for modification of existing facilities which request changes in transmitters, antennas or locations therefor, under the terms of the existing "freeze" policy as described in paragraph "3" herein. We would also provide, on an interim basis, for a more efficient use of authorized stations through the granting of special temporary authority (STA) permitting temporary increases in power within the framework of the Commission's existing Rules and Standards "which will not affect channel assignment proposals offered by the Commission or by interested parties and will not unduly restrict the Commission's flexibility in reaching final determinations with respect to assignments still in issue." Accordingly, the Commission proposes to consider, on a case-to-case basis, requests by existing stations for special temporary authority to increase coverage beyond that permitted under the "freeze" policy. The following considerations will be applicable to such requests for special temporary authority:

(a) Community stations are permitted, pursuant to §3.603 of the Commission's Rules, to operate with a maximum effective radiated power of 1 kw and with an antenna height of 500 feet above average terrain. The Commission will consider requests by existing community stations (three in number) operating 500 watt transmitters with less than 500 watts power output for special temporary authority to increase transmitter power output to that figure, provided that the effective radiated power may not exceed 1 kw. Transmitters of more than 500 watts rating will not be authorized.

(b) Section 3.604 of the Commission's Rules permits metropolitan stations to operate with effective radiated power not in excess of 50 kw with antenna height of 500 feet. However, under the provisions of said Section, antenna heights in excess of 500 feet are permissible but such grants may be subject to reduced effective radiated power "so that the coverage (within the 5000 uv/m contour) shall be substantially similar to that which would be

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1/ The Comments referred to are those of Radio Virginia, Inc., WXGI, Richmond, Virginia and of Radio Kentucky, Inc. WKYW, Louisville, Kentucky. These comments, in pertinent parts, are as follows:
Radio Virginia, Inc.: "2) In general, we wish to register opposition to these phases of the plan: ***** C — The plan to grant power increases on the VHF channels".
Radio Kentucky, Inc.: "Radio Kentucky, Inc. opposes the granting of further power increases to VHF channels."

provided by 50 kilowatts effective radiated peak power and a 500 foot antenna." Under this rule antenna heights in excess of 500 feet have been authorized, but the Commission has until now limited effective radiated power so that the reduced power and increased antenna height would provide equivalent 5000 uv/m coverage. The Commission now will consider requests by metropolitan stations operating 5 kilowatt transmitters at less than 5 kilowatt power output for special temporary authorization to increase transmitter power output to that figure, provided (1) the effective radiated power may not exceed 50 kilowatts and (2), where antenna heights exceed 2000 feet, the Commission may limit effective radiated power to less than 50 kilowatts.

(c) Section 3.605 of the Commission's Rules provides for rural stations serving areas more extensive than those served by metropolitan stations, where the additional areas served are predominantly rural in character. This rule does not limit the powers and antenna heights of such stations and, prior to the "freeze", applications therefor were considered on a case-to-case basis. The Commission will consider requests by rural stations to use the same power proposed for metropolitan stations in subparagraph "(b)" above.

(d) Grants made in accordance with the provisions of subparagraphs "(a)", "(b)" and "(c)" above will be issued subject to the condition that they are without prejudice to any determination which the Commission may hereafter make with respect to outstanding proposals concerning Appendices A, B, C and D of the Third Notice.

(e) Special temporary authorizations issued pursuant to the above requests, and extensions thereof, will be limited to periods not in excess of six months.

(f) Applications by stations for changes in their classification will not be granted.

9. Applications filed by existing stations for changes of transmitters and antennas will, therefore, be considered in accordance with the existing "freeze" order, and requests for operation of authorized equipment beyond the limits of the "freeze" policy will be considered for temporary periods in accordance with the procedure described above. Since amendment of our rules to provide for this procedure constitutes an amendment relating to practice and procedure before the Commission, and constitutes a statement of policy, under Section 4 of the Administrative Procedure Act proposed rule making is not required and said amendment may be made effective immediately.

Accordingly, it is ordered, this 25th day of July, 1951, that effective immediately, §1.371 of the Commission's Rules and Regulations is amended so that subparagraph "(b)" of footnote "8a" (designated footnote "10" in the Code of Federal Regulations) shall read as follows:

> (b) Formal applications pending before the Commission and those hereafter filed for modification of existing permits or license will be considered on a case-to-case basis and Commission action thereon will depend on the extent to which they are affected by the issues to be resolved in the proceedings bearing Docket Nos. 8736, 8975, 9175 and 8976. Such formal applications will be considered on the basis that neither the

coverage within the 500 uv/m contour nor the effective radiated power shall exceed that authorized on September 30, 1948; applications requesting greater coverage or power will be given consideration on the basis of partial grants within these limits. Licensees and permittees of television stations may apply by letter or other informal application for special temporary authority (STA), and for extensions thereof, for periods not in excess of six months, to operate under the following terms and conditions:

(1) Community television stations operating 500 watt transmitters with less than 500 watts power output may apply for special temporary authority to increase transmitter power output to that figure; provided that the effective radiated power may not exceed 1 kw.

(2) Metropolitan and rural television stations operating 5 kilowatt transmitters at less than 5 kilowatts power output may apply for special temporary authority to increase transmitter power output to that figure. In no event may the effective radiated power of a metropolitan or rural station exceed 50 kw. Where the antenna height of a metropolitan or rural television station exceeds 2000 feet above average terrain, the effective radiated power of such station may be limited to less than 50 kw.

(3) Applications by existing television stations for changes in their classifications will not be granted.

(4) Any authorization issued pursuant to the above subparagraphs shall be granted subject to the condition that it is without prejudice to any action the Commission may take with respect to outstanding proposals concerning Appendices A, B, C and D of the Third Notice of Further Proposed Rule Making and that such authorizations will either be modified to conform with any final determinations reached by the Commission in said proceeding, or will be cancelled.

Adopted: July 25, 1951

Released: July 26, 1951

Commissioner Jones dissenting.

Pike & Fischer

RADIO REGULATION

Volume Two

How to use—

PIKE AND FISCHER RADIO REGULATION

Material is arranged in these volumes by paragraph number (¶). The paragraph number is the key to all the material in the work. Gaps have of course been left in paragraphing to allow for addition of material in the future.

VOLUME 1

Volume 1 contains relevant statutes and related material, Congressional committee reports, and court rules in ¶¶10 to 40; treaties in ¶41; the Rules and Regulations of the Federal Communications Commission in ¶¶51 through 83; Forms in ¶98. A Master Index of all material in this volume will be found at the back of the volume.

VOLUMES 2 and 2A

Volume 2 consists of a digest of all decisions of the Federal Communications Commission and selected decisions of the federal and state courts and of the Federal Radio Commission. Material is arranged according to the relevant paragraph numbers in Volume 1. In addition, court decisions relating to radio and television, but not directly involving the Federal Communications Commission, are classified under ¶¶100 et seq.

Volume 2 includes decisions handed down through the first part of 1959. Decisions reported since that time are digested in Volume 2A, under the same classification scheme employed in Volumes 1 and 2. In order to locate all cases on a given point, it is necessary to refer both to Volume 2 and to Volume 2A.

VOLUMES 3 et seq.

Volume 3 and succeeding volumes consist of decisions of the F.C.C. since July 1, 1945, and of the courts since January 1, 1948, arranged in approximate chronological order. Reports of the F.C.C. in rule making proceedings, handed down after January 1, 1953, are reprinted in Volume 8 and succeeding volumes. All decisions and reports are headnoted and keyed to the material in Volume 1, and in addition are referred to in the subject matter digest in Volumes 2 and 2A. Tables of Cases will be found in Volume 2A.

Volumes 3 through 8, which cover cases handed down between July 1, 1945 and the early part of 1953, are not included in the Broadcast Edition of RADIO REGULATION.

In the Matters of	
Amendment of §3.606 of the Commission's Rules and Regulations	Docket Nos. 8736 and 8975
Amendment of the Commission's Rules, Regulations and Engineering Standards Concerning the Television Broadcast Service	Docket No. 9175
Utilization of Frequencies in the Band 470 to 890 mcs for Television Broadcasting	Docket No. 8976

THIRD REPORT OF COMMISSION

[¶91:36] 1. On July 11, 1949, the Commission issued its "Notice of Further Proposed Rule Making" (FCC 49-948) in Part II of the above entitled proceedings. Attached to said Notice were four appendices, i.e., Appendices A, B, C and D. Appendix A contained the Commission's proposals to amend its rules, regulations and engineering standards. Appendix B sets forth the methods and assumptions upon which the Commission based the figures and values specified in Appendix A. Appendix C contained the Commission's proposed revisions of its Table of television channel assignments in the United States and its Territories. Appendix D, as explained in the above Notice contained certain illustrative assignments for Canada, Mexico and Cuba based on the overall proposals for the United States, assuming that the borders between the United States and the respective countries did not exist.

2. The "First Report of Commission" (FCC 50-1064) and the "Second Report of Commission" (FCC 50-1224) concerning the color television issues were issued on September 1, 1950 and October 11, 1950, respectively. Subsequently, commencing on October 16, 1950, the Commission heard the testimony of interested parties who had filed comments concerning the general issues set forth in Appendices A and B of the above Notice. These hearings continued until January 31, 1951, when the Commission recessed the hearings in order to study the record and determine whether it should proceed with the hearings on Appendices C and D in the light of the testimony and exhibits theretofore presented with respect to the general issues. Thereafter, on March 22, 1951, the Commission issued its "Third Notice of Further Proposed Rule Making" (FCC 51-244) (16 F.R. 3072).

3. In Appendices A and B of the said Third Notice the Commission set forth its findings and conclusions based on the hearing record developed with respect to the general issues between October 16, 1950 and January 31, 1951. At the same time, interested parties were afforded the opportunity to object to these findings and conclusions by filing statements of objections in accordance with the procedure set forth in paragraph "11" of said Third Notice. In order that its conclusions might be effectuated in the public interest at the earliest possible date the Commission provided in paragraph "10" of said Third Notice as follows:

"10. The most important single factor which induced the issuance by the Commission of its "freeze" order of September 30, 1948, was the desire to ascertain whether sufficient mileage spacing had been provided between assignments set forth in its table. On the basis of the data contained in the record of this proceeding the Commission is proposing the separations specified in the attached Appendix A. In the light of these separations the Commission proposes to take the following actions upon the expiration of the time specified in paragraph 12 herein for the filing of comments and oppositions thereto:

(a) The Commission will determine whether any issue has been raised which would prevent the lifting of the "freeze" with respect to channel assignments in Alaska, Hawaiian Islands, Puerto Rico and Virgin Islands. These Territories are sufficiently removed from the continental United States so as not to be involved in the separations problems of continental United States and present no assignment problem with any neighboring countries. Separations have been maintained within the Territories which are in accordance with the Commission's proposals in Appendix A. Accordingly, in the absence of any issue with respect to these separations, the Commission proposes to lift the "freeze" with respect to the above Territories without waiting to reach a final determination on all the assignments proposed in Appendix C.

(b) The Commission will determine whether any issue has been raised with respect to the Commission's proposed assignments in the UHF band. In the absence of such issue, and where serious procedural or practical objections do not exist, the Commission will consider lifting the "freeze" on applications which specifically request a UHF channel.

(c) The Commission will determine whether any issue has been raised with respect to applications by existing television licensees and permittees to increase power in accordance with the proposals set forth in Appendix A. In the absence of such issue the Commission will consider lifting the "freeze" so far as existing stations are concerned on a case-to-case basis where it appears that a grant of increased power not in excess of the maximum specified in Appendix A will not affect channel assignment proposals offered by the Commission or by interested parties and will not unduly restrict the Commission's flexibility in reaching final determinations with respect to assignments still in issue.

(d) Should the Commission take action in accordance with the views expressed in subparagraphs (a), (b), and (c) above, a reasonable period will be provided for the filing of appropriate applications."

Appendix C of the Third Notice contains the Commission's proposed assignments for the United States and its Territories while Appendix D sets forth illustrative assignments for Canada and Mexico.

4. The above Third Notice further provided that comments could be filed by interested parties concerning the proposals set forth therein, and pursuant to petitions filed by representative members of the broadcasting industry the filing date therefor was extended by the Commission to May 7, 1951. To date, approximately 700 such comments have been received. Provision was also made in said Third Notice for the filing of oppositions to the above comments and, upon similar petition therefor, the filing date was extended to June 11, 1951, and the date of the hearing to July 9, 1951. To date, approximately 400 oppositions have been filed with the Commission.

5. In paragraph "10(a)" of the Third Notice the Commission stated that, in the absence of any issues concerning its proposals with respect to the Territories of the United States, the Commission proposed to lift the "freeze" on channel assignments therein without waiting to reach a final determination on all the assignments proposed in Appendix C. The Commission has, in a Memorandum Opinion and Order issued on June 15, 1951, designated for oral argument for June 28, 1951, questions relating to its authority to issue a Table of Assignments and to reserve channels for noncommercial educational stations. These questions bear a direct relationship to the proposal to lift the "freeze" in the Territories. Accordingly, no action is being taken by the Commission at this time to carry out the proposal set forth in paragraph "10(a)" of the Third Notice.

6. In paragraph "10(b)" of the Third Notice the Commission provided that in the absence of an issue with respect to its proposed assignments of UHF channels, and in the absence of serious procedural or practical objections, it would consider lifting the "freeze" on applications which specifically request a UHF channel. From a careful review and analysis of the comments filed to date concerning Appendices A, B, C and D of the Third Notice, it appears that issues have been raised which present substantive and procedural objections to the action proposed by the Commission in paragraph "10(b)". Accordingly, no action is being taken at this time to lift the "freeze" with respect to applications for UHF channels.

7. In paragraph "10(c)" of the Third Notice the Commission provided that in the absence of any issue with respect to applications by existing television licensees and permittees to increase power in accordance with the proposals set forth in Appendix A, the Commission would consider lifting the "freeze" so far as existing stations are concerned "on a case-to-case basis where it appears that a grant of increased power not in excess of the maximum specified in Appendix A will not affect channel assignment proposals offered by the Commission or by interested parties and will not unduly restrict the Commission's flexibility in reaching final determinations with respect to assignments still in issue." As indicated above, the Memorandum Opinion and Order issued on June 15, 1951, designated for oral argument questions relating to the Commission's authority to issue a Table of Assignments. In the event that the Commission should determine, after such oral argument, that it is without legal authority to adopt said Table of Assignments as proposed in the Third Notice, any action taken by it at this time to grant increases in power to existing television stations may

create a situation where interested parties who have refrained from filing applications pursuant to the Commission's request in paragraph "15" of the Third Notice would be seriously prejudiced as a result of the previous grants of increased power. For, in the absence of a Table of Assignments, applicants for new television stations would be permitted to file for any channels they deemed preferable and in any communities they chose. Such applications might well be mutually exclusive with the applications of existing stations to increase their respective powers. Accordingly, the Commission is of the opinion that no action should be taken by it at this time to lift the "freeze" with respect to applications by existing television stations to increase their respective powers.

Adopted: June 20, 1951

Released: June 21, 1951

In the Matter of	
General Mobile Radio Service	Docket No. 8658
Allocation of Frequencies Between 25 and 30 mc.	Docket No. 8965
Allocation of Frequencies Between 44 and 50 mc., and Between 152 and 162 mc.	Docket No. 8972
Allocation of Frequencies Between 72 and 76 mc.	Docket No. 8973
Allocation of Frequencies in the Band 450-460 mc.	Docket No. 8974
Revision of Part 10, "Rules and Regulations Governing Emergency Radio Service" to change the name of this Part to "Rules and Regulations Governing Public Safety Radio Services", and to make other changes and amendments.	Docket No. 9001
Promulgation of New Part 11 of the Commission's Rules — Rules Governing Industrial Radio Services.	Docket No. 9018
Proposed Rules and Regulations Governing Domestic Public Mobile Radiotelephone Services.	Docket No. 9046
Promulgation of New Part 16 — Rules Governing the Land Transportation Radio Services.	Docket No. 9047
Amendment of Part 2 of the Commission's Rules and Regulations.	— —

REPORT AND ORDER OF THE COMMISSION

By the Commission: (Commissioners Webster and Hennock dissenting in part. Commissioner Jones dissenting.)

General Statement

[¶91:20] The Commission is required by Sections 4 and 303 of the Communications Act of 1934 as amended, among other things, to "classify radio stations" and "prescribe the nature of the service to be rendered by each class of licensed stations", to "assign bands of frequencies to the various classes of stations and assign frequencies for each individual station and determine the power which each station shall use and the time during which it may operate", to "make such regulations not inconsistent with law as it may deem necessary to prevent interference between stations", to "study new uses for radio, provide for experimental uses of frequencies, and generally encourage the larger and more effective use of radio in the public

interest", to "make such rules and regulations and prescribe such restrictions and conditions . . . as may be necessary to carry out the provisions of" the Communications Act, "or any international radio or wire communications treaty or convention"; and "for the purpose of obtaining maximum effectiveness from the use of radio . . . in connection with the safety of life and property . . . investigate and study all phases of the problem and the best methods of obtaining the cooperation and coordination of these systems".

In keeping with this statutory obligation, the Commission held extensive hearings and oral argument in 1944 and 1945 (Docket No. 6651) on the general question of the allocation of frequencies throughout the spectrum. At that time, all interested persons were afforded an opportunity to present facts and reasons for assignments of frequencies for various services. Following these hearings, the Commission, on May 25, 1945, issued its Report of Allocations from 25,000 to 30,000,000 kilocycles. In that report the Commission made provision for frequencies which would permit the establishment of certain new radio services in addition to providing for existing services. The Commission stated that it would be the Commission's policy to encourage experimentation on the part of all interested users of those new services so that the most informed judgment possible might be exercised with respect to the best use to be made of the frequencies allocated and it was noted that future hearings would be necessary before final frequency assignments could be made and the services regularly established. The Commission, however, cautioned all applicants that a grant of an experimental authorization would not, in any way, constitute any assurance that the licensee would be authorized to operate a station in any services that might be finally established and that expenditures undertaken on account of such experimentation were incurred at the risk that frequencies would be shifted or would not necessarily be made available on a regular basis for the type of service authorized.

The next few years witnessed the growth, largely on an experimental basis, of a myriad of specialized uses of radio. On June 30, 1945, there were 21,950 stations in the non-broadcast services exclusive of amateurs. By June 30, 1948 these had more than doubled, increasing in number to 47,414 authorized stations. The number of mobile units authorized with these stations exceeds 140,000.

Establishment of new services intensifies the problem of finding frequency space and of regulating operations. As each new use of radio emerges from the experimental stage, spectrum space must be sought and procedures must be inaugurated to handle the newcomer in the light of international as well as domestic considerations as public interest may require. The tremendous expansion in the use of radio, international commitments entered into at the Atlantic City International Radio Conference (1947), and the study of operational data compiled from the reports filed by experimental licensees, made it imperative that the Commission re-evaluate the relative requirements of the several categories of services. In addition, the experimental program embarked upon as a result of our May 1945 allocations report had progressed sufficiently to enable the Commission to determine which services could best serve the public interest if established on a regular basis.

Docket No. 8658, in which hearings were held in December 1947, does not involve a specific rule proposal, but was in the nature of an investigative or

policy determining proceeding to ascertain, in substance, whether, and in what manner, regular and permanent provision should be made for the various general mobile radio services.

On May 6, 1948, the Commission released Notices of Proposed Rule Making relative to the allocation of frequencies in the bands 25-30 mc, 44-50 mc, 72-76 mc, 152-162 mc, and 450-460 mc. Specifically, these proposals involved the following dockets:

Docket No. 8965 - Allocation of Frequencies Between 25-30 mc.

Docket No. 8972 - Allocation of Frequencies Between 44-50 and 152-162 mc.

Docket No. 8973 - Allocation of Frequencies Between 72-76 mc.

Docket No. 8974 - Allocation of Frequencies Between 450-460 mc.

A few weeks later, on June 11, 1948, the Commission released a group of proposed service rules. These set forth specific sub-allocations of frequencies to the individual services and comprehensive regulations for their administration. These proposals are contained in the following dockets:

Docket No. 9001 - Revision of Part 10, "Rules and Regulations Governing Emergency Radio Service" to change the name of this Part to "Rules and Regulations Governing Public Safety Radio Services", and to make other changes and amendments.

Docket No. 9018 - Promulgation of New Part 11 of the Commission's Rules — Rules Governing Industrial Radio Services.

Docket No. 9046 - Proposed Rules and Regulations Governing Domestic Public Mobile Radiotelephone Services (Part 6).

Docket No. 9047 - Promulgation of New Part 16 — Rules Governing the Land Transportation Radio Services.

Since all of these dockets are interrelated, the Commission, by order of August 25, 1948, provided that oral argument would be heard in a consolidated proceeding commencing October 6, 1948. The arguments were heard from October 6 through October 15 before the Commission en banc.

The Commission received over 200 written comments in these dockets and some 135 persons presented oral argument, the transcript of which aggregates 1913 pages. The persons participating included licensees, applicants, trade associations, manufacturers, etc. An intensive study of all the comments filed and the arguments presented has been made in an effort to provide for maximum frequency utilization in the public interest. The Commission is well aware of the tremendous problems involved in public compliance

with any reallocation plan, but if facilities are to be provided for new services which should be recognized and for the necessary expansion and extension of existing services, some shifts in frequencies presently in use by existing licensees appear to be unavoidable.

In most cases the requests for frequencies far exceeded the available supply and, in some of these cases, there was presented little or no correlation between the number of channels requested and the number absolutely essential to the conduct of an adequate communications service. Secondly, the engineering standards upon which bandwidths of emissions were estimated appeared to be in conflict. It was therefore obvious that all of the requests could not be met in full and, in most instances, the Commission has had to allocate fewer channels than were requested or to assign the service to a different portion of the spectrum from that sought, or both.

There are six general principles that guided the Commission in making this determination. With the exception of the sixth principle, these principles were enunciated in the Commission's Report of May 1945 in Docket No. 6651. First, the Commission examined each request to determine whether the service really required the use of radio or whether wire lines were a practicable substitute. With an acute shortage of frequencies, it would not be in the public interest to assign a portion of the spectrum to a service which could adequately and feasibly use wire lines instead of radio. The Commission's determination was not limited to technical considerations, but also took into account economic and social factors and considerations of national policy.

Second, the Commission determined that all radio services should not be evaluated alike. Radio services which are necessary for the safety of life and property deserve more consideration than those services which are more in the nature of convenience or luxury.

The third principle the Commission considered was the total number of people who would probably receive benefits from a particular service. Where other factors were equal, the Commission attempted to meet the requests of those services which proposed to render benefits to large groups of the population rather than of those services which would aid relatively small groups.

The fourth principle related to consideration of the proper place in the spectrum for the service, based upon engineering consideration of propagation characteristics in different portions of the spectrum. Certain frequencies can be used more effectively by services requiring comparatively long range communications, while others are better suited for short range communications.

The fifth principle also pertained to assignment of each service to its proper place in the spectrum. In determining competing requests of two or more services for the same frequencies, where one or more of the services involved had already been assigned frequencies on a regular basis, the Commission gave careful consideration to the number of transmitters and receivers already in use, the investment of the industry and the public in equipment, and the cost and feasibility of converting the equipment for operation on different frequencies.

Finally, the Commission considered the necessity of achieving international standardization of maritime mobile service allocations around the international calling frequency 156.80 mc.

Though the dockets were heard together, in our consideration of these proceedings, the Commission has attempted to disassociate, to the extent feasible in each case, the question of the allocation of frequencies to the various services (Dockets Nos. 8965, 8972, 8973 and 8974) from the sub-allocation of those frequencies in the several parts of the rules governing those services (Dockets Nos. 9001, 9018, 9046 and 9047). For example, the Table of Frequency Allocations attached hereto as Annex 1,* and to which further reference will be made, shows only the service group to which a particular frequency is allocated, e.g., Public Safety, Industrial, Domestic Public, or Land Transportation. Since each service group contains several services, in order to determine the specific frequency available to a particular service, reference must be made to the specific rules governing that service.

DOCKET NO. 8965 - ALLOCATION OF FREQUENCIES BETWEEN 25-30 MC

This docket involves a general allocation of frequencies between 25-30 mc to certain categories of service. The Commission's proposal for this band was summarized in its Allocation Report of May 1945. Although the exact frequencies to be allocated to the various services were not specified, the 1945 report provided for the use of 59 frequencies, at intervals of 25 kc, to the services now involved in this docket.

Aviation	-	7 (Exclusive)
Industrial	-	52 (Shared)
Remote Pickup	-	24 (Shared)
Experimental	-	10 (Shared)

The proposal, as presented in Docket No. 8965, would provide an allocation of 53 frequencies at intervals of 20 kc and 17 frequencies at intervals of 10 kc, as follows:

Aviation	-	16 (Shared, 10 kc wide)
Fixed Public	-	1 (Exclusive, 10 kc wide)
Fixed Public	-	16 (Shared, 10 kc wide)
Industrial	-	34 (Exclusive, 20 kc wide)
Remote Pickup	-	19 (Exclusive, 20 kc wide)

In addition to the above proposed changes, the original allocation for industrial, scientific and medical equipment would be changed from 27.32 mc to 27.12 mc. The fixed and mobile band 27.43-27.48 mc would be changed to 27.23-27.28 mc and the amateur band 27.16-27.43 mc would be changed to 26.96-27.23 mc.

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* [The "Annexes" referred to in this Report are the revisions of Parts 2, 6, 10, 11 and 16 appearing in ¶¶ 52, 56, 60, 61 and 66 of Volume 1.]

No great controversy developed with respect to the proposed allocations as set forth in this band. The National Committee for Utilities Radio suggested an interchange of frequencies with other services in the industrial group. Since this is a matter of adjusting assignments within a service, and not an overall allocation problem, the question will be discussed in that part of the Commission's Report which deals with Docket No. 9018, Rules Governing Industrial Radio Services.

The comments of the Allen B. DuMont Laboratories, Inc. were directed to the question of whether or not television is considered a broadcast service, since part of the band is allocated for remote pickup purposes. The Commission considers the term "Broadcast Service" to include television as well as standard and FM broadcasting and, therefore, the television service would be permitted to use frequencies within this band for remote audio pickup purposes.

Accordingly, the allocation of frequencies between 25-30 mc, as set forth in the Commission's revised proposal issued on June 23, 1948 and shown on the attached Table of Frequency Allocations, Annex 1, is adopted without change.

DOCKET NO. 8972 - ALLOCATION OF FREQUENCIES BETWEEN 44-50 MC AND 152-162 MC

The Commission's Report of Allocations in May 1945 (Docket No. 6651) allocated the band 44-50 mc to the broadcast, fixed and mobile services and this band was designated as television channel No. 1. Pursuant to a hearing held in November 1947 (Docket No. 8487), the Commission, on May 5, 1948, issued an order deleting this allocation to the broadcast service and making the band available to the non-government fixed and mobile services exclusively, as compensation for the deletion of the allocation to the mobile services in the band 72-76 mc.

The proposal, as contained in Docket No. 8972 and on which oral argument was held, would have provided 300 frequencies in the band 44-50 mc at intervals of 20 kc, exclusively for the land mobile service as follows:

Public Safety	–	154 frequencies
Industrial	–	116 frequencies
Land Transportation	–	30 frequencies

In acting upon that proposal herein, it is to be noted, we have considered the arguments addressed to the subject of frequency spacing and have established the assignments in the 44-50 mc band on a 40 kc interval, rather than on 20 kc as proposed originally. However, we wish to emphasize that the ultimate utilization of this band, which is urgently required to take care of the anticipated overflow from the 152-162 mc band, will necessitate the development of techniques and equipments which will operate on a closer spacing than 40 kc.

The May 1945 report in Docket No. 6651 made provision for the following services in the band 152-162 mc at intervals of 60 kc, but did not specify the frequencies to be allocated:

FEDERAL COMMUNICATIONS COMMISSION REPORTS

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DECISIONS, REPORTS, AND ORDERS OF THE FEDERAL COMMUNICATIONS COMMISSION OF THE UNITED STATES

MARCH 1, 1937–NOVEMBER 15, 1937

VOLUME 4

REPORTED BY THE COMMISSION

UNITED STATES
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FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

COMMISSION ORDER No. 17–A

At a general session of the Federal Communications Commission held at its office in Washington, D. C., on the 29th day of September 1937;

The Commission having under consideration Telephone Division Orders Nos. 6–A, 6–B, and 14, subsection 85 (a), "Telephone toll tickets, and statements forming basis of charges to subscribers and others," and subsection 1 (c), "Trial balance sheets of general and auxiliary ledgers," of paragraph 20 of the Regulations to Govern the Destruction of Records of Telephone, Telegraph and Cable Companies (Including Wireless Companies) promulgated pursuant to order of the Interstate Commerce Commission made on the 3rd day of November 1919;

IT IS ORDERED, That the words "Optional after charges have been paid or considered to be uncollectible" in the column "Period to be retained" opposite said subsection 85 (a) of paragraph 20, be, and the same are hereby, deleted and that the words "6 months" be inserted at that point.

IT IS FURTHER ORDERED, That the records covered by said subsection 85 (a) of paragraph 20 be, and the same are hereby, exempted from the provisions of Telephone Division Orders Nos. 6–A, 6–B, and 14, and may be destroyed in conformity with the provisions of that subsection as amended by this order.

IT IS FURTHER ORDERED, That those carriers that are using reprinted copies of the said Regulations to Govern the Destruction of Records be, and the same are hereby, notified that the word "permanently" appearing in the original authenticated copies of the Interstate Commerce Commission's order of November 3, 1919, in the column "Period to be retained," opposite said subsection 1 (c), "Trial balance sheets of general and auxiliary ledgers," was by reason of a printing error omitted from such reprinted issues.

By the Commission.

[SEAL] T. J. SLOWIE, *Secretary.*

4 F. C. C.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

COMMISSION ORDER No. 18 [1]

IN THE MATTER OF FREQUENCY ALLOCATION TO SERVICES IN THE FREQUENCY BANDS FROM 10 KC TO AND INCLUDING 30000 KC

DOCKET No. 3929

At a regular meeting of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of October 1937;

The Commission having under consideration the provisions of Section 303 (c), (f), and (g) of the Communications Act of 1934, and Rule 229 of its Rules and Regulations; and

A public informal hearing having been conducted at the offices of the Commission from June 15 to 29, 1936, at which time persons representing the departments of the Federal Government, the agencies of state and municipal governments interested in radio, and persons representing all radio services and all important phases of the radio industry, presented testimony; and

The record of the hearing, having been made available to the Interdepartment Radio Advisory Committee, and said Committee having made certain recommendations with respect to the allocation of frequencies to Federal Government agencies; and

The Commission having considered the recommendations of the Interdepartment Radio Advisory Committee, and being fully advised in the premises, found, as a result of its investigation and hearing, that public convenience, interest, or necessity require that Rule 229 of its Rules and Regulations be revised:

IT IS ORDERED, That Rule 229 of the Rules and Regulations of the Commission in so far as it allocates the frequencies from 25000 kc to 28000 kc be and the same is hereby amended, effective at 3:00 a. m., E. S. T., October 13, 1938, in accordance with the table identified as Part I of Rule 229 attached hereto and made a part of this Order: *And provided, however,* That the Commission may make assignments in accordance with the allocation given in said table prior to October 13, 1938.

[1] See Report of the Commission, herein, at p. 582.

4 F. C. C.

IT IS FURTHER ORDERED, That any holder of, or applicant for, an instrument of authorization, whose frequency or frequencies heretofore assigned or applied for may be changed by the provisions of this Order, who objects to such change may within ninety (90) days from the date of this Order, file with this Commission his objections in writing and request a hearing.

IT IS FURTHER ORDERED, That the holder of, or an applicant for, an instrument of authorization who, prior to ninety (90) days from this date, fails to file written objections and a request for hearing as hereinabove set out, shall be deemed to have consented to such change.

IT IS FURTHER ORDERED, That any applicant who, after the date of this Order, requests an instrument of authorization or an authorization renewal for a frequency or frequencies which will be changed after 3:00 a. m., E. S. T., October 13, 1938, will without further notice be deemed to have consented to the effective time and date of such change of the frequency or frequencies requested.

Frequency allocations

PART I.— 10-30000 KILOCYCLES

RULE 229. Subject to the foregoing provisions, the center frequencies of communication bands that will be designated are as follows:[1]

Frequency (kilocycles)	Allocation	Frequency (kilocycles)	Allocation
10.05	Fixed.	15.00	Fixed.
10.20	Do.	15.20	Do.
10.35	Do.	15.40	Do.
10.50	Do.	15.60	Do.
10.65	Do.	15.80	Do.
10.80	Do.	16.00	Do.
10.95	Do.	16.20	Do.
11.10	Do.	16.40	Do.
11.25	Do.	16.60	Do.
11.40	Do.	16.80	Do.
11.55	Do.	17.00	Do.
11.70	Do.	17.20	Do.
11.85	Do.	17.40	Do.
12.00	Do.	17.60	Do.
12.15	Do.	17.80	Government.
12.30	Do.	18.00	Do.
12.45	Do.	18.20	Fixed.
12.60	Do.	18.40	Do.
12.75	Do.	18.60	Government.
12.90	Do.	18.80	Fixed.
13.05	Do.	19.00	Do.
13.20	Do.	19.20	Do.
13.35	Do.	19.40	Do.
13.50	Do.	19.60	Do.
13.65	Do.	19.80	Government.
13.80	Do.	20.00	Fixed.
13.95	Do.	20.25	Do.
14.10	Do.	20.50	Do.
14.25	Do.	20.75	Do.
14.40	Do.	21.00	Do.
14.55	Do.	21.25	Do.
14.70	Do.	21.50	Do.
14.85	Do.	21.75	Do.

See notes at end of table.

[1] Allocations are indicated for information purposes. Indented frequencies indicate assignments which have been made up to October 6, 1937, in accordance with the proviso in Rule 228. For more detailed information regarding restrictions on the use of frequencies, consult the chapter of the Rules and Regulations of this Commission dealing with the service to which the frequency is allocated.

Frequency allocations—Continued

PART I.—10-30000 KILOCYCLES—Continued

Frequency (kilocycles)	Allocation	Frequency (kilocycles)	Allocation
21.80	Fixed.	44.20	Fixed.
22.00	Do.	44.70	Do.
22.10	Do.	45.20	Do.
22.25	Do.	45.70	Do.
22.35	Do.	46.00	Government.
22.50	Do.	46.20	Do.
22.60	Do.	46.70	Fixed.
22.75	Do.	47.20	Do.
22.90	Government.	47.50	Do.
23.00	Do.	47.70	Do.
23.25	Fixed.	48.20	Do.
23.50	Do.	48.70	Do.
23.75	Do.	49.20	Do.
24.00	Government.	49.70	Do.
24.25	Fixed.	50.20	Do.
24.50	Do.	50.80	Do.
24.75	Do.	51.40	Do.
25.00	Do.	51.68	Do.
25.30	Do.	52.00	Do.
25.60	Do.	52.60	Do.
25.82	Do.	53.20	Do.
25.90	Do.	53.80	Government.
26.10	Government.	54.00	Do.
26.20	Do.	54.40	Fixed.
26.50	Fixed.	55.00	Do.
26.80	Do.	55.36	Do.
27.10	Do.	55.60	Do.
27.40	Do.	56.00	Government.
27.70	Do.	56.20	Do.
28.00	Do.	56.80	Fixed.
28.30	Do.	57.40	Do.
28.50	Government.	58.00	Government.
28.60	Do.	58.50	
28.90	Fixed.	58.60	
29.20	Do.	59.20	
29.50	Do.	59.80	60.00 Fixed.
29.80	Do.	60.40	
30.20	Do.	61.20	
30.60	Government.	61.50	
31.00	Fixed.	62.00	Do.
31.40	Do.	62.80	Do.
31.80	Do.	63.18	Do.
32.20	Do.	63.60	Do.
32.60	Do.	64.00	Government.
32.80	Government.	64.40	Do.
33.00	Do.	65.20	Fixed.
33.40	Fixed.	66.00	Government.
33.80	Government.	66.50	
34.20	Fixed.	66.80	
34.50	Do.	67.60	
34.60	Do.	68.00	Fixed.
35.00	Do.	68.40	
35.40	Do.	68.92	Do.
35.80	Do.	69.20	
36.20	Do.	69.50	
36.60	Do.	70.00	Do.
37.00	Do.	70.80	Do.
37.40	Do.	71.26	Do.
37.80	Do.	71.60	Do.
38.00	Government.	72.40	Do.
38.20	Do.	73.20	Do.
38.60	Fixed.	74.00	Do.
39.00	Do.	74.80	Government.
39.39	Do.	75.00	Do.
39.40	Do.	75.60	Fixed.
39.80	Do.	76.40	Do.
40.20	Do.	77.20	Do.
40.70	Do.	78.00	Do.
41.20	Do.	78.80	Do.
41.70	Do.	79.32	Do.
42.20	Do.	79.60	Do.
42.70	Government.	80.40	Do.
42.80	Do.	80.50	Do.
43.20	Fixed.	81.20	Do.
43.70	Do.		

See notes at end of table.

Frequency allocations—Continued

PART I.—10–30000 KILOCYCLES—Continued

Frequency (kilocycles)	Allocation	Frequency (kilocycles)	Allocation
82.00	Fixed.	144	Guard Band.
82.80	Government.	145	Coastal Teleg.
83.00	Do.	146	Do.
83.60	Fixed.	147	Do.
83.86	Do.	148	Do.
84.40	Do.	149	Do.
85.20	Do.	150	Do.
86.00	Do.	151	Ship Teleg.
86.80	Do.	152	Do.
87.60	Do.	153	Do.
88.40	Do.	154	Do.
89.20	Do.	a155	Ship Teleg. & Govt.
90.00	Do.	156	Ship Teleg.
90.80	Do.	157	Do.
91.60	Do.	158	Do.
92.40	Do.	159	Government.
92.76	Do.	160	Ship Teleg.
93.20	Do.	161	Fixed & Coastal Teleg.
94.00	Government.	162	Do.
94.80	Fixed.	163	Do.
95.00	Do.	164	Do
95.60	Do.	165	Do.
96.40	Do.	fh166	Govt., Fixed & Coastal Teleg
97.20	Do.	167	Fixed & Coastal Teleg.
97.50	Do.	168	Do.
98.00	Do.	169	Do.
98.80	Do.	170	Do.
99.00	Do.	171	Do.
100	Government.	br172	Govt. & Fixed.
101	Fixed.	173	Fixed & Coastal Teleg.
102	Government.	174	Do.
103	Fixed.	h175	Government.
104	Government.	176	Fixed & Coastal Teleg.
105	Coastal Teleg.	177	Do.
106	Government.	fhr178	Govt., Fixed & Coastal Teleg.
107	Coastal Teleg.	179	Fixed & Coastal Teleg.
108	Government.	a180	Govt., Fixed & Coastal Teleg.
109	Coastal Teleg.	181	Fixed & Coastal Teleg.
110	Do.	r182	Do.
111	Do.	r183	Do.
112	Do.	184	Do.
113	Government.	185	Government.
114	Coastal Teleg.	r186	Fixed & Coastal Teleg.
115	Government.	r187	Do.
116	Coastal Teleg.	bfhr188	Govt., Fixed & Coastal Teleg.
117	Do.	r189	Fixed & Coastal Teleg.
118	Do.	a190	State Police & Govt.
119	Do.	191	Fixed & Coastal Teleg.
a120	Coastal Teleg. & Govt.	br192	Govt. & Fixed.
121	Coastal Teleg.	r193	Fixed & Coastal Teleg.
122	Government.	[2] 194	Govt., Fixed & Coastal Teleg.
123	Coastal Teleg.	195	Government.
124	Do.	196	Do.
125	Do.	197	Do.
126	Do.	198	
127	Do.	199	
128	Government.	200	
129	Coastal Teleg.	201 201	Do.
130	Do.	202	
131	Do.	h203	Do.
132	Government.	204	
a133	Coastal Teleg. & Govt.	205	Gen. Communication.
134	Coastal Teleg.	h206	Government.
135	Do.	207	
136	Do.	208	Do.
137	Do.	hr209 209	Do.
138	Do.	br210	Do.
139	Do.	211	
140	Do.	bhr212	Do.
141	Do.	213	Gen. Communication.
142	Guard Band.	br214	Government.
143	Maritime Calling.	215	Do.
216		287	
217		*288	Government.
218		289	
219 219	Government.	*290 290	Do.
220		291	
221		*292	Do.
222		293	
221		*294	Do.
222		295	
223		*296 296	Do.
224 224	Do.	297	
br225	Do.	*298	Do.
226		299	
br227		*300	Do.
228		301	
229		*302 302	Do.
230 230	Do.	303	
231		*304	Do.
232		305	
233		*306	Do.
234		307	
235		*308 308	Do.
h236 236	Do.	309	
237		*310	Do.
238		311	
239		*312	Do.
240		313	
241		*314 314	Do.
242 242	Do.	315	
243		316	
244		317	
245	Do.	318	
br246		319	
247		320 320	Do.
248 248	Do.	321	
249		322	
250		323	Do.
251		324	
br252		325	
253		326 326	Do.
254 254	Do.	327	
255		328	
br256		329	
257	Do.	330	
258		331	
259		332 332	Do.
260 260	Do.	a333	Govt. & Aircraft.
261		334	
br262		335	
263	Do.	336	
264		337	
265		338 338	Government.
266 266	Do.	339	
267		340	
br268		341	
269		342	
270	Do.	343	Do.
271		344 344	Do.
br272 272	Do.	345	
273		346	
br274		347	
275	Do.	348	
276		349	
277		350 350	Do.
a278 278	Govt. & Airport.	351	
279		352	
280		353	
281		354	Guard Band.
282		d355	Government.
283		356	
284 284	Government.	357	
285		358	
*286	Do.	359 359	Do.
287		h360	Do.
		361	
		362	

See notes at end of table.

[2] Authorized for non-government use in Puerto Rico.

Frequency allocations—Continued

PART I.—10–30000 KILOCYCLES—Continued

See notes at end of table.

Frequency allocations—Continued

PART I.—10–30000 KILOCYCLES—Continued

Frequency (kilocycles)	Allocation	Frequency (kilocycles)	Allocation
**23100	Gen. Experimental.	24775	Gen. Communication.
23125	Gen. Communication.	24800	Government.
23150	Do.	24825	Gen. Communication.
23175	Do.	24850	Do.
23200	Do.	24875	Do.
23225	Do.	24900	Do.
23250	Do.	24925	Do.
23275	Do.	24930	Government.
23300	Do.	24950	Gen. Communication.
23325	Do.	24975	Do.
23350	Do.	25000	Government.
23375	Do.	si25025	Broadcast & Govt.
23400	Do.	si25050	Do.
23425	Do.	si25075	Do.
23450	Do.	si25100	Do.
23475	Do.	si25125	Do.
23500	Do.	si25150	Do.
23525	Do.	si25175	Do.
23550	Do.	si25200	Do.
23575	Do.	si25225	Do.
23600	Do.	si 25230	Do.
23625	Do.	si25250	Do.
23650	Do.	si25275	Do.
23675	Do.	si25300	Do.
23700	Do.	si25325	Do.
23725	Do.	si25350	Do.
23750	Do.	si25375	Do.
23775	Do.	si25400	Do.
23800	Do.	si 25410	Do.
23825	Do.	si25425	Do.
23850	Do.	si25450	Do.
23875	Do.	si25475	Do.
23900	Do.	si25500	Do.
23925	Do.	si25525	Do.
23950	Do.	si 25530	Do.
23975	Do.	si25550	Do.
24000	Do.	si25575	Do.
24025	Government.	si 25590	Do.
24050	Gen. Communication.	i25600	Do.
24075	Do.	i25625	Do.
24099	Government.	i25650	Do.
24100	Gen. Communication.	i25675	Do.
h 24120	Government.	i25700	Do.
24125	Gen. Communication.	i25725	Do.
h24150	Government.	i25750	Do.
24175	Gen. Communication.	l 25770	Do.
24180	Government.	i25775	Do.
24200	Gen. Communication.	i25800	Do.
24225	Do.	i25825	Do.
24250	Do.	i25850	Do.
24270	Government.	i25875	Do.
24275	Gen. Communication.	i25900	Do.
24300	Do.	i25925	Do.
24325	Do.	i25950	Do.
24350	Do.	i25975	Do.
24375	Do.	i26000	Do.
24400	Do.	i26025	Do.
24425	Do.	i26050	Do.
24450	Government.	i26075	Do.
24475	Gen. Communication.	i26100	Do.
24480	Government.	i26125	Do.
24500	Gen. Communication.	i26150	Do.
24510	Government.	i26175	Do.
24525	Gen. Communication.	l 26190	Do.
24540	Government.	i26200	Do.
24550	Gen. Communication.	i 26220	Do.
24575	Do.	i26225	Do.
24600	Do.	i26250	Do.
24625	Do.	i26275	Do.
24630	Government.	l 26280	Do.
24650	Gen. Communication.	i26300	Do.
24675	Do.	i26325	Do.
24700	Do.	i26350	Do.
24725	Do.	i26375	Do.
24750	Do.	i26400	Do.

See notes at end of table.

Frequency allocations—Continued

PART I.—10–30000 KILOCYCLES—Continued

Frequency (kilocycles)	Allocation	Frequency (kilocycles)	Allocation
i26425	Broadcast & Govt.	e27250	Gen. Communication & Govt.
i26450	Do.	e27275	Do.
i26475	Do.	e27300	Do.
i26500	Do.	e27325	Do.
i26525	Do.	e27350	Do.
i26550	Do.	e27375	Do.
i26575	Do.	e27400	Do.
ti26600	Do.	e27425	Do.
ti26625	Do.	e27450	Do.
ti26650	Do.	e27475	Do.
ti26675	Do.	e27500	Do.
ti26700	Do.	e27525	Do.
ti26725	Do.	e27550	Do.
ti26750	Do.	e27575	Do.
ti26775	Do.	e27600	Do.
ti26800	Do.	e27625	Do.
ti26825	Do.	e27650	Do.
ti26850	Do.	e27675	Do.
ti26875	Do.	e27700	Do.
ti26900	Do.	e27725	Do.
ti26925	Do.	e27750	Do.
ti26950	Do.	e27775	Do.
ti26975	Do.	e27800	Do.
e27000	Gen. Communication & Govt.	e27825	Do.
e27025	Do.	e27850	Do.
e27050	Do.	e27875	Do.
e27075	Do.	e27900	Do.
e27100	Do.	e27925	Do.
e27125	Do.	e27950	Do.
e27150	Do.	e27975	Do.
e27175	Do.	28000 to 30000	Amateur.
e27200	Do.		
e27225	Do.		

NOTES

a Available for non-government assignments.
b Available for non-government assignments in Alaska.
d Available for non-government stations for assignment to Merchant Fleet Corporation vessels for communication with government stations.
e Available for non-government assignments provided no interference is caused with government assignments.
f Not to be used by the government in the vicinity of the Great Lakes.
g Available for government use on basis of no interference to any fixed service.
h Available for government use provided no interference is caused to any other existing service.
i Available for use by government station provided no interference is caused to non-government operation.
j Not to be used within 300 miles of the Canadian border.
k Available for use during daylight hours (2 hours after local sunrise until 2 hours before local sunset, provided no interference is caused to the service of any other country.
Not to be used within 500 miles of the Canadian border.
* In use continually for the protection of life and property.
** All frequencies allocated as general experimental frequencies are available for assignment to broadcast service on an experimental basis.
r Available for assignment in Alaska under Rule 419.
s Available for assignment in accordance with Article 7, Paragraph 1 of the General Radio Regulations Annexed to the International Telecommunication Convention, Madrid, 1932, provided no interference is caused to the international mobile service.
t Available for assignment in accordance with Article 7, Paragraph 1 of the General Radio Regulations Annexed to the International Telecommunication Convention, Madrid, 1932, provided no interference is caused to the international fixed service.
z Assigned for low power fixed service in Hawaii.

ABBREVIATIONS

Exp. Vis. B/C—Experimental Visual Broadcasting.
Exp.—Experimental.
Gen.—General.
Govt.—Government.
Teleg.—Telegraph.
Ship Phone—Ship Radiotelephone.
Int. Broadcast—International Broadcast.
Emerg.—Emergency.
Relay B/C—Relay Broadcast.
Temp.—Temporary.

By the Commission.

[SEAL]

T. J. SLOWIE, *Secretary.*

4 F. C. C.

FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D. C.

COMMISSION ORDER No. 19 [1]

IN THE MATTER OF FREQUENCY ALLOCATION TO SERVICES IN THE FREQUENCY BANDS FROM 30000 KC TO AND INCLUDING 300000 KC

DOCKET No. 3929

At a regular meeting of the Federal Communications Commission held at its offices in Washington, D. C., on the 13th day of October 1937;

The Commission having under consideration the provisions of Section 303 (c), (f), and (g) of the Communications Act of 1934, and Rule 229 of its Rules and Regulations; and

A public informal hearing having been conducted at the offices of the Commission from June 15 to June 29, 1936, at which time persons representing the departments of the Federal Government, the agencies of state and municipal governments interested in radio, and persons representing all radio services and all important phases of the radio industry, presented testimony; and

The record of the hearing having been made available to the Interdepartment Radio Advisory Committee, and said Committee having made certain recommendations with respect to the allocation of frequencies to Federal Government agencies; and

The Commission having considered the recommendations of the Interdepartment Radio Advisory Committee, and being fully advised in the premises, found, as a result of its investigation and hearing, that public convenience, interest, or necessity require that Rule 229 of its Rules and Regulations be revised;

IT IS ORDERED, That Rule 229 of the Rules and Regulations of the Commission in so far as it allocates the frequencies above 30000 kc be and the same is hereby amended, effective 3:00 a. m., E. S. T., October 13, 1938, in accordance with the table identified as Part II of Rule 229 attached hereto and made a part of this Order; *Provided, however*, That the Commission may make assignments in accordance with the allocation given in said table prior to October 13, 1938.

[1] See Report of the Commission, herein, at p. 582.

IT IS FURTHER ORDERED, That any holder of, or applicant for, an instrument of authorization, whose frequency or frequencies heretofore assigned or applied for may be changed by the provisions of this Order, who objects to such change may within ninety (90) days from the date of this Order, file with this Commission his objections in writing and request a hearing.

IT IS FURTHER ORDERED, That the holder of, or an applicant for, an instrument of authorization who, prior to ninety (90) days from this date, fails to file written objections and a request for hearing as hereinabove set out, shall be deemed to have consented to such change.

IT IS FURTHER ORDERED, That any applicant who, after the date of this Order requests an instrument of authorization or an authorization renewal for a frequency or frequencies which will be changed after 3:00 a. m., E. S. T., October 13, 1938, will without further notice be deemed to have consented to the effective time and date of such change of the frequency or frequencies requested.

Frequency allocations

PART II.—30000-300000 KILOCYCLES

RULE 229. Subject to the foregoing provisions, the center frequency will be designated as follows: [1]

Frequency (kilocycles)	Allocation	Frequency (kilocycles)	Allocation
30020	Government.	500	Police.
060	Do.	540	Special Services.
100	Do.	580	Forestry.
140	Do.	620	Relay Broadcast.
180	Do.	660	Coastal and Ship Harbor.
220	Do.	700	Government.
260	Do.	740	Special Emergency.
300	Do.	780	Police.
340	Do.	820	Forestry.
380	Do.	860	Fixed.
420	Do.	900	Police.
460	Do.	940	Fixed.
500	Do.	980	Mobile Press.
540	Coastal and Ship Harbor.	32020	Government.
580	Police.	060	Do.
620	Geophysical and Motion Picture.	100	Do.
660	Experimental.	140	Do.
700	Police.	180	Do.
740	Special Services.	220	Do.
780	Fixed.	260	Do.
820	Relay Broadcast.	300	Do.
860	Mobile Press.	340	Do.
900	Government.	380	Do.
940	Forestry.	420	Do.
980	Police.	460	Do.
31020	Special Services.	500	Do.
060	Geophysical and Motion Picture.	540	Do.
100	Police.	580	Do.
140	Experimental.	620	Do.
180	Fixed.	660	Do.
220	Relay Broadcast.	700	Do.
260	Coastal and Ship Harbor.	740	Do.
300	Government.	780	Do.
340	Forestry.	820	Do.
380	Fixed.	860	Do.
420	Special Emergency.	900	Do.
460	Fixed.	940	Do.

[1] Allocations are for information purposes only. For more detailed information regarding restrictions on the use of frequencies, consult chapter of the Rules and Regulations of this Commission dealing with the service to which the frequency is allocated.

SUBPART E - Television Broadcast Stations

General

¶53:601 Scope of subpart

Whether or not subscription television would be in the public interest can best be determined after a trial of the service in operation. The degree of acceptance and support which the new service might be able to obtain from members of the public in a position to make a free choice could be reasonably tested in trial demonstrations. It cannot be concluded that trial demonstrations would seriously impair the existing television system. Nor are possible considerations of monopolistic control of the medium sufficient to warrant denial of the opportunity for a test. Each subscription television system will be permitted a trial in no more than three markets and authorizations will be limited, at least initially, to existing stations in cities with at least four commercial television services, whether or not from stations actually assigned to the city. Authorizations will not be limited to UHF stations, but only existing permittees, licensees or applicants for construction permits may apply. Individual stations may not acquire contractual or other rights to serve as the exclusive subscription television outlet in the local area, nor may a station be restricted by contract from transmitting programs of more than one system. The licensee must retain the freedom of decision to reject subscription television programs which he considers unsuitable and to schedule hours of transmission as he deems desirable; he must also be in a position to make a free choice among programs, whatever their source, which may become available for use. The licensee also should have the right to participate in determination of the amount of charges to be imposed upon subscribers. Charges and terms and conditions of service to subscribers must be applied uniformly. First Report on Subscription Television, 16 RR 1509 [1957].

Applications for trial subscription television operations by television broadcast stations will be accepted under conditions previously announced (16 RR 1509), except that the trial of any particular subscription television system using broadcast facilities will be limited to a single city, and except that authorizations will be granted on the condition that the public should not be called upon to purchase any special receiving equipment. Third Report on Subscription Television, 16 RR 1540a [1959].

No applications for subscription television authorizations will be granted until after adjournment of the First Session of the 86th Congress. Subscription Television, 17 RR 551 [1958].

¶53:603 Numerical designation of television channels

A person who was issued a construction permit for a television station on Channel 1, after having authorized the Commission to select a channel for him, and who made no appearance or formal protest in public hearings looking toward deletion of Channel 1 because of interference problems, may not recover damages from the United States because of the deletion of the channel and revocation of his permit. The claimant had not perfected his applications for other channels although he made several. The claimant and his corporation had not demonstrated the required financial condition and he had made misleading representations to the Commission. While the claimant had suffered losses, these

¶53:603 Numerical designation of television channels (Continued)

were due in the most part to his other activities and to general economic conditions and not to the Commission's action, and the claimant had not made an adequate showing of damage. Gleeson v. United States, 140 Ct. Cl. 265, 16 RR 2001 [1957].

Deletion of a channel from the television allocation table after a public hearing cancels authority previously granted to a permittee under a construction permit and extension of completion date will be denied. Broadcasting Corp. of America, 4 RR 1424 [1949].

Frequencies 88 through 94 mc will not be reallocated from the FM band to the television broadcast service. Pennsylvania Broadcasting Co., 13 RR 1596 [1956].

THE NEXT PAGE IS PAGE M-3625

¶53:606 Table of Assignments

A. Authority of the Commission
   (1) In general
   (2) Equities of existing stations
B. Channel assignment principles
   (1) In general
   (2) Transmitter or studio location
   (3) Substitution of lower channel
   (4) Canadian and Mexican border assignments
   (5) Interference considerations
   (6) Particular channel assignments
   (7) Hyphenated assignments
   (8) Use of channels by translator stations
   (9) Offset channel requirements
C. Use of directional antennas
D. Educational reservations
   (1) Authority of the Commission
   (2) General channel reservation principles
   (3) Share-time and other arrangments
   (4) Effect of reservation
   (5) Deletion of reservation
   (6) VHF-UHF and other channel shifts
E. Availability of channels
F. Implementation of channel allocations
   (1) Effect of channel shifts on outstanding licences and construction permits – rights of new applicants
   (2) License modification proceedings
   (3) Conditional grants; outstanding applications
   (4) New channels – rights of existing stations in area
   (5) Temporary operation
   (6) Effect of pendency of rule making proceedings or of requests for rule making
   (7) Effect of pendency of judicial review proceedings
   (8) Relationship of rule making and adjudicatory proceedings - collateral attack on channel allocations
G. Procedure in allocation of channels
   (1) Institution and conduct of rule making proceedings
   (2) Adequacy of notice
   (3) Comments and counter-proposals
   (4) Hearing
   (5) Findings and conclusions
H. "Freeze" on television allocations
   (1) In general
   (2) Rights of pre-freeze applicants or applicants who filed during freeze
I. Deintermixture cases
   (1) In general – criteria employed
   (2) Particular areas

A. Authority of the Commission (see also I, infra)

(1) In general

The Commission had authority to adopt a nation-wide television allocation plan. Peoples Broadcasting Co. v. United States, 93 U.S. App. D.C. 78, 209 F.(2d) 286, 9 RR 2045 [1953]; Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F.(2d) 24, 10 RR 2008 [1954].

Section 307(b) of the Communications Act, authorizing the Commission to distribute frequencies in response to individual applications, does not preclude the Commission from defining in advance the conditions upon which licenses will issue, and defining them so as to confine all applicants in a given community to a specified frequency or frequencies. The Commission did not abuse its discretion in doing this in the television service. Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F.(2d) 24, 10 RR 2008 [1954].

The Commission's decision to adhere to the 1952 television allocation plan for the time being as reflected in its refusal to institute a freeze on construction permits for VHF stations to prevent competition with existing UHF stations, was within its statutory authority and the courts may not interfere with it. Such matters were committed by Congress to the discretion of the Commission as an expert administrative agency, and as long as the Commission's action has a reasonable factual and legal basis the court may not overturn it. The court will not compel the Commission to delay existing adjudicatory proceedings conducted in accordance with the statute and valid regulations thereunder in order to await the outcome of rule-making proceedings. Coastal Bend Television Co. v. FCC, 98 U.S. App. D.C. 251, 234 F.(2d) 686, 13 RR 2189 [1956].

"Drop-in" of television channel 10 in Vail Mills, New York could not be upset by the court as arbitrary and capricious where the assignment was in conformity with the Commission's established principles and program, all procedural requirements as to rule-making proceedings were met, the basis and purpose of the order were amply and understandably stated and the reasons given were rational and supported the conclusions, and the order was consistent with Section 307(b) of the Act. The Commission's action was not rendered invalid because the Commission had received and listened to, ex parte, representatives of a network where these calls and conversations were in regard to the nation-wide intermixture problem. Van Curler Broadcasting Corp. v. United States, 98 U.S. App. D.C. 432, 236 F.(2d) 727, 14 RR 2001 [1956].

Action of the Commission in denying a request for rule making to shift VHF Channel 3 from Philadelphia to Atlantic City, thus making a VHF station available to the latter, was within the Commission's discretion and will not be set aside by the court. Mackey v. United States, 103 U.S. App. D.C. 146, 255 F.(2d) 898, 17 RR 2037 [1958].

Deletion of a channel from the television allocation table after a public hearing cancels authority previously granted a permittee under a construction permit and extension of construction date will be denied. Broadcasting Corp. of America, 4 RR 1424 [1949].

The Commission has authority to adopt rules and regulations providing for the allocation of television channels on a geographic basis and the reservation of

A. Authority of the Commission (Continued)

(1) In general (Continued)

certain channels for non-commercial educational television stations, such rules to be amended only in further rule making proceedings and to be applicable and controlling in individual licensing proceedings. Validity of Television Allocations, 7 RR 371 [1951].

The Commission may adopt rules and regulations which delineate elements of the public interest in advance of individual proceedings and thus remove certain issues from these proceedings, and this does not deprive an applicant of his right to a hearing. This is true of a television allocation table made on a geographical basis since such a table would be applicable generally to all persons wishing to establish a station in any given community. Inclusion of reasonable provisions limiting the time within which repetitious requests for changing the table will be considered, does not affect the validity of such a table. Validity of Television Allocations, 7 RR 371 [1951].

Section 307(b) of the Act, requiring the Commission to make fair, efficient and equitable distribution of radio facilities, does not prevent the Commission from adopting a television allocation table by rule making proceedings. Section 307(b) provides a substantive standard which may be implemented either through adoption of general rules or in consideration of proceedings on individual applications. Validity of Television Allocations, 7 RR 371 [1951].

The Commission has power to adopt a table of television channel assignments in rule making proceedings. Such action is rule making rather than adjudication and the separation of functions provisions of Section 409(c)(2) of the Act do not apply. Logansport Broadcasting Corp., 8 RR 659 [1952].

(2) Equities of existing stations

See also F(1), infra.

Denial by the Commission of petition by a UHF permittee for leave to intervene in proceedings on applications for VHF construction permits in the area, for stays and for reconsideration of denial of a previous petition for deintermixture was within the discretion of the Commission and will not be overturned by the court. The fact that the case involved two VHF stations rather than one, as in a previous case, that failure of the UHF station would leave its city without a local station, and that the proposal for deintermixture was area-wide and not city-by-city, do not require a reversal. Gerico Investment Co. v. FCC, 99 U.S. App. D.C. 379, 240 F.(2d) 410, 14 RR 2081 [1957].

Where the Commission has considered Section 307(b) factors in originally allocating television channels and again in a rule making proceeding involving the particular area, it is not required to review them in an adjudicatory proceeding on applications for use of a VHF channel allocated to an area, because a UHF licensee contends that authorization of a VHF station will result in a nearby community losing its only local television station, a UHF station. Gerico Investment Co. v. FCC, 103 U.S. App.D.C. 141, 255 F.(2d) 893, 17 RR 2049 [1958].

A. Authority of the Commission (Continued)

(2) Equities of existing stations (Continued)

The license of a UHF station in Fort Lauderdale, Fla. is not modified by a grant of a construction permit for operation of a station on VHF Channel 10 in Miami, 25 miles away. Economic injury to the UHF station from the grant is a matter properly to be considered by the Commission, if brought to its attention, and gives standing to the UHF licensee to participate in the proceedings and to obtain judicial review, but it does not amount to a modification of the UHF station's license since the rules authorized licensing of a VHF station at the time the UHF license was issued. Gerico Investment Co. v. FCC, 103 U.S. App. D.C. 141, 255 F.(2d) 893, 17 RR 2049 [1958].

UHF licensees in an area do not have much ground to complain of licensing of VHF stations in the area or of refusal of the Commission to deintermix the area, where they took their licenses with full knowledge of the situation and were able to obtain them more quickly because their applications were not contested. Springfield Television Broadcasting Corp. v. FCC, 104 U.S. App. D.C. 13, 259 F.(2d) 170, 17 RR 2059 [1958].

Assignment of a new VHF channel to Miami, Florida does not amount to a modification of the license of a UHF station at Fort Lauderdale, because of the economic effect which the action may have on the UHF station. Friedman v. FCC, 263 F.(2d) 493, 18 RR 2029 [U.S. App. D.C. 1959].

The Commission's Table of Assignments is not static and existing licensees are not entitled to protection from additional assignments which might conceivably adversely affect their private economic interests. Hearst Corp., 9 RR 1383 [1953].

Channels will not be assigned so as to avoid intermixture of VHF and UHF frequencies. The Commission's principles of television assignment will not be departed from because of some temporary adverse effect on private interests. Broadcast House, Inc., 10 RR 7 [1954].

The Commission in adopting its television allocation plan did not guarantee not to make any new assignments in any area which might adversely affect the existing balance between VHF and UHF assignments. A change in the intermixture ratio of VHF and UHF channels does not constitute an amendment on the licenses of existing stations. UHF licensees are not entitled to protection against the creation of competition by assignment of new VHF channels. There is no necessity for an oral hearing in a rule making proceeding for assignment of a VHF channel to an area. Ultra High Frequency Television Association, 10 RR 174 [1954].

The Commission's Table of Television Assignments is not static and existing licensees are not entitled to protection from additional assignments which could conceivably affect their private economic interests. Assignment of Channel 13 to Monroe, Louisiana is technically feasible and will not be denied because of allegations of economic injury to a station operating on Channel 8 in that city. Delta Television, Inc., 11 RR 1559 [1954].

The threat of economic injury to a UHF station from licensing of a VHF station is inherent in the allocations system and a person who secured a UHF grant at

A. Authority of the Commission (Continued)

(2) Equities of existing stations (Continued)

an early date may not complain of a possible loss of advantage through a later granting of a VHF license. Radio Wisconsin, Inc., 13 RR 349 [1955].

Even if a grant of a new station for Flint, Mich. would result in stations in Cadillac and Saginaw, Mich. ceasing operation, no violation of the spirit or letter of Section 307(b) of the Act would result. A service in one community is not protected from economic competition of a service in another community unless there is some overriding public interest consideration. WJR, The Goodwill Station, Inc., 13 RR 763 [1958].

Assignment of a VHF channel to Elmira, New York, will not be refused because of objections by UHF stations. Elmira Television, Inc., 13 RR 1536 [1955].

Grant of a construction permit for use of a VHF channel is not a modification of the license of a UHF station in the area. A licensee has no right to be free from economic competition. The Ashbacker doctrine has no application in such a situation. WKAT, Inc., 23 FCC 390, 15 RR 939 [1957].

An existing UHF station in an area will not be allowed to shift to a VHF channel newly assigned to the area without going through a comparative hearing with other applicants, nor is the station entitled to a hearing under Section 316 of the Act on the theory that the addition of the VHF channel constitutes a modification of its license because of the competitive effect on its operations. Miami Drop-In Case, 15 RR 1642a [1958].

Order allocating Channel 10 to Tampa-St. Petersburg will not be conditioned so as to permit UHF licensee in St. Petersburg to shift to Channel 10. Other persons are entitled to apply for use of the channel and the public interest will best be served by selecting the best qualified applicant from all such applicants. Tampa Drop-In Case, 15 RR 1667 [1957].

B. Channel assignment principles

(1) In general

The court may not set aside an assignment of a television channel to a particular city on the ground that it did not provide a fair and equitable distribution of service, if the assignment was supported by substantial evidence and was within the Commission's statutory authority. Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F. (2d) 24, 10 RR 2008 [1954].

Assignment of a new VHF channel to Miami, Florida does not amount to a modification of the license of a UHF station at Fort Lauderdale, because of the economic effect which the action may have on the UHF station. Friedman v. FCC, 263 F. (2d) 493, 18 RR 2029 [U.S. App. D.C. 1959].

Deletion of a channel from the television allocation table after a public hearing cancels authority previously granted a permittee under a construction permit and extension of construction date will be denied. Broadcasting Corp. of America, 4 RR 1424 [1949].

B. Channel assignment principles (Continued)

(1) In general (Continued)

It would not be fair, equitable or efficient principle of assignment always to assign a VHF channel to a larger community, where possible, in preference to assignment of that channel to a smaller community without consideration of the needs of the smaller community. WCAE, Inc., 8 RR 247 [1952].

In assigning educational channels the principle was followed that a UHF channel would be reserved where there were fewer than 3 VHF assignments except in primarily educational centers. Radio Wisconsin, Inc., 8 RR 323 [1952].

The Commission in its Table of Assignments was not attempting to make every assignment that could conceivably have been made under its standards. American-Republican, Inc., 8 RR 333 [1952].

Section 307(b) of the Act does not require a mathematical equality in the distribution of VHF television channels among the several states. Assignment of VHF Channel 10 to Terre Haute, Indiana in preference to Logansport and Owensboro, Kentucky, was proper. An equitable assignment of VHF assignments among the two states was made and other factors, such as population, economic and cultural importance, favored Terre Haute. It was not shown that assignment of the channel to Logansport and Owensboro would in fact result in service to any substantial white area which would not otherwise be served. No rigid application of the priorities proposed in the Third Notice of Proposed Rule Making was intended. Logansport Broadcasting Co., 8 RR 401 [1952].

The one VHF channel assigned to a community will not be reserved for educational use and the three UHF channels assigned for commercial operation in order to place the commercial licensees on an equal competitive basis. The Commission's allocation plan is based on the principle, among others, that UHF and VHF stations will be able to operate competitively in the same market. VHF channels were not reserved for educational use unless there were a total of at least 3 VHF channels assigned to the particular community, all of which were not in operation. Unreserved channels are not in fact "commercial," since they may be applied for by either commercial or noncommercial applicants. It would be wasteful to reserve the only VHF channel assigned to a community for educational use where no educational institution has indicated an intention to apply for the channel at an early date. Radio Wisconsin, Inc., 8 RR 467 [1952].

The Commission acted properly in allocating VHF and UHF television channels on an overall basis and was not required to distribute such channels separately in accordance with Section 307(b) of the Act. Section 307(b) does not require the separate and individual treatment of types or classes of stations within any radio service whenever there is any significant difference between the propagation characteristics of such types of stations. All that is required is that where classes of stations providing the same general type of service to the public, although with significant differences in propagation or other characteristics, are grouped together for allocation purposes, reasonable consideration be given in such allocation to such distinctions, and that was done. In any event, persons who filed no counter-proposals in the allocation proceedings cannot demand that the Commission adopt a new procedure which might achieve a different result as to the particular communities involved. Lehigh Valley Television, Inc., 9 RR 55 [1953].

B. Channel assignment principles (Continued)

(1) In general (Continued)

Contention that assignment of a particular channel to a particular community would not make the most efficient possible use of the available channels was rejected where it was not shown that the assignment of any other channel, consistent with the Rules, would permit greater flexibility in the assignment of UHF channels in the general geographic region involved. American-Republican Inc., 9 RR 199 [1953].

Decision with respect to assignment of a television channel to a particular community must be determined on the basis of the needs of the persons in the area for television service and the competing needs of other communities for television service. Contention that the site proposed by one applicant for the channel in another community might have to be relocated in the event the channel is assigned to the community in question and that if so relocated the use of high antenna heights might be precluded will not be given weight. That a site proposed by a particular applicant may fall short of the minimum separation to a proposed assignment is not a relevant consideration in a rule making proceeding, nor is possible objection by aeronautical authorities to utilization of a particular site with specified height which an applicant may propose. WCAE, Inc., 9 RR 202 [1953].

The principles applied by the Commission in effecting a "fair, efficient and equitable" distribution of radio facilities are equally applicable to television service. As between two communities within the same metropolitan area, the community which has no television station of its own and no foreseeable opportunity for such a station other than by a grant of one of two mutually exclusive applications, should be preferred over a community which has one station in operation and three additional channels assigned to it, all of which have been applied for. Mount Scott Telecasters, Inc., 9 RR 499 [1953].

Television channels assigned to Portland, Oregon are also available for a station located in Vancouver, Washington, a community not listed in the Table of Assignments and located eight miles north of Portland. Mount Scott Telecasters, Inc., 9 RR 499 [1953].

In considering whether to assign a television channel to Community A or Community B, the possible effect of an assignment on the site proposed by an applicant for a station in Community C will not be considered if other sites are available, although it would be if no other site were feasible. As between two communities, VHF channel will be assigned to the larger community, since it would be a better support nucleus for a VHF operation. Channel will not be reserved for educational use where the community has only one VHF assignment and is not an educational center. Polan Industries, Inc., 9 RR 642 [1953].

Allegations that if an additional television channel is assigned to a community it will be granted to the petitioner, applicant in a competitive proceeding for the one channel already assigned, and that a monopoly in the dissemination of news will be thereby increased and extended, are not relevant in a rule-making proceeding. The channel if assigned will be available upon application to all interested parties. Assignment will not be refused because of allegations that the community cannot support two television stations, where it is in line with assignments to other communities of comparable size. Wilton E. Hall, 9 RR 892 [1953].

B. Channel assignment principles (Continued)

(1) In general (Continued)

There is no difference between VHF channels for assignment purposes. Eastern Oklahoma Television Corp., 9 RR 942 [1953].

Channel 12 was deleted from a city with a population of 8000 and assigned to a city in the same state with a population of 15,900, UHF channel 26 being assigned as a substitute. As between two proposals, assignment of a VHF channel in a city with a population of 17,800 was to be preferred to assignment in a city with a population of only 1900, in which there had been no request for such an assignment. Eastern Oklahoma Television Corp., 9 RR 942 [1953].

Proposed change in the Table of Assignments to assign Channel 6 to Logansport, Indiana will be denied where a wholesale shifting of frequencies in cities extending from the State of Indiana to the Gulf of Mexico would be involved, show cause proceedings to move existing stations would be required as well as modification of outstanding construction permits and amendment of numerous applications, some in various stages of hearing, and changes in other rules were also involved. Channels will not be assigned to communities of only a few hundred persons in order to meet minimum spacing requirements, there being no showing of need for a channel in such communities. Logansport Broadcasting Corp., 9 RR 1175 [1953].

Assignment of a first VHF channel to a community of 22,800 is to be preferred over assignment of a second VHF channel to a larger city. Assignment of a first VHF channel to a city of 17,200 is to be preferred over the assignment of a first VHF channel to a community of only 6400. Charles A. Casmus, Jr., 9 RR 1186 [1953].

Where the question was whether to assign a television channel to either of two communities or to both jointly, the communities were both small in size and were near to a larger community and to each other so that a station in either community would serve the other and provide the trading area with another service, the assignment was made to both. Assignment of Television Channel to Parma-Onondaga, Michigan, 10 RR 71 [1954].

The Commission does not distinguish between UHF channels for assignment purposes nor will it take into account local terrain factors and asserted differences between low and high channels in making channel assignments. However, an additional channel will be assigned to a community where this may be done without making any other changes in the Table of Assignments and will bring the number of assignments in the community in conformity with the number accorded communities of similar size and importance. Southeastern Ohio Television System, 10 RR 141 [1954].

Educational reservation will not be shifted to a different channel and permittee of station on the latter channel ordered to show cause why it should not change to the channel originally reserved for educational use, where there are two other possible alternative solutions to the transmitter-site problems involved and it has not been established that neither is feasible. Department of Education of Puerto Rico, 10 RR 155 [1954].

Assignment of a fourth VHF channel to Duluth at the expense of deleting the only assignment in Hancock, Michigan and precluding assignment of a first VHF channel for Bemidji, Minnesota would not be warranted. Head of the Lakes Broadcasting Co., 10 RR 169 [1954].

B. Channel assignment principles (Continued)

(1) In general (Continued)

A Section 307(b) issue is not implicit in every television proceeding where conceivably a grant could be made premised thereon. The Commission's Table of Assignments was designed to provide a fair, efficient and equitable distribution of television service. However, where the case involves a community located within 15 miles of the community to which the channel has been assigned a determination should be made as to whether considerations with respect to Section 307(b) are applicable and if so, whether a choice between the applicants can be reasonably based thereon. Southern Tier Radio Service, Inc., 10 RR 204 [1954].

Where a case involves a community located within 15 miles of the community to which a television channel has been assigned, a determination should be made as to whether considerations with respect to Section 307(b) of the Act are applicable and if so, whether a choice between the applicants can be reasonably based thereon. Arkansas Television Co., 10 RR 529 [1954].

The Commission is not required to grant enlargement to add an issue as to Section 307(b) of the Act in a case involving a community located within 15 miles of the community to which the channel has been assigned, nor does enlargement mean that the section is to be considered the determinative issue in the proceeding, but an issue will be added upon a proper showing permitting a determination whether the section is applicable and if so, whether a choice can reasonably be based thereon. This does not mean that evidence on comparative coverage must be considered. St. Louis Telecast, Inc., 10 RR 1000 [1954].

Amendment of channel assignment rules so as to make an assignment available to other communities located within 15 miles of a listed community regardless of whether or not there are assignments in these other communities, or to provide a 5-mile tolerance in the spacing requirement rule, or to reserve the only assignment in a city for non-commercial educational use so that parties in that city could apply for an assignment in a nearby city, will be denied in the absence of any showing of compelling reasons for their adoption. Jackson Broadcasting and Television Corp., 10 RR 1259 [1954].

VHF set saturation in an area is not an appropriate factor for consideration in a channel assignment rule making proceeding, since it is a transitory factor and would result in a further concentration of VHF channels in communities already having such assignments to the exclusion of cities with UHF assignments only. The relative size and population of counties in which cities seeking assignments are located is not a determinative consideration. A first VHF assignment to a community will be preferred over a second or multiple VHF assignment to a larger community only if the smaller community is of substantial size. High Point Enterprise, Inc., 10 RR 1537 [1954].

Where a particular television channel had been assigned to one city in an area rather than to the hyphenated area as in the case of other channels, this was done because of the separation requirements, and a later change in the Table of Assignments removed the conflict, the channel was reassigned to the hyphenated area. Questions relating to a possible future request by permittee of the channel for change of studio site are not relevant to the issue. Van Curler Broadcasting Corp., 10 RR 1575 [1954].

B. Channel assignment principles (Continued)

(1) In general (Continued)

The concept of "community," as used in Section 307(b) of the Act, connotes at least three ideas: (1) a group of people; (2) common organization or interests; (3) a definite location. "Greater Endicott," New York cannot be regarded as a separate community where it has not been defined except by the Chamber of Commerce, and there is no common organization or common interests among the people living in Greater Endicott. Southern Tier Radio Service, Inc., 11 RR 143 [1954].

The only VHF channel in a community will not be reassigned to another community which already has a VHF station where an application for use of the channel has been filed and no compelling reasons have been shown for the change. Jacob A. Newborn, Jr., 11 RR 513 [1954].

Reallocation of VHF channels in Puerto Rico was ordered in order to permit two applicants to use transmitter sites which would otherwise result in sub-standard spacing. Sub-standard spacings will not be authorized since minimum separations represent a basic cornerstone of the Table of Assignments and it cannot be determined that the rugged terrain involved would preclude overlap of contours. Radio Americas Corp., 11 RR 1545 [1954].

The Commission has assigned VHF channels to small communities near large cities only in cases where an error in assignment had been made or a showing was made that the needs of the large city and the public interest required such assignments. Commonwealth Broadcasting Corp., 11 RR 1569 [1955].

Qualifications of prospective applicants are not a proper or relevant consideration in a rule-making proceeding to assign a channel to a particular community. Laurel Television Co., 12 RR 1515 [1955].

An assignment to a community proper when made on a site basis does not become improper when station using channel surrenders its permit. Amendment of Television Rules, 12 RR 1586g [1955].

Even if a grant of a new station for Flint, Mich. would result in stations in Cadillac and Saginaw, Mich. ceasing operation, no violation of the spirit or letter of Section 307(b) of the Act would result. A service in one community is not protected from economic competition of a service in another community unless there is some overriding public interest consideration. WJR, The Goodwill Station, Inc., 25 FCC 159, 13 RR 763 [1958].

Grant of application for authority to transmit television programs to a Mexican station which competes with United States stations is not a violation of the Table of Assignments. Section 3.606 of the Rules is not concerned with the operation of foreign stations. American Broadcasting-Paramount Theatres, Inc., 13 RR 1248 [1956].

B. Channel assignment principles (Continued)

(1) In general (Continued)

Any modification of the Table of Assignments which would involve significant departures from the system of intermixed channel assignments requires a thorough reexamination of the entire television structure. For this reason deintermixture will not be ordered on a local or piecemeal basis. Whether or not a VHF station has commenced operation in a particular community is not determinative of whether deintermixture should be ordered. First Report on Deintermixture, 13 RR 1511 [1955].

In evaluating various proposals for changes in television allocations the Commission has kept in mind the paramount need for more competitive services. No significant number of additional VHF channels can be provided using VHF frequencies under Commission control and now allocated to other services and proposals based on addition of VHF channels or suggesting an all-VHF service must be rejected. Authorization of VHF stations at substandard spacings would not adequately serve the Commission's long range objectives but would in many cases operate to place an artificial ceiling on the number of stations which may eventually be established. Deintermixture of VHF and UHF allocations is not practicable in a sufficient number of communities representing a sufficiently large segment of the total population to provide significantly enhanced opportunities for the fuller utilization of the UHF channels on a nationwide basis. The Commission will undertake a thorough, searching analysis of the possibilities for improving and expanding the nationwide television system through the exclusive use of the UHF band throughout or in a major portion of the United States. In the interim, the Commission will consider proposals to eliminate or add VHF commercial assignments in particular communities on the basis of specified factors. Also, the Commission will consider adding new VHF assignments where transmitter spacing requirements can be met by appropriate location of the new transmitter. The Table of Assignments will not be abandoned at the present time and assignments made on the basis of individual applications. Second Report on Deintermixture, 13 RR 1571 [1956].

A VHF channel will be assigned to an area with no operating stations and no VHF assignments within 50 miles if this can be done in accordance with the Rules and Standards. Interference caused to the Grade B contour of an existing station operating on the channel will not be taken into account. Contentions that the location of a television station in the area will be detrimental to the beauty of the landscape and to property values are not germane to the proceeding but are more appropriately within the jurisdiction of local zoning authorities. The question of hazard to air navigation can be considered in the context of a specific application. Channel Assignment to Nashaquitsa, Massachusetts, 14 RR 1501 [1956].

THE NEXT PAGE IS PAGE M-3637

B. Channel assignment principles (Continued)

(1) In general (Continued)

In the absence of an issue under Section 307(b) of the Act, the Commission is under no duty to make a finding of need to support the grant of a television application when a channel is available. WKAT, Inc., 23 FCC 390, 15 RR 939 [1957].

The standard of "fair, efficient and equitable" distribution of television facilities has been achieved in the Commission's Table of Assignments. A UHF licensee cannot contend, in the context of an adjudicatory proceeding on applications for a VHF construction permit, that the table of assignments is contrary to the public interest, convenience and necessity and violates the standard of fair, efficient and equitable distribution of facilities. Adjudication may not be transformed into rule making merely because the distinction between them may involve difficulties of recognition in a given case. Any improvements in the television allocation structure must be sought through rule making proceedings. WKAT, Inc., 23 FCC 390, 15 RR 939 [1957].

Section 307(b) of the Act does not require that VHF channels be allocated among the states in proportion to their respective areas and populations. The service rendered by UHF stations must be taken into account. Madison Deintermixture Case, 22 FCC 356, 15 RR 1563 [1957].

Section 307(b) of the Act does not preclude the authorization of stations to serve, maintain studios in and identify themselves in station announcements with more than one principal community. Main Studios and Station Announcements, 22 FCC 1567, 15 RR 1613 [1957].

Channel 6 will be assigned to Miami in order to improve the competitive situation. It cannot be held that a site would not be available which would meet separation requirements and from which a city-grade signal could be placed over Miami. That a Channel 6 station could not utilize the Miami "antenna farm" does not preclude the allocation. The Commission has never based its determination of whether a television channel should be assigned to a particular community on the question whether an available antenna farm could or could not be utilized. Possible interference to and from a Cuban station will not be taken into account. Miami Drop-In Case, 22 FCC 1238, 15 RR 1638a [1957].

Addition of a fourth VHF channel to Miami is in the public interest in order to provide greater opportunities for television growth and competition. The possibility that a site meeting all spacing and coverage requirements might not be feasible because of aeronautical considerations is not a reason for refusing to make the allocation. The assignment would not be modified to permit use of sub-standard spacings, although the rules with regard to separations might be waived in an adjudicatory proceeding if adequate coverage of Miami could not be provided from available sites. Miami Drop-In Case, 15 RR 1642a [1958].

Assignments of television channels are made to communities and their surrounding areas and not to individual parties and comparative showings with respect to coverage should be based upon assumptions of reasonable and similar facilities at sites reasonably close to the communities involved or as close as possible in accordance with spacing requirements. Channel Assignment in Alexandria, Minn., 15 RR 1740a [1957].

B. Channel assignment principles (Continued)

(1) In general (Continued)

Matters going to the qualifications of a particular applicant, participant in a rule making proceeding, are not relevant to the allocation of a television channel to a particular community. Channel Assignment in Alexandria, Minn., 15 RR 1740a [1957].

Notice of Proposed Rule Making, looking toward partial deletion of the Table of Assignments and other changes in the rules, was withdrawn because of the pendency of the Television Allocations Study Organization's survey of the television allocations structure. Table of Assignments, 16 RR 1505 [1957].

No issue is raised by a protest against grant of modification of existing intercity relay station authorization which alleges that the grant is contrary to the television allocation table in that it permits the applicant to use a channel allocated for the purpose of providing means of local expression, for the transmission of programs of distant stations. Mosby's Inc., 17 RR 593 [1958].

The fact that the Commission in some cases determined that deletion or shifting of a VHF television channel was in the public interest does not invalidate its decision not to take such action in other cases. Each case must be decided on the basis of its facts. Erie, Pa. - Flint, Mich. Channel 12 Case, 17 RR 1518b [1958].

Proposal to add a third VHF channel in the Providence, Rhode Island area by substituting Channels 8 and 13 for Channel 12 will not be adopted. The channels could be used only at sites widely separated from each other and at substantial distances from Providence and from the existing Channel 10 site, so that the competitive situation would not be effectively improved. Nor could it be determined with any certainty whether aeronautical hazards and limitations would preclude utilization of any particular antenna sites for Channels 8 and 13 in the areas south and east of Providence which would conform with minimum separation requirements and permit the use of antenna towers of sufficient height to furnish a city grade signal to Providence. While considerations of this sort have not precluded "drop-in" channel assignments, they are relevant where an existing station would be required to change channel and transmitter site and channel assignments in other communities would also be changed. For the same reason the channels will not be assigned to Providence on the theory that sites might be found which could be used in communities within 15 miles of Providence. In addition, the assignments as proposed would require reassignment of educational channels and change in transmitter site of a contemplated educational station, which might postpone considerably the advent of a first educational station in one of the communities involved, or make it impossible to establish an educational station which could serve the optimum number of people. Channel Assignment in Providence, R.I., 17 RR 1725 [1958].

(2) Transmitter or studio location

Where a television channel had been assigned to New Castle, Pa. and a construction permit issued for operation of a station in that city, subsequent reassignment of the channel to New Castle, Pa. - Youngstown, Ohio as a hyphenated assignment does not give applicants for use of the channel in

B. Channel assignment principles (Continued)

(2) Transmitter or studio location (Continued)

Youngstown a right to a comparative hearing with the New Castle permittee where the Commission finds, on the basis of substantial evidence, that the station is actually a New Castle station and not a Youngstown station. While the station's transmitter and antenna had been moved to Youngstown, its main studio remained in New Castle and there was no evidence that this was a sham or that it was in reality a Youngstown station, even though it did serve Youngstown and competed with Youngstown stations for audiences, networks and advertisers. Community Telecasting Co. v. FCC, 103 U.S.App.D.C. 139, 255 F.(2d) 891, 17 RR 2029 [1958].

A television channel will not be assigned to a particular transmitter site but only to a community. Mount Mitchell Broadcasters, Inc., 8 RR 709 [1952].

That a site proposed by a particular applicant may fall short of the minimum separation to a proposed assignment is not a relevant consideration in a rule making proceeding, nor is possible objection by aeronautical authorities to utilization of a particular site with specified height which an applicant may propose. WCAE, Inc., 9 RR 202 [1953].

Television channels will not be assigned to communities on the basis of specified transmitter sites or on the basis of an area outside the community where transmitter sites could be established. Chemical City Broadcasting Co., 9 RR 356 [1953].

In considering whether to assign a television channel to Community A or Community B, the possible effect of an assignment on the site proposed by an applicant for a station in Community C will not be considered if other sites are available, although it would be if no other site were feasible. Polan Industries, Inc., 9 RR 642 [1953].

There was no violation of the Rules in selecting a transmitter site for a Muskegon, Michigan station which while furnishing a signal of the required intensity to Muskegon, would also serve Grand Rapids, where it could not be said that the number of "local" programs devised to meet the needs of Muskegon was abnormally small, considering its size; where it did not appear that applicant had planned or arranged for any programs, the interest in which would be confined to Grand Rapids; and where specific shows utilizing persons and topics of interest in Muskegon had been planned. The facts that applicant had taken pains to insure a high grade of service to Grand Rapids, that the transmitter site could be utilized for a Grand Rapids station, that the applicant had offered to share the transmitter site with the Grand Rapids Board of Education if that body should apply for the non-commercial educational channel allocated to that city, and that certain key personnel would reside in Grand Rapids and commute to Muskegon were not sufficient to require a different conclusion. Versluis Radio and Television, Inc., 9 RR 1123 [1954].

The problem of inadequate separations will not be avoided by specifying a particular transmitter site and issuing a show cause order to permit a UHF station to shift to the new channel and employ the specific site. WBUF-TV, Inc., 12 RR 218a [1955].

B. Channel assignment principles (Continued)

(2) Transmitter or studio location (Continued)

The Commission in assigning channels to communities did not intend to confine signals to the communities to which the channels involved had been assigned or to limit the availability of stations to the people living within such communities. Maximum channel utilization was sought to be achieved. The fact that a station operating from a particular site, would render a slightly higher signal strength to another city than to the city to which the channel is assigned does not create a violation of the Rules, if a principal city signal is furnished to the latter city and the station is meeting the programming needs of that city. Nor is any violation of the priciples of the Sixth Report and Order present in such a situation, even though the station could render a principal city signal to the latter city from sites closer thereto. The fact that some of the station's proposals as to transmitter location, etc. may have been motivated by a desire to retain a network affiliation and may have been timed with an eye on the competitive situation existing in the other city does not show any violation of the Rules or reflect upon the permittee's qualifications to be a licensee. Gulf Television Co., 12 RR 447 [1956].

A television station authorized to operate on a channel assigned to Petersburg, Virginia, which has a transmitter site 8.5 miles from Petersburg and 12 miles from Richmond and provides a principal city signal to Richmond as well as Petersburg, violates no rule or policy of the Commission in seeking sponsorship and advertisers on the basis of such service or preparing and distributing advertising and promotional material geared to such an operation. Nor is preparation of advertising and promotional material stressing Richmond any violation of the rule on station identification announcements. No misrepresentation or false holding-out was involved nor had the licensee circumvented or violated §§3.606 or 3.607 of the Commission's Rules. Petersburg Television Corp., 12 RR 1395 [1955].

An assignment to a community proper when made on a site basis does not become improper when station using channel surrenders its permit. Amendment of Television Rules, 12 RR 158g [1955].

The prime purposes of the Sixth Report and Order were to assure that as many communities as possible would have receivable television signals and local outlets for expression and that the public generally would receive the most and best service possible. Signals are not to be confined to the communities to which the channels involved have been assigned, or the availability of stations limited to people residing within such communities. The Sixth Report and Order permits of flexibility in the location of transmitters, as long as the requirements for proper coverage of the principal city are complied with. While a transmitter is generally required to be located at the "most central point," this does not mean that the transmitter must be located in, or in close proximity to, the principal city to be served. Modification of construction permit of a Spartanburg, South Carolina station to change the transmitter site to a point nearer to Greenville and Anderson, South Carolina, was not required to be set aside on protests by UHF licensees in Greenville and Anderson where it appeared that satisfactory service would continue to be rendered to Greenville. While the move was motivated by desire to obtain a network affiliation, this did not adversely affect the public interest. Spartan Radiocasting Co., 13 RR 589 [1956].

B. Channel assignment principles (Continued)

(2) Transmitter or studio location (Continued)

The Commission will consider adding new VHF assignments where transmitter spacing requirements can be met by appropriate location of the new transmitter. Second Report on Deintermixture, 13 RR 1571 [1956].

Grant of an application to change main studio of a Mesa, Arizona station to a site within the city limits of Phoenix, Arizona, would not be contrary to the priorities set forth in the Commission's Sixth Report and Order nor inconsistent with §§3.606 and 3.607 of the Rules. The provisions of §3.613 for "waiver" of rule as to main studio location are not inconsistent with §§3.606 and 3.607. KTAR Broadcasting Co., 23 FCC 89, 14 RR 798 [1957].

Change of transmitter site of a Daytona Beach television station to a point nearer to Orlando, a larger city, is not contrary to the provisions of Section 307(b) of the Act where operation from the new site will result in service to increased areas and populations, will provide a stronger signal to those areas receiving A and B service from the original site, and will cause no loss of service to any areas served from that site. No violation of §§3.606 or 3.607 of the Rules is involved as long as the station remains a Daytona Beach station and there was no evidence of an intent to change its operation in this regard. While the Commission gives careful consideration to a proposed transmitter move away from a principal community toward some larger city, there is no conclusive presumption that such a move is in derogation of §§3.606 and 3.607. Nor does the fact that the move is in part motivated by a desire to obtain a network affiliation make it improper. Telrad, Inc., 24 FCC 191, 16 RR 231 [1958].

(3) Substitution of lower channel

There is no difference between VHF channels for assignment purposes. Eastern Oklahoma Television Corp., 9 RR 942 [1953].

The Commission will not recognize any differences between the various UHF channels for assignment purposes and will not substitue lower channels for higher ones. Sarkes Tarzian, Inc., 10 RR 324 [1954].

The Commission does not distinguish between the various VHF channels in assignment proceedings and will not change an educational reservation from Channel 7 to Channel 13 in order to permit a commercial station to change from Channel 13 to Channel 7 because of an alleged commercial disadvantage in the position of Channel 13 on the dial. Trinity Broadcasting Co., 10 RR 1207 [1954].

Petition of permittee of television station operating on Channel 13 requesting that the Table of Assignments be amended to reserve Channel 13 for non-commercial educational use in place of Channel 7 for the reason that the higher frequency would make no difference to the effective operation of the educational station whereas the proposed change would remove a competitive disadvantage to petitioner arising from the fact that Channel 13 is several channels removed from the other stations operating in the area, denied. Although the Commission has taken notice of temporary operating and technical problems relating to equipment encountered by a number of UHF

B. Channel assignment principles (Continued)

(3) Substitution of lower channel (Continued)

stations operating on high channels and determined that the public interest would be served by permitting such stations to operate on lower UHF channels when they could be made available, the Commission has never recognized differences in television frequencies for allocation purposes. Trinity Broadcasting Corp., 11 RR 1065 [1955].

While the Commission as a general rule will not recognize differences among UHF channels, it does recognize that in the light of present equipment problems, television service can be rendered more expeditiously on the lower UHF channels. Where a community is ready to proceed with television but a high UHF channel has been assigned to it, and a lower channel can be shifted to this community from another which is not ready to proceed, the Commission will do this in order to expedite the establishment of television service. Greylock Broadcasting Corp., 11 RR 1542 [1954].

Channels will not be reallocated so as to substitute lower UHF channels for channels specified in outstanding construction permits, where the higher UHF channels would have to be substituted for lower channels in other communities, and other authorized stations would be required to change frequencies. The fact that some of the permittees that would be required to shift frequencies have consented to the shift does not alter the situation. Helm Coal Co., 12 RR 306 [1955].

Reassignment of channels was made in order to permit an existing UHF station to operate on a lower UHF channel and thus improve its facilities and render a better service. While educational reservation in another city was shifted from Channel 22 to Channel 36, this change is not substantial and the educational applicant was not ready to proceed immediately with the establishment of a television station. Springfield Television Broadcasting Corp., 12 RR 1509 [1955].

Request for rulemaking to move television channel 21 from Huntington, Indiana to Fort Wayne, Indiana was denied. Although it is policy of Commission to permit a station having trouble on the higher UHF channel to change to a lower channel, shifted from another community, this policy does not pertain in a case where there is a demand for the lower channel in the community where it is assigned. Channel Assignment in Fort Wayne, Ind., 12 RR 158g [1955].

The Commission will amend the Table of Assignments in order that an operating UHF television station may be assigned a lower UHF frequency in those cases where the lower frequency can be obtained from a community not yet ready to proceed with television. Hampden-Hampshire Corp., 13 RR 1547 [1956].

A lower UHF channel will be assigned to a city where petitioner, an educational and religious non-profit organization, represents that operation on a lower channel will be less costly and that if the channel is assigned it will apply for a first local television station in the city which will provide a needed type of public service programming. Channel Assignment in Anderson, Indiana, 14 RR 1535 [1956].

B. Channel assignment principles (Continued)

(3) Substitution of lower channel (Continued)

While a lower UHF channel will be substituted where this can be done by switching the channel from a community where there is no present need or demand, Channel 21 will not be allocated to York or Harrisburg, Pennsylvania where this would require deletion of the channel from Lancaster and an application for use of Channel 21 in Lancaster has been filed. In addition, three existing UHF stations in York and Harrisburg sought the lower frequency and only one would be able to utilize it. Channel Assignment in Shinglehouse, Pennsylvania, 14 RR 1553 [1956].

A lower UHF channel will be shifted from one community to another where there is a demand for the frequency in the latter community and it does not appear that the channel will be put to use in the former community in the forseeable future. Channel Assignment in Binghamton, New York, 14 RR 1582 [1957].

Channel 33 will not be shifted from Reading to York, Pennsylvania to be used in lieu of Channel 49. York has two UHF stations on the air on Channels 43 and 49 and operation of stations as close as possible in frequency in a particular community has advantages for the public. Technical problems are not as severe on Channel 49 as on higher UHF channels. In addition, the use of Channel 33 at York would require a waiver of separation rules and a substantial deviation from minimum spacing requirements. Channel Assignment in York, Pennsylvania, 15 RR 1657 [1957].

Channel 15 is substituted for Channel 41 in Florence, Alabama at the request of the holder of the CP for Channel 41 in that city since the lower channel is not being used in the city from which it is deleted and since Florence is a much larger community than Corinth, Mississippi, which, in the shift, will be required to take a higher channel than the one previously assigned. Channel Assignment in Florence, Ala., 15 RR 1715 [1957].

Channel 16 is substituted for Channel 43 in Ephrata, Washington, on petition of the operator on Channel 43 where the substitution of the lower channel there would cause a change from Channel 25 to Channel 31 in Kennewick, Washington; the latter change causes no hardship to an applicant for Channel 25. Channel Assignment in Ephrata, Washington, 15 RR 1725 [1957].

At the request of the permittee operating on TV Channel 46 at South Bend, Indiana, Channel 16 is shifted from Aurora, Illinois to South Bend and granted to the petitioner. No objection was made to the proposal. Channel Assignment in South Bend, Indiana, 15 RR 1727 [1957].

Channel 33 will be assigned to Youngstown, Ohio. There are technological differences between the upper and lower UHF channels which affect the attitude of the television broadcasting industry and assignment of a lower channel will make it easier to inaugurate a fourth UHF service in the Youngstown area. It is not necessary to hold Channel 33 in reserve for use at some future time in some other community in Western Pennsylvania or Eastern Ohio. Assignments in Pittsburgh-Youngstown, 17 RR 1563 [1958].

B. Channel assignment principles (Continued)

(3) Substitution of lower channel (Continued)

Channel 2 will not be substituted for Channel 11 in Fort Worth and educational reservation in Denton, Texas, changed from Channel 2 to Channel 11, because of alleged superior propagation characteristics of Channel 2. The Commission does not recognize differences in propagation characteristics between VHF channels. Channel Assignment in Fort Worth, 18 RR 1645 [1959].

Channel 18 will not be shifted from Hartford to Waterbury, Conn. in order to permit a Waterbury station to change from Channel 53 to Channel 18, since Channel 18 is in use in Waterbury. Channel Assignment in Waterbury and Hartford, Conn., 18 RR 1664 [1959].

(4) Canadian and Mexican border assignments

Proposal which would require a change in the United States-Canadian Television Agreement will be rejected where agreement with Canada cannot be reached. Brockway Co., 9 RR 1381 [1953].

Channel assignments within 250 miles of the Canadian-United States border are subject to an agreement between the United States and Canada and changes in such assignments can be made only after mutual agreement. New Hampshire Commission on Educational Television, 11 RR 1305 [1955].

A fourth VHF channel will not be added in Buffalo, New York, where changes in channel assignments in Canadian communities would be required and no agreement can be reached with the Canadian authorities. WBUF-TV, Inc., 12 RR 218a [1955].

Channel 13 will not be assigned to Rochester, N. Y. until the U. S.-Canadian television agreement can be amended. Asssignment of Channel 13 to the Albany area does not substantially affect eventual use of the channel in Rochester. Albany-Schenectady-Troy Deintermixture Case, 15 RR 1514m [1958].

Reassignment of Channel 12 from Fresno to Santa Barbara will not be withheld on the basis of alleged private negotiations with Mexican officials looking toward reallocation of channels in Tijuana, Mexico. Assignment to Santa Barbara is preferable to assignment to Ventura since it would be more acceptable to Mexico because of the greater distance from the border. Fresno Deintermixture Case, 22 FCC 365, 15 RR 1586i [1957], vacated, 18 RR 1733 [1959].

(5) Interference considerations

(See also ¶53:612)

A proposed assignment meeting the minimum spacing requirements will not be denied because of adjacent channel interference to existing stations. Existing stations are not entitled to more protection from interference from proposed assignments than from other existing stations. Brockway Co., 9 RR 1381 [1953].

A proposed assignment which complies with the minimum spacing requirements will not be denied because of claimed interference to adjacent channel or co-channel stations. Hearst Corp., 9 RR 1383 [1953].

B. Channel assignment principles (Continued)

(5) Interference considerations (Continued)

Interference caused to the Grade B contour of an existing station operating on a channel will not be taken into account in assigning a VHF channel to an area with no operating stations and no VHF assignment within 50 miles. Channel Assignment in Nashaquitsa, Mass., 14 RR 1501 [1956].

A requested assignment of Channel 4 or 5 which can be accomplished in compliance with the rules and allocation principles and which will provide television service to a significant number of people, will not be denied because it will cause expense to licensees in the industrial radio services utilizing frequencies in the 72-76 mc band who are required to avoid interference to channels 4 or 5. This requirement applies with equal force to a station operating on a channel added to the table of assignments after its original adoption and after fixed stations in the area are already operating in the 72-76 mc band. Use of Channels 4 and 5 will not be restricted by the effect that stations on these frequencies might have on other services which are authorized to use the 72-76 mc band on a secondary basis. Channel Assignment in Glendive, Montana, 14 RR 1538 [1956].

Possible interference to and from a Cuban station will not be taken into account in assigning Channel 6 to Miami. Miami Drop-In Case, 22 FCC 1238, 15 RR 1638a [1957].

In view of the fact that the second harmonic of the local oscillator in conventional VHF television receivers, and possible higher orders of harmonics, are capable of causing harmful interference to the reception of UHF television stations, a Channel 15 station will be allowed to operate temporarily on a different channel in order to avoid interference caused by operation of a station on Channel 10 in the same area. Peninsula Broadcasting Corp., 17 RR 706 [1958].

An area will not be deprived of a needed television channel assignment meeting all allocation requirements on the basis of a claim of interference to existing co-channel stations. A station has no legal right to protection from interference which the Commission's rules do not protect it against, nor to a hearing on the question of modification of license on the basis of a claim of interference not recognized in the Rules. Harrisburg Drop-In Case, 17 RR 1629 [1958].

Various changes in UHF channel assignments are made in order to eliminate interference caused by operation of stations on Channels 12 and 19 in Milwaukee. Radiation of the second harmonic of local oscillators in VHF receivers tuned to Channel 12 causes interference to Channel 19. Channel Assignments in Milwaukee, 17 RR 1641 [1958].

Assignment of Channel 13 to Florence, S. C. will not be denied because of allegations of interference to a Channel 13 station in Asheville, N. C., since the assignment would meet all allocation requirements and the engineering methods used in computing the alleged interference are questionable. Channel Assignments in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

B. Channel assignment principles (Continued)

(6) Particular channel assignments.

Assignment of Channel 4 to Irwin, Pennsylvania, in order to provide additional television service to Pittsburgh was proper where the channel could not be assigned to Pittsburgh or Braddock without violating minimum mileage separation requirements. No unmerited preference was given to an Irwin applicant by so doing. The channel would not be assigned to Braddock on condition that a Columbus, Ohio station on the same channel operate at less than maximum height or power. Assignment of Television Channel to Irwin, Pennsylvania, 8 RR 453 [1952].

Additional UHF channels will not be assigned to Los Angeles or St. Louis since such assignments would preclude the utilization of UHF channels in other communities at some future date. In addition, it could not be concluded that the ten channels in Los Angeles and seven channels in St. Louis did not constitute a fair and equitable assignment of the available television facilities to those communities. Lawrence A. Harvey, 9 RR 616 [1953].

A television channel will not be assigned to Beverly Hills, California, even though it is a separate city from Los Angeles, since it is completely surrounded by Los Angeles and the ten channels assigned to Los Angeles will adequately serve the needs of Beverly Hills. Lawrence A. Harvey, 9 RR 908 [1953].

A seventh (UHF) television channel will not be assigned to Cleveland, Ohio. United Broadcasting Co., 9 RR 947 [1953].

Channel 10 will not be shifted from Hibbing, Minnesota to Virginia, Minnesota since Hibbing has a larger population and an application for use of Channel 10 in that community is pending. The proposal would also require that Channel 10 be shifted from Hancock, Michigan (population 5200) to Laurium, Michigan (population 3200). Channel 10 will not be assigned to Duluth at the cost of deleting the only assignments in Hibbing and Hancock. The fact that Channel 13 could be assigned to Buhl, Minnesota, a community of 1400, and applied for by Hibbing or Virginia, and that Channel 13 in Calumet, Michigan could be applied for by Hancock or Laurium, under the 15-mile rule, does not offer a satisfactory solution. Channel 13 will be assigned to Bemidji, Minnesota, however, since this city has a population of 10,000 and the assignment can be accomplished merely by substituting Channel 11 for Channel 13 in Fargo, North Dakota. Channel 12 will not be assigned to Duluth-Superior at the expense of deleting it from Brainerd, Minnesota and Iron River, Michigan. Assignment of an additional VHF channel to Duluth-Superior would not necessarily resolve the procedural problems in the Duluth-Superior hearing since other applications could be filed for the new channel. However, Channel 12 will be shifted from Iron River to Ironwood, Michigan and Channel 33 substituted in Iron River, since Iron River has a population of only 4000 and no application for Channel 12 has been filed. Head of the Lakes Broadcasting Co., 9 RR 1370 [1953].

Zone line having been shifted, assignment of a first VHF channel to Fayetteville, West Virginia, a community of less than 2,000 was rescinded in favor of conflicting proposals to assign a first VHF channel to Bluefield, West Virginia or High Point, North Carolina, communities of 21,500 and 40,000 population respectively. As between the two, Bluefield was preferred, although smaller, since two VHF channels had been assigned to cities close to High Point and assignment of the channel to High Point would have precluded assignment of a VHF channel to Wilmington, North Carolina. The fact that assignment of Channel 6 to Bluefield would require a substitution of Channel 4 for Channel 6

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

in Beckley, West Virginia, so that applicants for the Beckley channel would have to specify a new site, was not sufficiently serious to preclude the change. Daily Telegraph Printing Co., 10 RR 1530 [1954].

Transfer of Channel 3 from Lewiston, Idaho to Richland, Washington was denied where application for use of Channel 3 in Lewiston had been filed since the filing of the petition for reallocation and there was no clear showing that public interest required such a change, which was opposed by several parties. KALE, Inc., 11 RR 480 [1954].

Television channels 2 and 9 switched between Boise and Caldwell, Idaho in order to allow permittee of a station in Meridian, Idaho with temporary studios in Boise and its transmitter ten miles from Boise to become a Boise station. Boise Valley Broadcasters, Inc., 11 RR 1557 [1954].

Television channel assignments in Miami, Fort Lauderdale and Belle Glade, Florida changed in order to solve an existing antenna site problem and permit stations in Miami and Fort Lauderdale to operate from "antenna farm" established in order to comply with CAA requirements. Tri-County Broadcasting Co., 11 RR 1565 [1954].

Channel 13 will not be assigned to Princess Anne, Virginia, a small community of only 250 persons about 15 miles from Norfolk, in order to provide a third VHF service to the Norfolk-Portsmouth-Newport News area, where the channel would have to be deleted from New Bern, North Carolina, a community of 16,000 people with only one VHF assignment. Addition of a VHF assignment to Arapahoe, North Carolina, a community of only 307 persons about 14 miles from New Bern would not be justified. Commonwealth Broadcasting Corp., 11 RR 1569 [1955].

Channels 45 and 73 will not be shifted between New Castle, Pennsylvania and Youngstown, Ohio so that station authorized to operate on Channel 45 at New Castle may become a Youngstown station on the same channel, where there is no showing that other parties may not be ready and willing to undertake operation on Channel 45 in New Castle and Channel 73 is available in Youngstown. WKST, Inc., 12 RR 1505 [1955].

Channel 45 will not be shifted from New Castle, Pennsylvania, to Youngstown, Ohio so that a station authorized to operate on Channel 45 at New Castle may become a Youngstown station on the same channel, where this would result in adding a fourth channel to Youngstown, nothing in the record establishes a need for a fourth channel in Youngstown, and the assignment could not be made without shifting assignments in other communities, substituting higher UHF channels for lower channels presently assigned, and in two of the proposed alternative plans, changing frequency of authorized stations. It could not be found that lower channels assigned to other communities would not be used in the foreseeable future, and a shift to a higher frequency might impede establishment of a first or second television service in those communities. While UHF permittees in two cities raised no objections to operating on other frequencies as proposed, channel assignments would not be changed to make a fourth channel available to a community which had no present need for a fourth assignment.

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

While the petitioning station stated that it could operate more successfully on Channel 45 as a Youngstown station than as a New Castle station, private interests of this nature are not proper considerations which warrant assignment changes. WKST, Inc., 12 RR 1508 [1956].

Channel 45 shifted from New Castle, Pennsylvania to Youngstown, Ohio-New Castle, Pennsylvania as a hyphenated assignment, where this may result in an earlier commencement of an additional service to Youngstown. Community Telecasting Co., 12 RR 1508i [1956].

As between conflicting proposals to assign Channel 7 to Laurel, Pachuta or Gulfport, Mississippi, public interest would be best served by an assignment to Laurel-Pachuta jointly. Laurel has a greater population than Gulfport and the fact that the county in which Gulfport is situated has a larger population is not material. In addition, Gulfport is only 15 miles from Biloxi, where Channel 13 is assigned, while Laurel and Pachuta are at least 25 miles from the nearest community to which a VHF channel is assigned. Channel Assignment to Laurel-Pachuta, Mississippi, 12 RR 1515 [1955].

Channel 3 shifted from Montpelier to Burlington, Vermont, and existing station on that channel authorized to operate as a Burlington station. Mt. Mansfield Television, Inc., 12 RR 1520 [1955].

Channel 16 was assigned to Pittsburg, California in order to make a television assignment available to a community presently without one. Capital City TV Corp., 12 RR 1524 [1955].

Where licensee seeks rulemaking to move channel 13, on which it operates in Stockton, to San Francisco, so that it can program better film and be near more live talent and news, held rulemaking not warranted in face of the refusal to consider such an allocation at time of Sixth Report and the fact that San Francisco already had assigned to it 4 VHF commercial channels, one in hearing. Television Diablo, Inc., 12 RR 1589 [1955].

Drop-in of Channel 10 in Vail Mills, New York, a small community located in the Albany-Schenectady-Troy area, was ordered in spite of the fact that the Commission was presently considering possible amendments to its allocation plan. The assignment was consistent with the existing rules and principles and would bring an additional television service to a substantial number of people. The fact that Vail Mills does not have a postoffice does not prevent assignment of a channel to it. First Report on Deintermixture, 13 RR 1511 [1955].

The Commission will not decline to add a new assignment to the present Table of television channel assignments, where the assignment can be made in compliance with present rules and standards and there is a demand for the channel, because of the pendency of general rule making proceedings. Assignment of a VHF channel will not be refused because of objections by UHF stations. As between Elmira, New York, a city of 50,000, and Blossburg, Pennsylvania, a community of 2000 persons, assignment will be made to Elmira. Channels 11 or 13 could not be assigned to Blossburg or the area nearby. Show cause order will not be issued to permit an existing UHF station to operate on the new channel. Elmira Television, 13 RR 1536 [1955].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

Requests for reallocation of television channels in Puerto Rico were denied on a finding that the public interest would best be served by retaining the assignments as they were. A channel would not be taken away from a much larger city to be added to a smaller city, nor would the city be denied its second assignment to make available a fourth assignment to another city, or to make an educational assignment available in the smaller city. El Mundo, Inc., 13 RR 1553 [1956].

Television channels 8 and 10 assigned to Agana, Guam, effective immediately. Radio Guam, 13 RR 1556 [1956].

Television channel 3 shifted from Pueblo to Alamosa, Colorado to afford VHF service to the Alamosa area. Channel Assignment to Alamosa, Colorado, 14 RR 1504b [1956].

As between conflicting proposals to shift Channel 6 from Clarksdale, Mississippi to Indianola, Greenwood or Cleveland-Ruleville, Mississippi, assignment to Greenwood was preferred as representing the most efficient use of the channel. Contention that assignment to Indianola would provide a "city-grade" service to a greater population was without merit. Channel Assignment to Greenwood, Mississippi, 14 RR 1506 [1956].

VHF television channel will not be shifted from a city with a population in excess of 25,000 to a city with less than 9000 persons which has a UHF channel assignment and receives service from other communities, especially where an application has been filed for use of the channel as presently assigned. Channel Assignment to Roswell, New Mexico, 14 RR 1508 [1956].

Channel 13 will be assigned to Marquette, Michigan, and Channel 5 substituted for Channel 13 in Calumet, Michigan where this can be done in conformity with the Commission's Rules and Standards and will provide facilities for affording an additional television service to the Marquette area, even though the party which had requested the assignment had since withdrawn its request. Channel Assignment to Marquette, Michigan, 14 RR 1511 [1956].

VHF channel will not be allocated to Houma, Louisiana, a community only about 40 miles from New Orleans, while a proposal to shift one of the two VHF channels assigned to New Orleans to Mobile, Alabama, is under consideration. Channel Assignment to Houma, Louisiana, 14 RR 1512 [1956].

Channel 21 will be assigned to Fort Wayne, Indiana, where this can be done in accordance with relaxed rules as to transmitter spacing. Assignment to the smaller communities of Huntington or Roanoke would not be in the public interest or in accord with the Commission's objective of improving the opportunities for effective competition among a greater number of stations in many areas since these communities are so near to Fort Wayne and so much smaller that a station located in either of them would include Fort Wayne in its coverage and service area and would be at a competitive disadvantage in competing with Fort Wayne stations. The channel will not be made available exclusively for applicants for Channel 69 in a pending proceeding. Television Assignment to Fort Wayne, Indiana, 14 RR 1517 [1956].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

A first VHF channel will not be assigned to Moses Lake, Washington since all the assignments in that area are in the UHF band and the area can be adequately served by UHF. However, a UHF channel will be assigned to the community of Moses Lake. Walla Walla will not be made a UHF area by deleting from commercial use the two VHF channels assigned there. Operation of VHF stations in Walla Walla would not have serious adverse effect on UHF operations in the Moses Lake area. Channel Assignment to Moses Lake, Washington, 14 RR 1529 [1956].

Channel 8 will be shifted from Woodward to Elk City, Oklahoma and Channel 35 substituted in Woodward where there have been no applications for television facilities in either city, Elk City is in a more populous area and it is represented that an application will be filed for use of Channel 8 in that community. Television Assignment to Elk City, Oklahoma, 14 RR 1534 [1956].

Channel 9 will be moved from Sandpoint, Idaho to Kalispell, Montana and Channel 8 from Kalispell to Missoula in order to afford an additional television service to Missoula. Channel Assignment to Missoula, Montana, 14 RR 1551 [1956].

As between proposals to add a second assignment to Williamsport, Pennsylvania, and to assign channels to Shinglehouse, Pennsylvania and Clymer, New York, the latter proposal will be preferred since stations located in those small communities would provide a first service to large areas and populations. Channel Assignment to Shinglehouse, Pa., 14 RR 1553 [1956].

Channel 9 will not be moved from Monahans, Texas, to the Hobbs-Nadine, New Mexico area where an application has been filed for Channel 9 in Monahans and its assignment to that city represents a more effective utilization of available facilities. Channel Assignment to Monahans, Texas, 14 RR 1565 [1956].

Channel 19 assigned to Nacogdoches, Texas and other channel assignments changed. Channel Assignment to Nacogdoches, Texas, 14 RR 1567 [1956].

Channel 15 will be shifted from Angola to Fort Wayne, Indiana in order to permit a more effective use of television facilities and improve the opportunities for effective competition. Channel Assignment to Fort Wayne, Indiana, 14 RR 1571 [1956].

Petition for rule making seeking reassignment of Channel 5 from Walla Walla, Washington to Pendleton, Oregon, a smaller community, will be denied. The desire of Pendleton for a local outlet should not be achieved by depriving Walla Walla of one of its two VHF assignments. Retaining Channel 5 at Walla Walla will make more effective use of available facilities and improve the competitive television situation in the area. Channel Assignment to Walla Walla, Washington, 14 RR 1573 [1956].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

Channel 13 was reassigned from Warner Robins to Macon, Ga. after adoption of new minimum separation rules. Channel Assignment in Macon, Ga., 14 RR 1581 [1956].

Channel 18 will be shifted from Lebanon to Lafayette, Ind. in order to make for more efficient use of channels. Channel Assignment in Lafayette, Ind., 14 RR 1584 [1956].

Channels 62 and 14 were exchanged between Evansville, Indiana and Owensboro, Kentucky, where, because of arrangements made between the parties involved, the change would make possible the affording of a local television service in Owensboro at an early date. Channel Assignment in Evansville, Indiana, 14 RR 1591 [1956].

Channel 11 shifted from Yreka City, California, to Coos Bay, Oregon and Channel 19 substituted in Yreka City. Assignment to Coos Bay is preferable to assignment to Prineville, Oregon, in view of the greater population in the Coos Bay area. Channel Assignment in Coos Bay, Oregon, 14 RR 1593 [1956].

Channel 6 will not be shifted from Butte to Bozeman, three applications having been filed for the frequency and Butte being a larger city than Bozeman, nor will Channel 12 be shifted from Helena, the state capital, to Bozeman, applications having been filed for both VHF channels allocated to Helena, a larger city than Bozeman. Channel Assignment in Bozeman-Helena, Montana, 14 RR 1595 [1957].

Making the Albany-Schenectady-Troy area a three-VHF market by retaining Channels 6 and 10 in the area and shifting Channel 13 from Utica to Albany (substituting Channel 2 in Utica) is preferable to making the area all-UHF or partially UHF. Deleting Channel 6 from the area would be time-consuming in view of the fact that a licensee is presently operating on the channel, whereas assignment of Channel 13 can be made with little delay. In addition, making the Albany area a 3-VHF market avoids the danger of "white areas" that might arise from an all-UHF allocation. Assignment of a third VHF channel to Albany-Schenectady-Troy is preferable to assigning a second VHF channel to Utica; also, if Channel 13 is deleted from Utica it may be possible, with Canadian concurrence, to assign it to Rochester as well as Albany. Final action on the proposal will not be delayed until all problems with respect to other communities such as Rochester, Utica, Syracuse and Providence, some of them requiring negotiations with Canada, can be solved. Albany-Schenectady-Troy Channel Assignments, 23 FCC 358, 15 RR 1514a [1957].

Channel 2, deleted from Springfield, Illinois in order to deintermix that area, will be assigned to St. Louis and Terre Haute rather than Salem, Missouri and Salem, Illinois, small communities in which no one had indicated an intention of applying for use of the channel. Assignment to St. Louis is preferable to assignment to Cape Girardeau, Missouri, a much smaller community with one VHF station on the air. Addition of Channel 2 in St. Louis would make for more effective competition, and the same is true of assignment to Terre Haute of another VHF channel. Springfield Deintermixture Case, 22 FCC 318, 15 RR 1525 [1957].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

Proposal to move Channel 3 from Hartford, Connecticut to Providence, Rhode Island, was denied on the basis of a finding that Providence did not have a greater need for the channel or that the move would result in a greater compliance with Section 307(b) of the Act. In addition, a station operating on Channel 3 would have to be located so far south of Providence, in order to meet spacing requirements, that it could not provide a principal city signal over all or even the greater part of the city. Assignment of the channel to the southern part of Rhode Island would not comply with good allocation principles. Reassignment of the channel to Bridgeport, Connecticut and Worcester, Massachusetts would not be in the public interest under existing allocation principles. Hartford Deintermixture Case, 22 FCC 382, 15 RR 1540i [1957].

Channel 3 will not be shifted from Madison, Wisconsin to Rockford, Illinois, since a greater "white area" would be created than eliminated and the Madison area, with its rougher terrain, has a greater need for a VHF allocation. Removal of the channel would not effectively deintermix Madison and the competitive situation in Rockford would not be appreciably improved. Madison Deintermixture Case, 22 FCC 356, 15 RR 1563 [1957].

Channel 12 will be deleted from Fresno, California and assigned to Santa Barbara, Channel 30 being substituted in Fresno. Assignment of the channel to Santa Barbara will provide an additional local outlet. Reassignment of Channel 12 will not be withheld on the basis of alleged private negotiations with Mexican officials looking toward reallocation of channels in Tijuana, Mexico. Assignment to Santa Barbara rather than Ventura is preferable, since the channel in Ventura would represent an eighth VHF channel in the Los Angeles area, while it would provide a needed second local outlet for a larger community in Santa Barbara, and assignment to Santa Barbara would be more acceptable to Mexico because of the greater distance from the border. Assignment of Channel 12 to Bakersfield would not be in the public interest, since that area is largely UHF. Fresno Deintermixture Case, 22 FCC 365, 15 RR 1586i [1957], vacated, 18 RR 1733.

Channel 12 is added to New Orleans in order to make the New Orleans area predominantly VHF. While the terrain in the area is favorable for UHF propagation, the conversion rate has been low, only one UHF station is operating in New Orleans and one in Baton Rouge, and UHF stations could not provide satisfactory service to the entire trade area. Proposal to shift Channel 4 from New Orleans to Mobile would not effect a fair, efficient and equitable distribution of channels, and Channel 6 could not be reallocated from New Orleans except to a place in close proximity to New Orleans. Channel 11 was assigned to Houma, Louisiana and Channel 12 to Beaumont-Port Arthur, Texas. Assignment to Beaumont-Port Arthur was preferable to assignment to Lake Charles, Louisiana, and assignment to Beaumont-Port Arthur-Lake Charles on a hyphenated basis would not be justified. Channel 3 was assigned to Lake Charles-Lafayette in order that the question as to which city should use the channel could be decided in an adjudicatory hearing. New Orleans Deintermixture Case, 22 FCC 396, 15 RR 1603 [1957].

Channel 3 assigned to Ainsworth, Nebraska, in order to provide a first VHF service to the area. 15 RR 1617 [1957].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

Table of Assignments is amended to assign Channel 3 to Sterling, Colo., where there is an unquestioned need for a first VHF channel. This action is preferable to counterproposals which would necessitate more channel changes in more communities, would require shift of educational reservation in Boulder, Colo. from VHF to UHF, and would deprive Boulder of its only commercial channel. The only community which would lose its only assignment under the proposal adopted is Ainsworth, Neb., a town of 2,150. While one of the two VHF channels assigned to Cheyenne, Wyo. would be deleted, no one had ever applied for it or indicated an interest in its use. Channel Assignment in Sterling, Colo., 15 RR 1622b [1957].

Channel 9 shifted from Rome, Georgia to Chattanooga, Tennessee in order to make a more effective use of the spectrum, permit an additional television service to an extensive area and population, insure continuation of Channel 9 service in the Chattanooga-Rome area and provide a needed third local service in Chattanooga. Channel Assignment to Chattanooga, Tennessee, 15 RR 1623 [1957].

Channel 13 will be added to Norfolk-Portsmouth-Newport News in order to increase the opportunities for effective competition among a greater number of stations. That a Channel 13 station might have lesser coverage than the other VHF stations in the area because of aeronautical considerations is not an objection to the assignment. The fact that a site might not be available from which a city grade signal could be placed over Newport News is not an objection since the channel is assigned on a hyphenated basis. Norfolk Drop-In Case, 22 FCC 1227, 15 RR 1630 [1957].

A third VHF commercial channel will be added to Charleston, South Carolina in order to improve the competitive television situation. No UHF stations are authorized or on the air in the city or within 100 miles. Charleston Drop-In Case, 22 FCC 1231, 15 RR 1634 [1957].

Channel 6 will be assigned to Miami in order to improve the competitive situation. It cannot be held that a site would not be available which would meet separation requirements and from which a city-grade signal could be placed over Miami. That a Channel 6 station could not utilize the Miami "antenna farm" does not preclude the allocation. Miami Drop-In Case, 22 FCC 1238, 15 RR 1638a [1957].

Addition of a fourth VHF channel to Miami is in the public interest in order to provide greater opportunities for television growth and competition. The possiblity that a site meeting all spacing and coverage requirements might not be feasible because of aeronautical considerations is not a reason for refusing to make the allocation. The assignment would not be modified to permit use of sub-standard spacings, although the rules with regard to separations might be waived in an adjudicatory proceeding if adequate coverage of Miami could not be provided from available sites. Miami Drop-In Case, 15 RR 1642a [1958].

Channel 10 will be added to Duluth, Minnesota-Superior, Wisconsin, in order to provide a third local commercial VHF outlet, and deleted from the smaller

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

communities of Hibbing, Minnesota and Hancock, Michigan. The fact that an application for Channel 10 in Hibbing has been submitted does not affect this conclusion. Educational reservation of Channel 8 in Duluth-Superior will not be removed. Duluth-Superior Drop-In Case, 22 FCC 1235, 15 RR 1643 [1957].

Proposal to add Channel 11 in St. Joseph, Tennessee and substitute Channel 49 for Channel 11 as educational reservation in Lexington, Tennessee will be denied. The area involved is predominantly UHF and UHF can provide satisfactory service in the area. Establishment of a VHF station in the area would detract from the ability of the UHF stations to continue to provide service. Channel Assignment in St. Joseph, Tennessee, 15 RR 1645 [1957].

Channel 3 will not be assigned to Clearfield, Pennsylvania since the area is primarily UHF. 15 RR 1649 [1957].

The sole VHF channel in Spartanburg, South Carolina, will not be deleted in order to provide a third VHF service to Knoxville, Tennessee. Spartanburg is a predominantly VHF market and receives Grade A VHF service from two outside stations. Channel Assignment in Knoxville, Tennessee, 15 RR 1650 [1957].

Channel 4 will be substituted for Channel 8 in Hay Springs, Nebraska in order to expedite establishment of a local television outlet in that community, and Channel 9 substituted for Channel 4 in North Platte, Nebraska. Objections to substitution of Channel 9 in North Platte, based on speculative assumptions as to future use of that channel, will be rejected. Channel Assignment in Hay Springs, Nebraska, 15 RR 1661 [1957].

Under changed minimum spacing requirements Channel 10 may be assigned to Tampa-St. Petersburg or Daytona Beach, Florida and proposals to assign the channel to New Port Richey or Bunnell, Florida, smaller cities near those communities, will be rejected. As between Tampa-St. Petersburg and Daytona Beach, assignment to Tampa-St. Petersburg will make for more effective use of the spectrum and will make possible an additional television service to a greater number of people. Tampa Drop-In Case, 15 RR 1663 [1957].

As between Presque Isle and Madawaska, Maine, proposal to assign Channel 10 to Presque Isle as a second VHF assignment is preferable to assignment to Madawaska. A station in Presque Isle will serve Madawaska. Channel Assignment in Presque Isle, Maine, 15 RR 1676 [1957].

Channel 12 will be shifted from Coeur d'Alene to Moscow, Idaho. The two communities are of comparable size but no applications have been filed for the channel in Coeur d'Alene whereas an intention to file for the channel in Moscow has been indicated. Coeur d'Alene receives three satisfactory services from Spokane, Washington. Alternative proposal to shift Channel 10 from Pullman, Washington to Moscow will be denied. Channel Assignment in Moscow, Idaho, 15 RR 1680 [1957].

Proposal to assign Channel 5 to Columbia, South Carolina as a second VHF channel in the area will be rejected since the area is one which conduces to the growth of UHF service. 15 RR 1682 [1957].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

As between conflicting requests for assignment of Channel 8 to Waycross or Moultrie, Georgia, Waycross is to be preferred. Waycross is the larger community and while there are other communities near to Moultrie, television assignments are made primarily to principal cities. More persons would be located within the Grade B contour of a Moultrie station but more persons would receive a first service from a Waycross station. Moultrie was within the Grade B contour of two stations 25 and 35 miles away, while Waycross is 75 miles from a television station. Assignment of a UHF channel to Waycross would not serve the public interest. Channel Assignment in Waycross, Georgia, 15 RR 1699 [1957].

Where conflicting petitions request Channel 6 for Eureka, California and for Brookings, Oregon, it is consistent with Section 307(b) of the Communications Act to assign the channel to Eureka because of the size of the community and the availability of other channels to Brookings. Channel 8 is assigned there. Channel Assignment in Eureka, California, 15 RR 1717 [1957].

On the petition of the licensee of channel 8 in Muskogee, Oklahoma, the only VHF assignment in the city, that channel is shifted to Tulsa, Oklahoma, because Channel 8, as a Muskogee station, cannot successfully compete with the two Tulsa VHF stations for network and national business and Muskogee cannot otherwise support a television station. Channel Assignment in Tulsa, Oklahoma, 15 RR 1720 [1957].

Where, on petition for reconsideration it is shown that demand exists for channel 13 in Arecibo, Puerto Rico, a channel previously shifted to Aguadilla, Puerto Rico, twenty-eight miles away, channel 13 is deleted from Aguadilla, Puerto Rico and assigned to Aguadilla-Arecibo. Channel Assignments in Puerto Rico, 15 RR 1729 [1957].

Channel 7 will be shifted from St. Cloud to Alexandria, Minn., where it would provide a first television service to almost 65,000 more persons than at St. Cloud, even though St. Cloud is itself a larger community than Alexandria. Channel Assignment in Alexandria, Minn., 15 RR 1739 [1957].

Channel 9 will be assigned to Wausau, Wisconsin, rather than to Hancock, Michigan. Assignment of a VHF channel to Wausau would provide a much needed second local outlet to a significant number of persons. The population of Wausau is six times that of Hancock and a channel assigned to Calumet, Michigan can be utilized in Hancock. Channel Assignment in Wausau, Wisconsin, 15 RR 1741 [1957].

As between various conflicting proposals, assignment of Channel 2 to Portland, Oregon would better carry out the objectives of the Commission's interim allocation plan, than assignment to a smaller community. A Channel 2 facility in Longview, Washington would be at a competitive disadvantage with the three Portland VHF stations and no need or demand for a channel had been shown for the smaller communities of Astoria, The Dalles or Condon, nor that they could support a station. Competition would be enhanced by adding a VHF channel in Portland. As between Portland and Vancouver, Washington, no choice need be made at the present time since a channel allocated to Portland is also

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

open to application for use in Vancouver under the 15 -mile rule. Channel Assignment in Portland, Oregon, 15 RR 1748 [1957].

Channel 3 will not be deleted from Philadelphia in order to provide a VHF assignment for Atlantic City, New Jersey. Philadelphia is a much larger city and a station is operating on Channel 3 and has been for many years. There is no other VHF station in the Atlantic City area with which a Channel 3 station there could compete on an equal basis, and Atlantic City receives service from the three Philadelphia stations and from a Wilmington, Delaware station. Channel Assignment in Atlantic City, New Jersey, 15 RR 1755 [1957].

Television channel assignments in the South Bend-Elkhart areas and related areas are changed and South Bend-Elkhart made a hyphenated area. 16 RR 1506 [1957].

Channel 12 will be assigned to Mankato, Minnesota rather than Fairmont, Minnesota or Estherville, Iowa. Mankato is larger than Fairmont and Estherville combined and a Mankato station would render a Grade A service to both of these communities. Deletion of Channel 12 from Brainerd, Minnesota is not required as the channel can be used in both Mankato and Brainerd by proper selection of transmitter sites. Channel Assignments in Mankato, Minn., 16 RR 1539 [1957].

Assignment of Channel 12 to Arecibo-Aguadilla, Puerto Rico and Channel 13 to Fajardo, Puerto Rico is preferable to assignment of Channel 8 in Fajardo, since it would permit a much wider area in which a site could be selected. While some hardship might be caused to applicants for Arecibo and Aguadilla, this is outweighed by the overall advantages of the change. Channel Assignments in Puerto Rico, 16 RR 1544 [1957].

Channels 9 and 16 will not be switched between Pittsburgh, Pa. and Steubenville, Ohio, in order to add an additional VHF channel to Pittsburgh, since there is little likelihood that a UHF station could successfully operate in Steubenville and the practical result would be the deletion of Steubenville's sole facility. Nor will an alternate proposal to add a VHF channel to Pittsburgh be considered which would require widespread changes in channel assignments in 12 to 15 cities spread over six states and would require existing stations to change frequencies, some from VHF to UHF, or change transmitter and antenna sites. Three commercial VHF stations and a noncommercial educational VHF station are operating in the Pittsburgh area and three other VHF stations provide service to the area. Channel Assignments in Pittsburgh, Pa., 16 RR 1558 [1957].

Two UHF channels will be added to Bakersfield, California where this is possible without any other changes in assignments and three parties with broadcast experience have shown an interest in the assignments. Finalization of the assignments will not be delayed pending resolution of deintermixture policy questions involving Bakersfield presented by pending petitions. Even if deintermixture should be ordered, it would take some time to accomplish. Argument that one of the parties might make use of an added UHF channel to strengthen its television position is more properly presented in a licensing proceeding and is not appropriate in a rule making proceeding. Channel Assignments in Bakersfield, Calif., 16 RR 1565 [1958].

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

Channel 11 will be reassigned from Galveston to Houston, Texas, even though this involves deletion of Galveston's only VHF assignment, since Galveston is only about 45 miles from the center of Houston, a much larger city, and the two VHF stations in Houston provide Grade A service to Galveston. The Galveston station, which had requested the change in order to be permitted to identify itself as a Houston-Galveston station, had given assurances that it would maintain programming and technical personnel, local offices and auxiliary studios in Galveston, would continue to solicit local advertising and offer a favorable local rate to Galveston and would continue to provide a city-grade service to that city. License of the Galveston station was modified to specify operation on Channel 11 in Houston. Channel Assignments in Galveston-Houston, 16 RR 1605 [1958].

Channel 13 will be assigned to Panama City, Florida, in order to permit early establishment of an additional service to the area. Panama City "Drop-In" Case, 16 RR 1608 [1958].

Channel 3 will be assigned to Harrisburg, Illinois, in order to provide a VHF service to southern Illinois. No VHF channels were previously assigned to the area and only one UHF station was in operation, but both Harrisburg and Carbondale, as well as much of the surrounding area, received Grade B VHF service from stations in Cape Girardeau, Mo. and Paducah, Ky., and St. Louis, VHF stations also served part of the area. There was no need for assignment of two VHF channels, although this was technically feasible, since the principal communities involved were small and close together and a station in any one of them would furnish Grade B service to the others. Assignment of Channel 3 was preferable to assignment of Channel 8 or 13 because antenna site requirements would limit the service which a station in Channel 8 or 13 could furnish, and in addition a Channel 3 station would have to be located farther away from Evansville, an all-UHF city. As between Harrisburg and Carbondale, assignment to Harrisburg was preferable since there was a UHF station on the air there and assignment of the channel to that city would permit continuation of an existing local service. Channel Assignments in Carbondale-Harrisburg, Ill., 16 RR 1617 [1958].

Channel 13 will not be assigned to Cartter, Illinois which is a small unincorporated village of less than 100 persons situated on the periphery of a large UHF area. Channel 3 has been assigned to Harrisburg, Ill. and Channel *8 to Carbondale, Ill. and stations on these channels will furnish a Grade B service to Cartter. Channel Assignment in Cartter, Ill., 16 RR 1628 [1958].

Channel 12 will not be deleted from Flint, Mich. and assigned to Saginaw-Bay City-Flint or to Ann Arbor. There is a greater need for a VHF channel in Flint than in Saginaw or Ann Arbor and reopening the Flint Channel 12 proceeding would entail further delay in that case. The only VHF channel assigned to Flint will not be deleted in order to add it to Detroit as an educational channel. Erie, Pa.-Flint, Mich. Channel 12 Case, 17 RR 1509 [1958].

Transfer of Channel 73 from Youngstown to Pittsburgh, and change of authorization of a Channel 73 permittee in Youngstown to a different channel, is

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

withdrawn. There is no need for an additional UHF channel in Pittsburgh and since the Channel 73 permittee has never constructed its station a modification of its authorization is not necessary for the preservation of an existing service. Channel Assignments in Pittsburgh-Youngstown, 17 RR 1567 [1958].

Additional UHF channel will not be assigned to Los Angeles-Pasadena, California in view of the fact that ten television channels are already assigned to the area and addition of an eleventh assignment might preclude the utilization of a number of UHF assignments in other communities at some future date. Channel Assignments in Los Angeles, 17 RR 1568d [1958].

Channel 7 will be shifted from Pine Bluff to Little Rock, Ark., and authorization of existing Pine Bluff station modified accordingly. Little Rock is three times the size of Pine Bluff, the two communities are only 36 miles apart, and the two existing Little Rock stations serve Pine Bluff, so that the Pine Bluff station is at a competitive disadvantage in competing with the Little Rock stations for audience, revenues and programs. No evidentiary hearing is necessary in such a case. Channel Assignments in Little Rock, 17 RR 1599 [1958].

Channel 12 will not be shifted from Brainerd, Minn. to the much smaller community of Walker in order to allow an applicant to obtain a larger Grade B coverage and to provide service to the city of Bemidji as well as to Brainerd. Channel Assignment in Brainerd, Minn., 17 RR 1604 [1958].

Assignment of Channel 3 to Harrisburg, Ill. for commercial use and Channel 8 for educational use in Carbondale, Ill. is preferable to assignment of Channel 8 for commercial use and Channel 3 for education. Harrisburg Drop-In Case, 17 RR 1629 [1958].

Channel 12 will not be shifted from Hutchinson to Wichita, Kansas, at request of licensee of the Hutchinson station, where it does not appear that the station could meet the technical requirements for qualification as a Wichita station. Channel Assignments in Wichita-Hutchinson, 17 RR 1638 [1958].

Channel 8 is added to the Winston-Salem-High Point-Greensboro area in order to provide the area with a third television outlet. Channel 13 is substituted for Channel 8 in Florence, S. C. and existing licensee required to shift channels. This is preferable to retaining Channel 8 in Florence and adding Channel 13 there, even though an additional VHF assignment in Florence would enable more persons to receive a second or third service than would an additional VHF channel in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

Channel 7 will be assigned to Charleston, S. C. in preference to Channel 8 since a transmitter for a Channel 7 operation could be located in Charleston whereas a Channel 8 transmitter would have to be located approximately 11 miles outside the city to maintain required separations. Channel Assignments in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

Channel 8 will not be assigned to Fayetteville, N. C. as a first VHF channel in preference to assignment of the same channel to Winston-Salem-High Point-Greensboro. While the UHF station in Fayetteville has ceased operation and

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

it is not likely that the city will have a local television outlet as long as only UHF channels are available, the city receives VHF service from several outside stations. Channel Assignment in Fayetteville, N. C., 17 RR 1660 [1958].

Proposal to add a third VHF channel in the Providence, Rhode Island area by substituting Channels 8 and 13 for Channel 12 will not be adopted. The channels could be used only at sites widely separated from each other and at substantial distances from Providence and from the existing Channel 10 site, so that the competitive situation would not be effectively improved. Nor could it be determined with any certainty whether aeronautical hazards and limitations would preclude utilization of any particular antenna sites for Channels 8 and 13 in the areas south and east of Providence which would conform with minimum separation requirements and permit the use of antenna towers of sufficient height to furnish a city grade signal to Providence. For the same reason the channels will not be assigned to Providence on the theory that sites might be found which could be used in communities within 15 miles of Providence. In addition, the assignments as proposed would require reassignment of educational channels and change in transmitter site of a contemplated educational station, which might postpone considerably the advent of a first educational station in one of the communities involved, or make it impossible to establish an educational station which could serve the optimum number of people. Counterproposal to assign Channel 8 to Springfield, Mass. will be denied on the ground that the competitive television situation in the area would be worsened rather than improved. Channel Assignment in Providence, R. I., 17 RR 1725 [1958].

Channel 9 will not be deleted from Hot Springs, Ark. in order to permit assignment of Channel 10 to Shreveport, La. The public interest would not be served by deleting Hot Springs' only VHF channel in order to permit assignment of a third VHF channel in Shreveport. Deintermixture to all-UHF in the Hot Springs area would not be practicable since it receives VHF signals from Little Rock. It cannot be concluded that any Hot Springs station would be forced by economic necessity to move into Little Rock. Channel Assignment in Hot Springs, Ark., 18 RR 1517 [1959].

Channel 8 will not be shifted from Jonesboro to Forrest City, Ark. . Jonesboro is a much larger city and applications have been filed for use of the channel in Jonesboro. In addition, while both Jonesboro and Forrest City receive service from Memphis stations, Forrest City is nearer to the Grade A contours of the Memphis stations. Channel Assignment in Jonesboro, Ark., 18 RR 1524 [1959].

The public interest would not be served by deletion of one of the two channels assigned to the Virgin Islands in order to provide an eleventh channel to Puerto Rico. Channel Assignments in Puerto Rico and Virgin Islands, 18 RR 1528 [1959].

Channel 4, the only station allocated to Bloomington, Indiana, will not be reassigned to Indianapolis in order to facilitate competition of the Bloomington station with the Indianapolis stations. While petitioner represented that he would not move his transmitter site, which was midway between Bloomington and Indianapolis, and would continue to serve Bloomington viewers and

B. Channel assignment principles (Continued)

(6) Particular channel assignments (Continued)

advertisers, decisional weight cannot be given in a rule making proceeding to present intentions of the present licensee of a channel. Allegations that continued operation of a station on Channel 4 in Bloomington might be impossible if the channel were not shifted to Indianapolis were not convincing. Petitioner had been given authority to identify the station with Indianapolis as well as with Bloomington. Channel Assignment in Bloomington, Indiana, 18 RR 1539 [1959].

Channel 12 will not be shifted from Wilmington, Delaware to Atlantic City, N. J. Wilmington and its metropolitan area have a much larger population than Atlantic City. Channel 12 is the only VHF channel allocated to Delaware, while Channel 13 is assigned to Newark, N. J. The channel has been in use in Wilmington and applications for authority to operate on the channel are pending. The argument that the Wilmington assignment barely meets minimum separation requirements while an Atlantic City assignment would result in separations greater than the minimum is not entitled to consideration. Nor will the channel be assigned to Atlantic City-Wilmington as a hyphenated assignment, since the need of Wilmington for the channel is clearly greater and there are no Section 307(b) questions to be resolved in an adjudicatory hearing. That the transmitter of a Wilmington station would have to be located in New Jersey does not affect this determination. The channel will not be reserved for educational use in view of its status as the only channel in Delaware and the existence of applications for its commercial use. Educational applicants may file applications for comparative consideration. Channel Assignments in Wilmington-Atlantic City, 18 RR 1653 [1959].

A VHF channel will not be assigned to Pendleton, Oregon, since the entire area is served by UHF channels. 18 RR 1663 [1959].

Channel 9 will be shifted from Hattiesburg, Miss. to Baton Rouge, La. in order to make Baton Rouge a 2-VHF market. A station operating on Channel 9 at Baton Rouge would bring additional Grade A and B service to substantial populations, while there would be no loss of existing service in the Hattiesburg area since a VHF station is about to go on the air there. It is doubtful whether Hattiesburg could support two VHF stations. Counterproposal to assign Channel 9 to Natchez, Miss. will be denied since that city is less than 1/5 the size of Baton Rouge and is only 200 miles from the transmitter site of a station on Channel 9 in Lufkin, Texas. Channel Assignments in Baton Rouge-Hattiesburg, 18 RR 1666 [1959].

(7) Hyphenated assignments

Where a television channel had been assigned to New Castle, Pa. and a construction permit issued for operation of a station in that city, subsequent reassignment of the channel to New Castle, Pa.-Youngstown, Ohio as a hyphenated assignment does not give applicants for use of the channel in Youngstown a right to a comparative hearing with the New Castle permittee where the Commission finds, on the basis of substantial evidence, that the station is actually a New Castle station and not a Youngstown station. While the station's transmitter and antenna had been moved to Youngstown, its main studio remained in New Castle and there was no evidence that this was a sham or that it was in

B. Channel assignment principles (Continued)

(7) Hyphenated assignments (Continued)

reality a Youngstown station, even though it did serve Youngstown and competed with Youngstown stations for audiences, networks and advertisers. Community Telecasting Co. v. FCC, 103 U.S. App. D.C. 139, 255 F.(2d) 891, 17 RR 2029 [1958].

Assignment of television channels to two "hyphenated" communities does not mean that the channels are intended for joint use of both communities. Operation on the assigned channel in either city will afford service to the other city and the applicant by selection and location of its main studio indicates which community is to be considered as the principal community to be served. Tribune Co., 9 RR 719 [1954].

Channel 11 is assigned to Houma, Louisiana and Channel 12 to Beaumont-Port Arthur, Texas. Assignment to Beaumont-Port Arthur was preferable to assignment to Lake Charles, Louisiana, and assignment to Beaumont-Port Arthur-Lake Charles on a hyphenated basis would not be justified. Channel 3 was assigned to Lake Charles-Lafayette in order that the question as to which city should use the channel could be decided in an adjudicatory hearing. New Orleans Deintermixture Case, 22 FCC 396, 15 RR 1603 [1957].

Assignment of a television channel to two communities in hyphenation is proper where questions as to fair, efficient and equitable distribution of facilities can be more properly determined in an adjudicatory proceeding on applications for use of the channel. Channel was properly assigned to Beaumont-Port Arthur, Texas, rather than to Beaumont-Port Arthur-Lake Charles where the relative size and importance of the communities would have made a grant of a Lake Charles application impracticable. New Orleans Deintermixture Case, 15 RR 1612a [1957].

Channel 13 will be added to Norfolk-Portsmouth-Newport News in order to increase the opportunities for effective competition among a greater number of stations. The fact that a site might not be available from which a city grade signal could be placed over Newport News is not an objection since the channel is assigned on a hyphenated basis. Norfolk Drop-In Case, 22 FCC 1227, 15 RR 1630 [1957].

Television channel assignments in the South Bend-Elkhart area and related areas are changed and South Bend-Elkhart made a hyphenated area. However, authorization of an existing Elkhart station will not be modified to specify operation as a South Bend-Elkhart station. Authority to identify the station with more than one city may be considered on the basis of a request for waiver of the rules. Channel Assignments in South Bend-Elkhart, Indiana, 16 RR 1506 [1957].

The channel will be assigned on a hyphenated basis to all three cities and conflicting demands for use of the channel can be resolved in a comparative hearing on applications for the channel. Channel Assignments in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

B. Channel assignment principles (Continued)

(7) Hyphenated assignments (Continued)

Channel 12 will not be assigned to Atlantic City-Wilmington as a hyphenated assignment, since the need of Wilmington for the channel is clearly greater and there are no Section 307(b) questions to be resolved in an adjudicatory hearing. That the transmitter of a Wilmington station would have to be located in New Jersey does not affect this determination. Channel Assignments in Wilmington-Atlantic City, 18 RR 1653 [1959].

(8) Use of channels by translator stations

Proposal to change UHF channel assignments in six communities and to delete the channels assigned in four others, in order to permit utilization of one channel for several proposed translator stations, will not be considered in the absence of any showing of need for such action. Springfield Television Broadcasting Corp., 16 RR 1548 [1957].

Channel 80 will be substituted for Channel 70 in Bradford, Pa. so as to make Channel 70 available for translator service in the North Warren, Pa. area. No other translator channel was available for North Warren which would meet the separation requirements of the Rules or which would not be adjacent to channels already authorized or applied for for translator service in the area. Channel 70 could not be used at North Warren unless removed from Bradford. Channel 80 would be adequate for service in Bradford. Channel Assignments in Bradford, Pa., 16 RR 1597 [1958].

Channel 75 is substituted for Channel 74 in Lewistown, Pa. in order to make Channel 74 available for translator use in North Warren, Pa. However, applicant seeking to use Channel 74 in North Warren may have to change its site if proposal to allocate Channel 75 in Erie, Pa. for broadcast use is made final, in view of the fact that the distance between the presently proposed site and Erie is less than 55 miles. Channel Assignments in Lewistown, 16 RR 1599 [1958].

(9) Offset channel requirements

Offset channel requirements will not be changed to reduce interference where the showings as to populations and areas which would be gained and lost, and availability of other services to the affected areas, are incomplete and were made by methods not intended for use in making such refined comparisons of coverage. Offset Channel Requirements in Memphis, Tenn., 18 RR 1542 [1959].

C. Use of directional antennas

The Commission has consistently rejected the principle that a table of assignments be promulgated on the basis of the mandatory utilization of directional television antennas in specific areas. Easton Publishing Co., 6 RR 1408 [1951].

The only limitations on the use of directional antennas by television stations are that they may not be used for the purpose of reducing the minimum mileage separation requirements and that they may not have a ratio of minimum to

C. Use of directional antennas (Continued)

maximum radiation in the horizontal plane of more than 10 decibels. The use of directional antennas is not limited to situations in which a non-directional antenna would place the required signal over the principal community. Versluis Radio and Television, Inc., 9 RR 1123 [1954].

A directional antenna may be used to provide the minimum signal strength over the entire principal community to be served by a television station if the other requirements of the Rules have been met. The Commission's concern over directional antennas in the Sixth Report had to do primarily with the questions of maximum suppression and maintenance of mileage separations. Versluis Radio and Television, Inc., 9 RR 1123 [1954].

D. Educational reservations

(1) Authority of the Commission
(2) General channel reservation principles
(3) Share-time and other arrangements
(4) Effect of reservation
(5) Deletion of reservation
(6) VHF-UHF and other channel shifts

(1) Authority of the Commission

Section 307(c) of the Act does not indicate that the Commission does not have authority to reserve facilities for non-commercial educational use in the absence of specific Congressional mandate. Validity of Television Allocations, 7 RR 371 [1951].

The Commission has authority to adopt rules and regulations providing for the allocation of television channels on a geographical basis and the reservation of certain channels for non-commercial educational television stations, such rules to be amended only in further rule making proceedings and to be applicable and controlling in individual licensing proceedings. Validity of Television Allocations, 7 RR 371 [1951]; Hearst Radio, Inc., 8 RR 634 [1952].

(2) General channel reservation priciples

In assigning educational channels the principle was followed that a UHF channel would be reserved where there were fewer than three VHF assignments except in primarily educational centers. Radio Wisconsin, Inc., 8 RR 323 [1952]. See also 8 RR 467 [1952].

Channel will not be reserved for educational use where the community has only one VHF assignment and is not an educational center. Polan Industries, Inc., 9 RR 642 [1953].

An additional television channel, assigned to an area for the purpose of expediting the furnishing of television service, will not be reserved for non-commercial educational use on the basis of a request by a university stating merely that at some future time it may desire to establish an educational station. University of Kentucky, 9 RR 1169 [1953].

D. Educational reservations (Continued)

(2) General channel reservation principles (Continued)

VHF channel will not be reserved for non-commercial educational use upon petition of an educational institution, licensee of a UHF station at another place, which states that it can best meet its obligations by extending its educational services by the use of the channel, where the channel was previously assigned to the area after rule-making proceedings, four applicants have applied for the channel and much time and expense have been expended by the parties and the Commission in preparing for hearing. Michigan State Board of Agriculture, 10 RR 1261 [1954].

As between proposals to assign Channel 2 to Havana, Florida, a community of 1634 persons only 16 miles from Tallahassee, which has 3 assignments, or to assign it for educational purposes to Andalusia, Alabama, a community of 9162 with one assignment, the latter assignment will be preferred in order to aid in effectuation of a statewide educational television service. While as a general rule a channel will be reserved for educational purposes if the community has three channels assigned to it or is a primarily educational center, this is not a hard and fast rule. John H. Phipps, 11 RR 1527 [1954].

The allocation principles expressed in the Sixth Report with respect to educational reservations were merely guideposts employed in establishing a Table of Assignments and do not preclude assignment of a VHF channel in a community which is not a primarily educational center but where the educators have established a need for such an assignment as part of a statewide educational service. John H. Phipps, 11 RR 1529 [1954].

Channel 13 in Monroe, Louisiana will be reserved for educational use where a need has been shown for an educational facility in the area and the State Board of Education has shown a desire and ability to proceed with plans for prompt establishment of an educational television service. No commercial applications for the channel had been filed and general allegations that applications might be filed in the future did not warrant permitting the channel to remain unused for an indefinite period. Louisiana State Superintendent of Education, 12 RR 1521 [1955].

Channel 8 in Waycross, Georgia, will not be reserved for educational use. Waycross is not predominantly an educational center, the single VHF channel assigned to Waycross is likely to be the only channel utilized in that city in the foreseeable future, and applications for use of the channel by a commercial and an educational applicant are pending. The question whether the channel should be utilized by a commercial or a non-commercial licensee can be better determined in the comparative proceeding. Channel Assignments in Waycross, Ga., 15 RR 1703 [1957].

Channel 8 will be assigned to Carbondale, Ill. for educational use in view of need and demand evidenced by Southern Illinois University for an educational VHF channel and the definite prospect of the utilization of the channel by the University. Channel Assignments in Carbondale-Harrisburg, Ill., 16 RR 1617 [1958].

D. Educational reservations (Continued)

(2) General channel reservation principles (Continued)

A second educational television channel will be added to Pittsburgh, Pa. on basis of a showing of a compelling need for a second educational channel. Existing channel is being used 81-1/2 hours a week and a second channel is needed for expansion of the program. Deletion of Channel 22 from Clarksburg, W. Va. is proper in view of lack of any objection, and substitution of Channel 79 in Clarksburg would serve no useful purpose. Channel Assignments in Pittsburgh-Youngstown, 17 RR 1563 [1958].

Channel 12 will not be reserved for educational use in view of its status as the only channel in Delaware and the existence of applications for its commercial use. Educational applicants may file applications for comparative consideration. Channel Assignments in Wilmington-Atlantic City, 18 RR 1653 [1959].

Proposal to reserve Channel 13 at Indianapolis for educational use, instead of the UHF channel presently reserved, will not be made the subject of proposed rule making. While a VHF frequency is preferable to a UHF channel for educational use in an area in which all the commercial stations are VHF and no UHF receivers are in circulation, the public interest would not warrant the Commission in depriving Indiananpolis of one of its three local television outlets in order to make a VHF channel available for educational use. At least three commercial television outlets are needed in Indianapolis to satisfy the public need for local service and maintain effective competition. The station in Bloomington, Ind. cannot be considered as an Indianapolis outlet, and taking Indianapolis-Bloomington as a single market, there is a need for the four existing commercial services. That Channel 13 is being used under temporary authority is no reason for changing its allocation any more than one of the other channels allocated to the area. Educational Reservation in Indianapolis, 18 RR 1673 [1959].

(3) Share-time and other arrangements

Permittee of a UHF television station will not be granted special temporary authority to operate on a VHF channel reserved for educational use for a minimum of three years and thereafter until a qualified applicant is granted authority to use the channel. Educational reservations will be deleted only through regular rule-making proceedings. Rib Mountain Television, Inc., 11 RR 983 [1955].

A reserved VHF channel will not be made available for commercial use in order to make a fourth commercial VHF television outlet available to a city where efforts are being actively pursued to make possible the construction and operation of a local educational television station on the channel. A proposal to establish a new classification of television station involving joint commercial and non-commercial use will not be considered in the limited context of a single community. Channel Assignment in Des Moines, Iowa, 14 RR 1524d [1956].

The Commission will not allow operation on a reserved channel on a share-time basis between a commercial operator and educational interests. Channel Assignments in San Antonio, Texas, 16 RR 1610 [1958].

D. Educational reservations (Continued)

(4) Effect of reservation

Reservation of a particular channel for an educational station is tantamount to deletion of the channel in so far as commercial applicants are concerned. The channel is as effectively removed from availability for commercial operation as if it did not appear in the assignment table at all. Hearst Radio, Inc., 9 RR 145 [1953].

(5) Deletion of reservation

Television channels were reserved for noncommercial educational use because of the fact that educational institutions require more time than commercial interests to prepare for television. While such a reservation should not be for an excessively long period and should be surveyed from time to time, no limit has been placed on the duration of such channel assignments. An educational reservation will not be deleted in the absence of compelling circumstances. Petition for deletion of an educational reservation was denied where a foundation had been organized for the purpose of establishing and operating an educational station and had made substantial progress and a survey and study was being made by a special legislative committee for submission to a later legislative session. WWEZ Radio, Inc., 9 RR 909 [1953].

Educational reservation will not be deleted from a channel assigned to Birmingham, Alabama, because service to that city will be available from an educational station in Munford, Alabama, where the Munford station will not place a 77 dbu signal over the entire city. The matter of available facilities in Birmingham is also an important factor. Voice of Dixie, Inc., 11 RR 309 [1954].

Permittee of a UHF television station will not be granted special temporary authority to operate on a VHF channel reserved for educational use for a minimum of three years and thereafter until a qualified applicant is granted authority to use the channel. Educational reservations will be deleted only through regular rule-making proceedings. Rib Mountain Television, Inc., 11 RR 983 [1955].

In the absence of substantial evidence that the educational interests in a locality have made constructive efforts to utilize a reserved educational television channel the continued reservation of available spectrum space cannot be justified, particularly where there is evidence of a demand for the channel for a commercial station which would provide television service to a substantial number of persons. Channel Assignment in Bryan-College Station, Texas, 14 RR 1521 [1956].

A reserved VHF channel will not be made available for commercial use in order to make a fourth commercial VHF television outlet available to a city where efforts are being actively pursued to make possible the construction and operation of a local educational television station on the channel. A proposal to establish a new classification of television station involving joint commercial and non-commercial use will not be considered in the limited context of a single community. Channel Assignment to Des Moines, Iowa, 14 RR 1524d [1956].

D. Educational reservations (Continued)

(5) Deletion of reservation (Continued)

Rules will not be amended so as to make all television channels presently reserved for education available for commercial use. However, educational reservations will be surveyed from time to time and problems handled on a case-to-case basis. Albert Jerry Balusek, 14 RR 1532d [1956].

Continued reservation of a television channel for educational purposes cannot be justified in the absence of substantial evidence that educational interests in the area have made constructive efforts to utilize the channel, particularly where there is evidence of a demand for the reserved channel for a commercial station which would provide a needed service to a substantial number of persons. Any commercial operator would be expected to cooperate with educational institutions with a view to making his facilities available for educational programs in the public interest and an educational institution could apply for the frequency and propose a share time operation with a commercial station. Channel Assignment in Weston, West Virginia, 14 RR 1586 [1956].

Educational reservation will not be removed from Channel 9 in Bozeman, Montana since Montana State College has demonstrated an active interest in utilizing the channel and has undertaken preliminary steps toward applying for use of the channel. Channel Assignments in Bozeman-Helena, Mont., 14 RR 1595 [1957].

Request to delete educational reservation of Channel 3 in Tampa-St. Petersburg, Florida and shift the channel to Fort Pierce, Florida for commercial use will be denied where active steps are being taken to construct and operate an educational station on the channel. Gene T. Dyer, 15 RR 109 [1957].

Deletion of educational reservation in Jacksonville, Fla. would not be justified inasmuch as a construction permit for an educational station has been issued. Channel Assignments in Jacksonville, Fla., 15 RR 1732 [1957].

In the absence of substantial evidence that educational interests in a locality have made constructive efforts to utilize a reserved channel, the continued reservation of available spectrum space for educational purposes cannot be justified, particularly where there is evidence of a demand for the reserved channel for a commercial station which would provide needed service to a substantial number of persons. Educational reservation was removed from Channel 9 in Eugene, Oregon, no affirmative action having been taken toward use of the channel for educational purposes other than recently inaugurated studies of the advisability of possible use of the channel in some manner in the distant future. There was need for a second commercial VHF service in the area; only two other VHF channels were allocated to the area, UHF service not being economically feasible, and only one Grade B signal was received in the city. A construction permit had been issued for an educational station on Channel 7 in Corvallis, 35 miles from Eugene. Channel Assignment in Eugene, Oregon, 15 RR 1744 [1957].

An educational reservation will not be removed if there has been an active interest in the assignment on the part of educators and educational institutions and affirmative steps for the utilization of the educational channel have been

D. Educational reservations (Continued)

(5) Deletion of reservation (Continued)

taken. Where a state commission on educational television had been formed, meetings had been held by educators with the Governor and other officials, numerous studies and attempts to obtain funds had been made, and the state university had obtained a transmitter site and a building containing suitable studio facilities, reservation would not be deleted. Educational Reservation in New Hampshire, 16 RR 1554 [1957].

Educational reservation will not be deleted where there has been an active interest in the assignment on the part of educators and educational institutions and where affirmative plans for utilization of the educational channel have been undertaken. Channel Assignment in San Antonio, Texas, 16 RR 1610 [1958].

Where educational institutions have shown an active interest in bringing educational television to Denton, Texas, and have taken active steps toward that goal, even though they have not yet solved the problems of financing the construction and operation of the station, the Commission denies request to delete the educational reservation on Channel 2 in Denton to make the channel available for commercial use there or in other adjacent communities. Channel Assignments in Longview-Denton, Texas, 17 RR 1549 [1958].

(6) VHF-UHF and other channel shifts

The one VHF channel assigned to a community will not be reserved for educational use and the three UHF channels assigned for commercial operation in order to place the commercial licensees on an equal competitive bases. The Commission's allocation plan is based on the principle, among others, that UHF and VHF stations will be able to operate competitively in the same market. VHF channels were not reserved for educational use unless there were a total of at least 3 VHF channels assigned to the particualr community, all of which were not in operation. Unreserved channels are not in fact "commercial," since they may be applied for by either commercial or noncommercial applicants. It would be wasteful to reserve the only VHF channel assigned to a community for educational use where no educational institution has indicated an intention to apply for the channel at an early date. Radio Wisconsin, Inc., 8 RR 467 [1952].

Educational reservations will not be shifted to the only VHF channels in two communities in order to solve the intermixture problem in the area, where VHF signals are already received in the area, a number of VHF-only sets already exist in the area, a VHF station in the area has commenced commercial operation since filing of the peition and there is no indication that educators in the communities are ready to proceed to establish stations. Sir Walter Television Co., 11 RR 331 [1954].

Educational reservation shifted from Channel 18 to Channel 12 on petition of permittee of a station operating on Channel 12, which, although not presently authorized as an educational station, is in practical effect operating as such and which will be able to obtain grants-in-aid and other financial support as an educational station operating on a VHF channel in an all-VHF state. Permittee will be required to operate as a noncommercial educational station after change

D. Educational reservations (Continued)

(6) VHF-UHF and other channel shifts (Continued)

of the reservation to Channel 12. Television Assignment in Lincoln, Nebraska, 14 RR 1536 [1956].

Educational reservation will not be changed from UHF to VHF where an educational institution has already filed an application for the VHF channel, an application for commercial use of the channel also having been filed. The public interest would be better served by considering the applications of the non-commercial and commercial applicants on their comparative merits. Reservation is not necessary since the educational institution is ready to go ahead with its plans. Channel Assignment in Lubbock, Texas, 14 RR 1562 [1956].

Channel 3 in Madison, Wisconsin will not be changed to educational use, thus requiring the educational station presently operating on Channel 21 to change to Channel 3, since the State Radio Council, licensee of the educational station, probably could not afford to make the change and the result might be to end the operation of the station. Madison Deintermixture Case, 22 FCC 356, 15 RR 1563 [1957].

Educational reservation will not be changed from Channel 24 to Channel 53 at the request of a commercial station operating on Channel 53, in order to permit the latter to shift to Channel 24, where there has been an active interest in the educational assignment on the part of educators and educational institutions. Channel Assignments in Waterbury and Hartford, Conn., 16 RR 1600 [1958].

Educational reservation in Denton, Texas, will not be changed to a UHF channel in order to make the VHF channel available for commercial use. While an educational television station is about to be established in Dallas, 35 miles away, this is not enough to show that there is no need for a separate educational channel in Denton or that the channel will not be used. The question of adequate financial support for a station on the channel is one which must be determined on the basis of all the circumstances in the case and no precise line can be drawn in determining the length of the period during which continued reservation of a channel is appropriate. Channel Assignments in Longview-Denton, Texas, 17 RR 1552a [1959].

Educational channel reservation in Pittsburgh changed from Channel 22 to Channel 16 in order to encourage early inauguration of a new educational service on that channel, which had previously been used for commercial programming so that a large number of receivers in the area were equipped to receive the channel. Channel Assignments in Pittsburgh, 17 RR 1568b [1958].

E. Availability of channels

See also (F)(1), infra.

In a situation where VHF Channels 2, 5, 8 and 11 had been assigned to a city, authorizations had been issued for all except 11, and the proposed new allocation plan would assign Channel 8 to another city and assign Channel 11 to the licensee of Channel 8 in the first city, the Commission, by granting an application of the licensee of Channel 11 for merger with a permittee of another

E. Availability of channels (Continued)

television station in the same city upon condition that the license be surrendered before program test authorization was issued for the other station, did not thereby make Channel 11 "available" to other applicants for television construction permits in the same city so as to preclude a later change in the condition permitting assignment of the license rather than surrender. No legal rights as to such channel accrued to such applicants, and applicants for construction permits have no right to comparative consideration with an application for assignment of license. The proposal to reallocate Channel 8 was an independent matter which did not give the applicants any right to a comparative hearing, and in any event it was still only a proposal and it was also proposed to assign a UHF channel to the city. Atlanta Newspapers, Inc., 7 RR 482 [1951].

Rule which provides that application may be filed to construct television broadcast stations on assigned channels, clearly refers only to unoccupied channels. Where a construction permit has been granted, the specified channel is for all practical purposes deleted from the Table of Assignments, and it is not available for application unless the construction permit is surrendered or revoked or the license comes up for renewal. WKST, Inc., 15 RR 120 [1957].

F. Implementation of channel allocations

(1) Effect of channel shifts on outstanding licenses and construction permits - rights of new applicants

See also A(2), supra.

Where a television channel had been assigned to New Castle, Pa. and a construction permit issued for operation of a station in that city, subsequent reassignment of the channel to New Castle, Pa.-Youngstown, Ohio as a hyphenated assignment does not give applicants for use of the channel in Youngstown a right to a comparative hearing with the New Castle permittee where the Commission finds, on the basis of substantial evidence, that the station is actually a New Castle station and not a Youngstown station. While the station's transmitter and antenna had been moved to Youngstown, its main studio remained in New Castle and there was no evidence that this was a sham or that it was in reality a Youngstown station, even though it did serve Youngstown and competed with Youngstown stations for audiences, networks and advertisers. Community Telecasting Co. v. FCC, 103 U.S. App. D.C. 139, 255 F.(2d) 891, 17 RR 2029 [1958].

The Commission did not abuse its discretion in ruling that a construction permit for a New Castle, Pa. television station was not automatically cancelled by reassignment of the channel to New Castle, Pa.-Youngstown, Ohio as a hyphenated assignment. Community Telecasting Co. v. FCC, 103 U.S. App. D.C. 139, 255 F.(2d) 891, 17 RR 2029 [1958].

A person who was issued a construction permit for a television station on Channel 1, after having authorized the Commission to select a channel for him, and who made no appearance or formal protest in public hearings looking toward deletion of Channel 1 because of interference problems, may not recover damages from the United States because of the deletion of the channel and revocation of his permit. The claimant had not perfected his applications for other

F. Implementation of channel allocations (Continued)

(1) Effect of channel shifts on outstanding licenses and construction permits—rights of new applicants (Continued)

channels although he made several. The claimant and his corporation had not demonstrated the required financial condition and he had made misleading representations to the Commission. While the claimant had suffered losses, these were due in the most part to his other activities and to general economic conditions and not to the Commission's action, and the claimant had not made an adequate showing of damage. Gleeson v. United States, 140 Ct. Cl. 265, 16 RR 2001 [Ct. Cl. 1957].

Deletion of a channel from the television allocation table after a public hearing cancels authority previously granted to a permittee under a construction permit and extension of completion date will be denied. Broadcasting Corp. of America, 4 RR 1424 [1949].

In a situation where VHF Channels 2, 5, 8 and 11 had been assigned to a city, authorizations had been issued for all except 11, and the proposed new allocation plan would assign Channel 8 to another city and assign Channel 11 to the licensee of Channel 8 in the first city, the Commission, by granting an application of the licensee of Channel 11 for merger with a permittee of another television station in the same city upon condition that the license be surrendered before program test authorization was issued for the other station, did not thereby make Channel 11 "available" to other applicants for television construction permits in the same city so as to preclude a later change in the condition permitting assignment of the license rather than surrender. No legal rights as to such channel accrued to such applicants, and applicants for construction permits have no right to comparative consideration with an application for assignment of license. The proposal to reallocate Channel 8 was an independent matter which did not give the applicants any right to a comparative hearing, and in any event it was still only a proposal and it was also proposed to assign a UHF channel to the city. An applicant could not contend that he had relied on the original merger condition and not opposed reallocation of Channel 8. Even if he had so relied, this would not give him a right to comparative consideration and he could still oppose the reallocation. Atlanta Newspapers, Inc., 7 RR 482 [1951].

Channel 13 will not be substituted for Channel 43 so as to allow petitioner, permittee of Channel 43, to change to Channel 13 but interested parties will be given an opportunity to apply for Channel 13. Delta Television, Inc., 11 RR 1559 [1954].

The problem of inadequate separations will not be avoided by specifying a particular transmitter site and issuing a show cause order to permit a UHF station to shift to the new channel and employ the specific site. A show cause order will not be issued to a UHF station for the use of a VHF channel proposed to be assigned to a community. If the channel is assigned it should be available for any applicants who wish to apply. WBUF-TV, Inc., 12 RR 218a [1955].

Channel 3 shifted from Montpelier to Burlington, Vermont, and existing station on that channel authorized to operate as a Burlington station. Mt. Mansfield Television, Inc., 12 RR 1520 [1956].

F. Implementation of channel allocations (Continued)

(1) Effect of channel shifts on outstanding licenses and construction permits – rights of new applicants (Continued)

Show cause order will not be issued to permit an existing UHF station to operate on VHF channel newly assigned to the community. Elmira Television, Inc., 13 RR 1536 [1956].

Where channel 21 was assigned to Fort Wayne, Indiana, in accordance with relaxed transmitter-spacing rules, the channel would not be made available exclusively for applicants for Channel 69 in a present proceeding. 14 RR 1517 [1956].

Use of the modification procedure under Section 316 of the Act is inappropriate where a channel on which a station is operating is shifted from one community to a larger nearby city on the petition of the permittee of the station. Permittee may apply for authority to operate as a station of the latter city under §3.607(a) of the Rules. Channel Assignment in Fort Wayne, Ind., 14 RR 1571 [1957].

Channel 13 was reassigned from Warner Robins to Macon, Georgia after adoption of new minimum separation rules. Licensee operating on the channel was not ordered to show cause why its authorization should not be modified to specify operation at Macon, since the amendment was effectuated on its petition. The licensee could apply for authority to operate as a Macon station under §3.607(a). Channel Assignment in Macon, Georgia, 14 RR 1581 [1957].

Channel 18 will be shifted from Lebanon to Lafayette, Indiana in order to make for more efficient use of channels, but authorization of existing station operating on Channel 59 in Lafayette will not be modified to specify Channel 18. All interested parties will be able to apply for Channel 18. Channel Assignment in Lafayette, Indiana, 14 RR 1584 [1957].

Channels 62 and 14 were exchanged between Evansville, Ind., and Owensboro, Ky, where because of arrangements made between the parties involved the change would make possible the affording of a local television service in Owensboro at an early date. Outstanding authorizations of the stations involved were modified without further show cause proceedings because of the unusual circumstances. Channel Assignment in Evansville, Ind., 14 RR 1591 [1956].

A VHF licensee in Evansville was not deprived of its statutory right to a full adjudicatory-evidentiary hearing by the deletion of its channel in rule making proceedings, since the licensee retained its right to a full evidentiary hearing before its authorization could be modified. Evansville Deintermixture Case, 15 RR 1573 [1957].

Channel 15 is substituted for Channel 41 in Florence, Alabama at the request of the holder of the construction permit for Channel 41 in that city. Requests that Channel 15 be made available to other applicants in addition to the petitioner are denied. Channel Assignment in Florence, Ala., 15 RR 1715 [1957].

On the petition of the licensee of channel 8 in Muskogee, Oklahoma, the only VHF assignment in the city, that channel is shifted to Tulsa, Oklahoma. The

F. Implementation of channel allocations (Continued)

(1) Effect of channel shifts on outstanding licenses and construction permits – rights of new applicants (Continued)

shifted channel is granted to the existing Muskogee licensee (while will continue to maintain a studio in Muskogee) over the objection of a CP holder of a Tulsa UHF facility never built, who sought an opportunity to apply for Channel 8 if assigned to Tulsa. Channel Assignment in Tulsa, Oklahoma, 15 RR 1720 [1957].

Television channel assignments in the South Bend-Elkhart area and related areas are changed and South Bend-Elkhart made a hyphenated area. However, authorization of an existing Elkhart station will not be modified to specify operation as a South Bend-Elkhart station. Authority to identify the station with more than one city may be considered on the basis of a request for waiver of the rules. Channel Assignments in South Bend-Elkhart, Indiana, 16 RR 1506 [1957].

Channel 11 will be reassigned from Galveston to Houston, Texas. The Galveston station, which had requested the change in order to be permitted to identify itself as a Houston-Galveston station, had given assurances that it would maintain programming and technical personnel, local offices and auxiliary studios in Galveston, would continue to solicit local advertising and offer a favorable local rate to Galveston and would continue to provide a city-grade service to that city. License of the Galveston station was modified to specify operation on Channel 11 in Houston. Channel Assignments in Galveston-Houston, 16 RR 1605 [1958].

Transfer of Channel 73 from Youngstown to Pittsburgh, and change of authorization of a Channel 73 permittee in Youngstown to a different channel, is withdrawn. There is no need for an additional UHF channel in Pittsburgh and since the Channel 73 permittee has never constructed its station a modification of its authorization is not necessary for the preservation of an existing service. The public interest will best be served by selecting the best qualified applicant for the new channel in Youngstown (Channel 33). Channel Assignments in Pittsburgh-Youngstown, 17 RR 1567 [1958].

Licensee of a station on Channel 8 in Florence, S. C. will be permitted to continue to operate on Channel 8 pending final action of the Commission on any application for regular operation on Channel 8 in Winston-Salem-High Point-Greensboro, to which the channel has been shifted. While this would preclude temporary operation on Channel 8 in Winston-Salem-High Point-Greensboro, the public interest did not call for authorization of temporary operation on the channel by the licensee of a UHF station in Winston-Salem which had been off the air for more than a year. Channel Assignments in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

Channel 9 will be shifted from Hattiesburg, Miss. to Baton Rouge, La. The licensee of Channel 9 in Hattiesburg, which had requested the shift of channel, will not be given licensee or permittee rights in the channel at Baton Rouge, but other applicants will be allowed to file for the use of the channel. Channel Assignments in Baton Rouge-Hattiesburg, 18 RR 1666 [1959].

F. Implementation of channel allocations (Continued)

(2) License modification proceedings

(See also (1), supra).

Proceedings pursuant to an order to show cause directed to a VHF licensee, whose channel has been deleted and a UHF channel substituted, will not be stayed pending action on court appeals taken from the deintermixture order. Evansville Television, Inc., 15 RR 544 [1957].

Existing UHF station in an area is not entitled to a hearing under Section 316 of the Act on the theory that addition of a VHF channel in the area constitutes a modification of its license because of the competitive effect on its operations. Miami Drop-In Case, 15 RR 1642a [1958].

A VHF licensee in Evansville was not deprived of its statutory right to a full adjudicatory-evidentiary hearing by the deletion of its channel in rule making proceedings, since the licensee retained its right to a full evidentiary hearing before its authorization could be modified. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1573 [1957].

In a proceeding on an order to show cause why a station license should not be modified to specify a UHF channel instead of a VHF channel, in connection with a reallocation of channels, the burden of proceeding with the evidence and the burden of proof are on the Commission, and the station involved is not in the position of an applicant. Request by the station that additional counsel be furnished from the General Counsel's office on the ground that Broadcast Bureau counsel is not acting in a neutral capacity but is hostile to the station, and is not introducing relevant data into the record, is without merit in the absence of any showing of specific evidence which has not been made a matter of public record. Evansville Television, Inc., 17 RR 158 [1958].

Show cause proceedings are not ordinarily necessary to effect a change in offset carrier designation of a channel assigned to an existing station. Harrisburg Drop-In Case, 17 RR 1629 [1958].

(3) Conditional grants; outstanding applications

The Commission was not arbitrary in determining to "deintermix" channel assignments in a particular city and in assigning a UHF channel to the successful applicant in a competitive hearing proceeding on applications for use of the sole VHF channel originally assigned to the city but deleted after a conditional grant of the application. Considerations of fairness to the applicant, which had gone through a lengthy hearing for a VHF channel, did not outweigh the public interest considerations involved. WIRL Television Co. v. United States, 102 U.S. App. D.C. 341, 253 F.(2d) 863, 16 RR 2049 [1958].

In view of the Commission's notice of proposed deintermixture rule making with respect to the proposed reassignment of a VHF channel and the proposed assignment of a UHF channel to the community to which the VHF is presently assigned, the grant in an adjudicatory proceeding for the VHF channel should be conditioned in such a manner as to stay constrcution pending outcome of the rule making proceeding. Such action is based on reasons of sound policy and is in no way a prejudgment of the rule making proceeding. The Commission believes,

F. Implementation of channel allocations (Continued)

(3) Conditional grants; outstanding applications (Continued)

nevertheless, that the equities of the situation as well as the public interest require that a permit issue to the prevailing applicant. WMBD, Inc., 11 RR 533 [1956]; Sangamon Valley Television Corp., 11 RR 783 [1956]; Travelers Broadcasting Service Corp., 12 RR 689 [1956].

The Commission has power in a comparative television proceeding to grant an application for a VHF channel subject to a condition which allows the Commission to specify, without further hearing, either the VHF channel requested or such UHF channel as may be substituted at the conclusion of a pending rule making proceeding. Such procedure is not inconsistent with Sections 303(f) and 316(a) of the Act, and the prevailing applicant cannot reasonably contend that the conditional grant constituted an unqualified grant of its application. Since the condition constituted an integral part of the grant, the petitioner may not accept the grant and reject the condition. If the prevailing applicant accepts the grant, it may not object to the condition; if it rejects the conditional authorization it has no grant whatsoever. The Commission may amend the authorization to specify operation on the UHF channel in lieu of the channel specified in the application. WMBD, Inc., 22 FCC 1039, 11 RR 609 [1957].

Where the Commission during pendency of a proceeding on competitive applications for a VHF channel proposed to deintermix the area and assign two UHF channels in place of the VHF channel, and thereafter granted one of the applications on condition that construction be stayed until conclusion of the rule making proceeding, a request by the unsuccessful applicant in the VHF proceeding that its application also be granted for operation on one of the UHF channels will be treated as an application and granted, where the applicant has been found qualified and no other applicant has expressed an interest in the use of the channel since the finalization of the assignment to the community. WMBD, Inc., 22 FCC 1345, 11 RR 613 [1957].

The Commission has power in a comparative television proceeding to grant an application for a VHF channel subject to a condition which allows the Commission to specify without further hearing, either the VHF channel requested or such UHF channel as may be substituted at the conclusion of a pending rule making proceeding. The applicant cannot acept the grant and reject the condition. Sangamon Valley Television Corp., 22 FCC 1173, 11 RR 814f[1957].

Grant of construction permit for a new VHF station is conditioned in such a manner as to stay any construction pending the outcome of a deintermixture rule making proceeding on the proposed reassignment of the VHF channel to another community and the assignment of a UHF channel to the community involved. This in no way constitutes a pre-judgment of the rule making proceeding, but rather that authority for construction should be withheld for reasons of sound policy. Loyola University, 12 RR 1017 [1956].

An applicant for Channel 8 in Peoria, whose application was granted on condition that a different channel could be substituted if Channel 8 was deleted as proposed in pending rule making proceedings, is not a "permittee" entitled to the protection of Sections 303(f) and 316 of the Act. Channel 8 may be deleted by rule making proceedings under such circumstances, and an evidentiary hearing is not required. No further proceedings are needed, since the applicant either accepted the grant subject to the condition, or did not accept it. Peoria Deintermixture Case, 22 FCC 342, 15 RR 1550c [1957].

F. Implementation of channel allocations (Continued)

(4) New channels – rights of existing stations in area

(See also (A)(2), supra and (F)(5), infra).

The Commission was not arbitrary, capricious or unreasonable in refusing to modify license of a UHF station to permit operation on a VHF channel newly assigned to the area, and in opening the question of allocating the channel to other applicants as well as the UHF licensee. Friedman v. FCC, 263 F.(2d) 493, 18 RR 2029 [U.S. App. D.C. 1959].

An existing UHF station in an area will not be allowed to shift to a VHF channel newly assigned to the area without going through a comparative hearing with other applicants, nor is the station entitled to a hearing under Section 316 of the Act on the theory that the addition of the VHF channel constitutes a modification of its license because of the competitive effect on its operations. Miami Drop-In Case, 15 RR 1642a [1958].

Order allocating Channel 10 to Tampa-St. Petersburg will not be conditioned so as to permit UHF licensee in St. Peterburg to shift to Channel 10. Other persons are entitled to apply for use of the channel and the public interest will best be served by selecting the best qualified applicant from all such applicants. Tampa Drop-In Case, 15 RR 1667 [1957].

(5) Temporary operation

Permittee of a UHF television station will not be granted special temporary authority to operate on a VHF channel reserved for educational use for a minimum of three years and thereafter until a qualified applicant is granted authority to use the channel. Rib Mountain Television, Inc., 11 RR 983 [1955].

A UHF licensee will not be permitted to operate on a reserved channel pending a determination of the rule making proceeding involving possible reassignment of the channel. Channel Assignment to Des Moines, Iowa, 14 RR 1524d [1956].

UHF licensees in the Albany-Schenectady-Troy area will be given authority to operate temporarily on VHF channels newly assigned to the area, but other parties will be allowed to apply for the channels and no preference will be given the UHF operators on the basis of such temporary VHF operation. Albany-Schenectady-Troy Channel Assignments, 23 FCC 358, 15 RR 1514a [1957].

Where Channel 36 is removed from St. Louis in order to assign it to Springfield, Illinois, and Channel 2 is moved from Springfield to St. Louis, licensee already operating on Channel 36 in St. Louis will be given temporary authority to operate on Channel 2, pending action on applications for use of that channel which may be filed by the licensee and others. Acceptance of such temporary authorization will operate as a waiver of any rights on Channel 36 and no preference will be given to the licensee, as an applicant for Channel 2, because of the temporary grant of expenditures pursuant thereto. If the licensee of Channel 36 does not accept this temporary authorization, Channel 39 will be assigned to Springfield. Assignment of Channel 36 is preferable because sets in the area are equipped to receive that channel. Springfield Deintermixture Case, 22 FCC 318, 15 RR 1525 [1957].

F. Implementation of channel allocations (Continued)

(5) Temporary operation (Continued)

The Commission did not unlawfully convert a rule making proceeding into a licensing proceeding or violate Sections 308, 309(a) or 319 of the Act in granting temporary authorization for operation on a VHF channel, assigned to a city in deintermixture proceedings, to the licensee of a UHF station in the city whose channel was deleted. Springfield Deintermixture Case, 15 RR 1539 [1957].

Where the Commission assigned two new VHF channels to an area and authorized existing UHF stations in the area to operate on the new channels pending a hearing on applications for regular operation on the channels, but no condition was made that the two UHF stations begin operating on the VHF channels at the same time, temporary operation on one of the channels would not be stayed, at the request of an applicant for that channel, until operation could begin on the other channel. Veterans Broadcasting Co., Inc., 16 RR 423 [1957].

UHF station in operation in Harrisburg, Ill. will be permitted to shift to VHF channel newly assigned to the area, on a temporary basis and subject to the outcome of any hearing ordered on applications which may be filed for use of the channel. Channel Assignments in Carbondale-Harrisburg, Ill., 16 RR 1617 [1958].

In view of the fact that the second harmonic of the local oscillator in conventional VHF television receivers, and possible higher orders of harmonics, are capable of causing harmful interference to the reception of UHF television stations, a Channel 15 station will be allowed to operate temporarily on a different channel in order to avoid interference caused by operation of a station on Channel 10 in the same area. However, the station will not be given temporary authority to operate on Channel 13, which has not yet been assigned to any applicant and for which the Channel 15 licensee is an applicant. While a competing applicant may be granted the right to operate on a contested channel during a comparative hearing under appropriate circumstances, this operation will not be allowed where it would jeopardize the continuance of another television service in the area, and operation on Channel 13 would have an adverse effect on continued operation of a Channel 27 station in the area. Licensee will therefore be given temporary authority to operate on Channel 21, a channel reserved for non-commercial educational use in the area but for which no application is pending, and which can be received by a substantial number of UHF receivers. Peninsula Broadcasting Corp., 17 RR 706 [1958].

Licensee of a station on Channel 8 in Florence, S. C. will be permitted to continue to operate on Channel 8 pending final action of the Commission on any application for regular operation on Channel 8 in Winston-Salem-High Point-Greensboro, to which the channel has been shifted. While this would preclude temporary operation on Channel 8 in Winston-Salem-High Point-Greensboro, the public interest did not call for authorization of temporary operation on the channel by the licensee of a UHF station in Winston-Salem which had been off the air for more than a year. Channel Assignments in Winston-Salem-High Point-Greensboro, 17 RR 1645 [1958].

F. Implementation of channel allocations (Continued)

(6) Effect of pendency of rule making proceedings or of requests for rule making

(See also (3), supra).

The Commission's decision to adhere to the 1952 television allocation plan for the time being, as reflected in its refusal to institute a freeze on construction permits for VHF stations to prevent competition with existing UHF stations, was within its statutory authority and the courts may not interfere with it. The court will not compel the Commission to delay existing adjudicatory proceedings conducted in accordance with the statute and valid regulations thereunder in order to await the outcome of rule-making proceedings. Coastal Bend Television Co. v. FCC, 98 U.S. App. D.C. 251, 234 F.(2d) 686, 13 RR 2189 [1956].

The Commission was not arbitrary or capricious in refusing to stay or condition a grant of a VHF television channel, made after a comparative proceeding, pending action on a request for deintermixture filed by a UHF permittee in the same community. While the Commission had stayed or conditioned grants made in other communities, in those cases the Commission had already made tentative or preliminary conclusions that deintermixture might be appropriate. In the instant case it had made no such conclusions and there was a public interest in bringing a new television service to the community without further delay. Jacksonville Journal Co. v. FCC, 101 U.S. App. D.C. 12, 246 F.(2d) 699, 15 RR 2045 [1957].

Petition for rehearing and for stay of grant or construction pending disposition of petition to institute rule making proceeding seeking to amend Table of Assignments to delete the channel involved will be denied where station will make available a second local television service. Request for institution of rule making proceeding will not be prejudiced thereby since issuance of construction permit cannot operate to negate Commission's rule making power and rule making power is broad enough to permit substitution of channels. WPTF Radio Company, 12 RR 669 [1956].

Parties who have filed a petition for changes in television channel assignments have no standing to request the Commission to stay adjudicatory proceedings involving the assignments in question where they are not parties to the adjudicatory proceedings and have not filed a petition for leave to intervene or showed any good cause for such a late request, initial decision having been issued and oral argument in one case having been held before the petition was filed. The discretion to stay a proceeding in such a situation is vested in the Commission and the Commission cannot recognize private interests in this regard. Biscayne Television Corp., 12 RR 1463 [1955].

Action on an application for a VHF station will not be delayed pending consideration of general rule making questions. The Commission will not be precluded from carrying out any rule changes it may decide upon by assignment of particular channel under existing rules. Gulf Coast Broadcasting Co., 13 RR 223 [1955].

Stay of decision in an adjudicatory proceeding is not a matter of right but is within the discretion of the Commission and depends on the circumstances of the particular case. Action on comparative television applications will not be stayed pending general rule making proceedings. Radio Wisconsin, Inc., 13 RR 349 [1955].

F. Implementation of channel allocations (Continued)

(6) Effect of pendency of rule making proceedings or of requests for rule making (Continued)

Requests by UHF permittees for consolidation of VHF adjudicatory proceedings with rule making proceedings, for stay, etc. denied. Evansville Television, Inc., 13 RR 369; WPTF Radio Co., 13 RR 412; City of Jacksonville, 13 RR 416; California Inland Broadcasting Co., 13 RR 419; Biscayne Television Corp., 13 RR 423; WMBD, Inc., 13 RR 632; Travelers Broadcasting Service Corp., 13 RR 634; Loyola University, 13 RR 639; Port Arthur College, 13 RR 640c; Superior Television, Inc., 14 RR 79.

Stay of effective date of VHF construction permit pending disposition of pending rule-making proceedings, requested by protestant whose protest had been denied, was refused. Spartan Radiocasting Co., 13 RR 611 [1955].

UHF permittee will not be permitted to intervene in proceeding on applications for VHF construction permit in its area where the petition is not filed until long after issuance of initial decision and oral argument thereon, the sole effect of granting intervention would be to delay the inception of a first television service to the city to which the VHF channel is assigned, and the relief requested is in conflict with the request of petitioner in a rule-making petition filed by it. Columbia Amusement Co., 14 RR 757 [1956].

Construction permit which has been outstanding for more than two years will not be modified to include a condition that no construction be undertaken until initiation and conclusion of rule making proceedings to delete the channel involved from the city. American Television Co., Inc., 14 RR 836 [1956].

Grant of VHF application will not be stayed or conditioned so as to prevent construction until request for rule-making to delete the channel has been ruled on. No irreparable injury was shown and the only effect of granting such relief would be to delay institution of a new service. Radio Station WSOC, Inc., 14 RR 901 [1956].

Grant of application for modification of VHF construction permit to change transmitter site and increase power will not be conditioned so as to stay construction pending outcome of a rule making proceeding looking toward possible deintermixture of the area. Dispatch, Inc., 15 RR 896 [1957].

Finalization of new UHF channel assignments will not be delayed pending resolution of deintermixture policy questions presented by pending petitions. Even if deintermixture should be ordered, it would take some time to accomplish. Argument that one of the parties might make use of an added UHF channel to strengthen its television position is more properly presented in a licensing proceeding and is not appropriate in a rule making proceeding. Channel Assignments in Bakersfield, Calif., 16 RR 1565 [1958].

(7) Effect of pendency of judicial review proceedings

Stay of assignment of a channel to Irwin, Pennsylvania, would not be granted because of pendency of judicial review proceedings seeking to set aside the Commission's refusal to assign the channel to Pittsburgh. Judicial review of

F. Implementation of channel allocations (Continued)

(7) Effect of pendency of judicial review proceedings (Continued)

the assignment of the channel to Irwin had not been sought and it would not be in the public interest to delay processing of applications until the conclusion of the judicial review proceedings, even though such processing would be fruitless should the court reverse the Commission's action with respect to Pittsburgh. WWSW, Inc., 8 RR 700 [1952].

Condition will not be attached to a television grant because of the pendency of judicial review proceedings challenging the reallocation of the channels involved where such a condition is not legally essential in order to protect the rights of the parties. Valley Telecasting Co., 10 RR 695 [1954].

Proceedings pursuant to an order to show cause directed to a VHF licensee, whose channel has been deleted and a UHF channel substituted, will not be stayed pending action on court appeals taken from the deintermixture order. Evansville Television, Inc., 15 RR 544 [1957].

Grant of approval of transfer of control of a VHF television station will not be conditioned so as to make the grant subject to the outcome of an appeal to the Court of Appeals from the Commission's previous refusal to shift another VHF channel to the community, or to whatever action the Commission might take on a proposal to make the area all-UHF. No rule making proposal to delete the channel from the area was in fact pending before the Commission and no condition was necessary with regard to the court cases. Expenditures by the transferee of the station in acquiring the stock of the licensee would not be given any consideration in any future rule making proceedings and to attach the condition requested would imply the contrary. Greater Rockford Television, Inc., 16 RR 438 [1958].

(8) Relationship of rule making and adjudicatory proceedings – collateral attack on channel allocations

(See also (B)(7), supra).

Where the Commission has considered Section 307(b) factors in originally allocating television channels and again in a rule making proceeding involving the particular area, it is not required to review them in an adjudicatory proceeding on applications for use of a VHF channel allocated to an area, because a UHF licensee contends that authorization of a VHF station will result in a nearby community losing its only local television station, a UHF station. Gerico Investment Co. v. FCC, 103 U.S. App. D.C. 141, 255 F.(2d) 893, 17 RR 2049 [1958].

Determination by the Commission in the television allocation proceedings that a particular channel should be deleted from a community and another channel substituted therefor was rule-making, but determination of the question of whether an authorization should be issued to operate a station in the community on the new channel to the existing licensee in the community or to another applicant is licensing and adjudication and involves no rule making questions. The question must be determined in a comparative hearing. Peoples Broadcasting Co., 8 RR 275 [1952].

F. Implementation of channel allocations (Continued)

(8) Relationship of rule making and adjudicatory proceedings – collateral attack on channel allocations (Continued)

Issues will not be specified in a further hearing on an application for a VHF station as to whether it is in the public interest to grant an additional VHF channel in the city until pending rule making proceedings have been decided and Commission policy on deintermixture enunciated or as to the effect a second VHF grant would have on existing UHF operations. Matters essentially rule making in nature should not be interposed in an adjudicatory proceeding. In addition, the request was tardy since it was not made until after a merger and grant of the application in question. WWSW, Inc., 12 RR 858c [1955].

Requests by UHF permittees to intervene in proceeding on applications for VHF construction permits are untimely where they were not filed until long after initial decision and oral argument thereon. Intervention would not be allowed at such a late date on the theory that not until the Commission announced that it would not consider individual deintermixture petitions until conclusion of the newly instituted general rule making proceeding were petitioners aware of the necessity for intervention. In any event, it would not be appropriate to interject into the VHF proceeding matters having to do with the advisability of promulgating rules intended for general applicability or matters relating to economic injury to existing broadcast services. Radio Wisconsin, Inc., 13 RR 349 [1955].

Rule making proceedings concerning deintermixture will not be consolidated with adjudicatory proceedings on applications for VHF channels already assigned to the community. First Report on Deintermixture, 13 RR 1511 [1955].

The question of hazard to air navigation can be considered in the context of a specific application. Channel Assignment in Nashaquitsa, Mass., 14 RR 1501 [1956].

Assignment of channels to a community, which can be accomplished in conformity with the Rules and Standards, will not be denied because of allegations that the channels will be used for satellite operations to the detriment of an existing station in the area. Such questions can be more appropriately considered in passing on applications for use of the channels. Channel Assignment in Clarkston, Washington, 14 RR 1510 [1956].

Record in a comparative case involving applications for television authorization in St. Louis, Missouri or East St. Louis, Illinois will not be reopened to consider effect of changes in channel allocations as they relate to an alleged disparity between VHF assignments in Illinois and Missouri. Questions of this sort are rule making in nature and cannot be resolved in a comparative case. In any event, considerations of fair, efficient and equitable distribution of facilities had been held not applicable to the case. St. Louis Telecast, Inc., 15 RR 46 [1957].

Protestant's right to be heard under Section 309(c) of the Act cannot be used as a vehicle to limit or intrude upon the Commission's rule making activities. Where protestant, by inclusion of an issue as to whether grant of an application

F. Implementation of channel allocations (Continued)

(8) Relationship of rule making and adjudicatory proceedings - collateral attack on channel allocations (Continued)

for a change in transmitter site precludes assignment of Channel 5 to the community which it serves, seeks to establish in a protest proceeding matters which require consideration by the Commission in a pending petition for rule making, the inclusion of the issue in the hearing should not be construed as a finding that such an issue is proper in a protest proceeding. Georgia-Carolina Broadcasting Co., 15 RR 183 [1957].

In the absence of an issue under Section 307(b) of the Act, the Commission is under no duty to make a finding of need to support the grant of a television application when a channel is available. WKAT, Inc., 23 FCC 390, 15 RR 939 [1957].

The standard of "fair, efficient and equitable" distribution of television facilities has been achieved in the Commission's Table of Assignments. A UHF licensee cannot contend, in the context of an adjudicatory proceeding on applications for a VHF construction permit, that the table of assignments is contrary to the public interest, convenience and necessity and violates the standard of fair, efficient and equitable distribution of facilities. Adjudication may not be transformed into rule making merely because the distinction between them may involve difficulties of recognition in a given case. Any improvements in the television allocation structure must be sought through rule making proceedings. WKAT, Inc., 23 FCC 390, 15 RR 939 [1957].

Assignment of Channel 6 to Miami will not modified to permit use of substandard spacings, although the rules with regard to separations might be waived in an adjudicatory proceeding if adequate coverage of Miami could not be provided from available sites. Miami Drop-In Case, 15 RR 1642a [1958].

Channel 8 in Waycross, Ga. will not be reserved for educational use. Applications for use of the channel by a commercial and an educational applicant are pending, and the question whether the channel should be utilized by a commercial or a noncommercial licensee can be better determined in the comparative proceeding. Channel Assignments in Waycross, Ga., 15 RR 1703 [1958].

A proceeding on a show-cause order looking toward modification of the license of a television station to specify a UHF channel instead of a VHF channel, instituted to effectuate a deintermixture order previously entered in rule making proceedings, is an adjudicatory and not a combination adjudicatory and rule making proceeding. Evansville Television, Inc., 16 RR 745 [1958].

Argument that a party might make use of an added UHF channel to strengthen its television position is more properly presented in a licensing proceeding and is not appropriate in a rule making proceeding. Channel Assignments in Bakersfield, Calif., 16 RR 1565 [1958].

Channel 12 will not be reserved for educational use in view of its status as the only channel in Delaware and the existence of applications for its commercial use. Educational applicants may file applications for comparative consideration. Channel Assignments in Wilmington-Atlantic City, 18 RR 1653 [1959].

G. Procedure in allocation of channels

(See also (I), infra).

(1) Institution and conduct of rule making proceedings

The Commission's decision to adhere to the 1952 television allocation plan for the time being as reflected in its refusal to institute a freeze on construction permits for VHF stations to prevent competition with existing UHF stations, was within its statutory authority and the courts may not interfere with it. Such matters were committed by Congress to the discretion of the Commission as an expert administrative agency and as long as the Commission's action has a reasonable factual and legal basis the court may not overturn it. The court will not compel the Commission to delay existing adjudicatory proceedings conducted in accordance with the statute and valid regulations thereunder in order to await the outcome of rule making proceedings. Coastal Bend Television Co. v. FCC, 98 U.S.App.D.C. 251, 234 F.(2d) 686, 13 RR 2189 [1956].

The Commission followed the procedural requirements for rule making in refusing a request for deintermixture of the Hartford area. Springfield Television Broadcasting Corp. v. FCC, 104 U.S.App.D.C. 13, 259 F.(2d) 170, 17 RR 2059 [1958].

The question of geographical assignment of television channels is properly determined in rule making proceedings. That the action will have a substantial effect upon future and present applicants for television station licenses does not transform it into adjudicatory action. There is no requirement that an opportunity for an oral presentation be afforded in a rule making proceeding nor does due process of law require any particular form of hearing, if indeed any hearing at all, in rule making proceedings. Parties whose applications were filed or heard prior to the institution of the television rule making proceedings have no greater rights than potential applicants in so far as the adoption of the allocation table is concerned, nor any right to separate procedural treatment. Oral presentation will not be allowed as a matter of discretion where no showing is made that adequate presentation on written materials is not possible. Daily News Television Co., 7 RR 839 [1951].

Requested amendment of the television allocation table to assign a channel to a community is not rendered moot by the fact that the party seeking the amendment is a permittee on another channel in the community. However, where judicial review proceedings are pending involving refusal of the Commission to allocate a channel to a particular place, and the grant of the proposed amendment would make that allocation impossible, the amendment will be made subject to such action as the Commission may take in the light of the final decision on the court case. Logansport Broadcasting Co., 9 RR 964 [1952].

Educational reservations will be deleted only through regular rule making proceedings. Rib Mountain Television, Inc., 11 RR 983 [1955].

Proposal to change channel assignments in Fresno and Madera, California, was dismissed because of the subsequent issuance of a broader proposal covering the same subject. Channel Assignments in Fresno, California, 14 RR 1528e [1956].

G. Procedure in allocation of channels (Continued)

(1) Institution and conduct of rule making proceedings (Continued)

The Commission is not required to institute formal rule making proceedings on petition of an interested party for deintermixture of an area if it is not convinced that the public interest would be served by adoption of the proposal and it does not appear that any additional material which might be presented in a rule making proceeding would be of assistance to the Commission. Channel Assignments in Champaign-Urbana, Ill., 16 RR 1634b [1958].

(2) Adequacy of notice

(See also (3), infra).

Section 4(a) of the Administrative Procedure Act requires only that a notice of proposed rule making include a description of the subjects and issues involved. There was no violation of the section because the Commission in its Final Report in the television allocation proceeding considered a factor which it had not included in the "priorities" set out in the Third Notice of Proposed Rule Making. The priorities were intended as guides, not as inflexible, unchangeable rules. The Commission was not required to start the proceedings over again every time it decided to take account of some additional factor. Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F.(2d) 24, 10 RR 2008 [1954].

Action of the Commission in determining, after full rule making proceedings, to delete VHF Channel 9 from an area is not void because the Commission's original proposal did not refer to deletion of that channel, where the original notice of proposed rule making gave adequate notice of "the subjects and issues involved" and the objecting party had adequate opportunity to comment on the suggestion that Channel 9 be deleted, which was made in a counterproposal filed by another party, but chose not to do so or even to file a petition for reconsideration after the adoption of the final order. Owensboro on the Air, Inc. v. United States, 104 U.S. App. D.C. 391, 262 F.(2d) 702, 18 RR 2001 [1958].

Errors in the Assignment Table of television channel allocations with reference to assignment separations may be corrected without further notice procedures where the proposals for correction are made in a petition for reconsideration properly filed in the allocation proceeding and interested parties have had a full opportunity to submit comments or counterproposals. However, such changes will not be made effective immediately since persons affected are entitled to notice of the change. Chesapeake Television Broadcasting, Inc., 8 RR 125 [1952].

Errors in the Assignment Table of television channel allocations with reference to assignment separations may be corrected without further notice procedures where the proposals for correction are made in a petition for reconsideration properly filed in the allocation proceeding and interested parties have had full opportunity to submit comments or counterproposals. Polan Industries, 8 RR 130 [1952].

G. Procedure in allocation of channels (Continued)

(2) Adequacy of notice (Continued)

There was no error in assigning Channel 33 to Norfolk-Portsmouth-Newport News, even though the Third Notice of Further Proposed Rule Making proposed to assign that channel to Newport News. Nothing precludes a party from applying for authority to erect a station to serve only Newport News. Eastern Broadcasting Corp., 8 RR 226 [1952].

Petition for reconsideration of television channel assignments will not be entertained on the basis of allegations that petitioner had not been afforded notice of the methods of computing mileage separations adopted in the Sixth Report and Order, since the question of the method of measuring assignments and facilities separations was squarely put in issue in the proceedings. Petitioner had not requested that the method of measurement be revised or amended or suggested or proposed a different or alternative method of measurement. Western Broadcasting Co., 8 RR 264 [1952].

Interested parties were afforded reasonable opportunity to prepare and file applications for a television channel added to a community by an order adopted for the purpose of correcting an error in the original allocations, where the new assignment was made approximately 60 days before the grant of an application for operation on such channel. Polan Industries, 8 RR 398 [1952].

Section 4(a) of the Administrative Procedure Act was not violated in the institution of deintermixture rule making proceedings since interested parties were given full opportunity to submit comments, data, arguments and counterproposals. Evansville Television, Inc., 14 RR 829 [1956].

(3) Comments and counter-proposals

(See also (2), supra).

While television allocation proceedings are ordinarily considered as rule making, rather than adjudicatory in nature, ex parte representations to members of the Commission in such a proceeding vitiate the action of the Commission where resolution of conflicting private claims to a valuable privilege is involved. Sangamon Valley Television Corp. v. United States, 18 RR 2109 [U. S. App. D. C. 1959].

Agency action that substantially and prejudicially violates the agency's rules cannot stand. Where the Commission's regular practice in television allocation proceedings was to prescribe a cut-off date for filing of comments favoring or opposing the proposed allocation, receipt of ex parte representations off the record after the time for filing formal comments had expired was improper and required vacation of the Commission's action. Sangamon Valley Television Corp. v. United States, 18 RR 2109 [U. S. App. D. C. 1959].

The Commission did not, in violation of Section 4 of the Administrative Procedure Act, limit the scope of comments that might be filed by interested parties with respect to Appendices A and B of the Third Notice of Proposed Rule Making in the television allocation proceedings by requiring that persons objecting to the proposals refer to the volume and page number of the transcript or exhibit

G. Procedure in allocation of channels (Continued)

(3) Comments and counter-proposals (Continued)

containing the evidence on which their objection is based. Appendices A and B are in effect a proposed decision based on the record in the hearings previously had and comments filed with respect to Appendices A and B are, in substance, exceptions to such proposed decision. WKMH, Inc., 7 RR 320 [1951].

The Commission has authority to require that pleadings filed in the television allocation proceeding contain appropriate engineering information where engineering matters are involved. WKMH, Inc., 7 RR 320 [1951].

A comment urging that a VHF channel, now in commercial operation be made available instead for noncommercial educational use, is proper under the Commission's Third Notice of Proposed Rule-Making in the television proceedings and the fact that the effectuation of such a proposal, if it were made final, would require a show cause hearing at some future date and would move an existing station to the UHF band, does not render it defective. Presque Isle Broadcasting Co., 7 RR 427 [1951].

Where the initial comment of a state board of education proposed assignment of flexibility channels for educational use in the state, a proposal in its subsequent sworn statement that specific channels which were assigned under the Commission's table, be set aside for educational use, did not fall within the scope of the issues raised by the initial pleading and could not be considered. Connecticut State Board of Education, 7 RR 751 [1951].

Late filing of comment proposing assignment of Channel 3 to Santa Barbara, California was permitted where the proposal stemmed from changes in the proposed assignment plan made in the United States-Mexican Agreement. Radio KIST, Inc., 7 RR 949 [1952].

A proposal to assign a particular television channel to a given community was not entitled to comparative consideration with proposals which would have assigned the channel to another community where the first proposal did not meet the minimum separation requirements. High Point Enterprise, Inc., 8 RR 220 [1952].

An error in assignment of a particular television channel arising from the location of the transmitter of an existing station which was shifted to that channel cannot be corrected by changing that station to still another channel, since new proposals may not be made in the allocation proceedings after issuance of the Commission's Report, and because it would be in contravention of the Temporary Processing Procedure. Memphis Publishing Co., 8 RR 268 [1952].

Petition for reassignment of television channels cannot be considered, even though designated as a petition for reconsideration, where no error in the Commission's original decision is asserted but the petition is based on a new evidentiary showing. Whether a community should have been considered as a "primarily educational center" cannot be considered where no request to so designate the community was made during the course of the allocation proceedings. Radio Wisconsin, Inc., 8 RR 323 [1952].

G. Procedure in allocation of channels (Continued)

(3) Comments and counter-proposals (Continued)

Consideration of a proposal submitted for the first time in a petition for reconsideration, inconsistent with the position taken by the petitioner in the television allocation proceedings, would subvert orderly procedures and would deny other parties protection to which they are entitled. Such a proposal will not be considered. Logansport Broadcasting Corp., 8 RR 401 [1952].

A party to the television proceedings may not on a petition for reconsideration contest the Commission's decision denying a counterproposal of another party, where the party opposed the counterproposal on the merits. Logansport Broadcasting Corp., 8 RR 659 [1952].

A further notice of proposed rule making is not required to be published before the Commission can adopt a counterproposal submitted in a rule making proceeding, where the other parties have had notice of the counterproposal and an opportunity to oppose it. Head of the Lakes Broadcasting Co., 10 RR 169 [1954].

Institution, on the Commission's own motion, of deintermixture rule making proceedings involving specific communities and areas will not be reconsidered and the notices withdrawn on the basis of contentions which may more appropriately be considered as comments in the rule making proceeding. Such contentions are prematurely raised. Evansville Television, Inc., 14 RR 829 [1956].

Proposal to assign Channel 31 in Peoria, Illinois cannot be severed from proposal to deintermix Peoria by deletion of Channel 8 and addition of Channel 25 where the two proposals are integral parts of the overall interim deintermixture program. WMBD, Inc., 14 RR 834 [1956].

A proposal to add a channel in a particular community will not be withdrawn from consideration in a rule making proceeding because the original proponent of the proposal wishes to withdraw it. A proponent of a proposal does not have a proprietary interest therein. Period of 21 days for filing of comments was not unduly short, where the original proceeding had been pending for many months and the party objecting had itself petitioned for the rule making in question. Evangeline Broadcasting Co., 14 RR 1197 [1957].

A counterproposal seeking deletion of a channel from a community is properly considered where it relates to the same area as the original proposal and ample opportunity to file reply comments has been afforded. Albany-Schenectady-Troy Deintermixture Case, 22 FCC 293, 15 RR 1501 [1957].

In a rule making proceeding looking toward deintermixture of the Evansville area through deletion of Channel 7, a counterproposal seeking to delete Channel 9 in Hatfield, Indiana or reserve it for educational use was not invalid as beyond the scope of the proceeding. All parties were on notice that the proceeding concerned the need for and advisability of area deintermixture, and Hatfield is in the Evansville area. Applicants for Channel 9 in Hatfield had ample opportunity to submit comments in opposition to the counterproposal. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1573 [1957].

G. Procedure in allocation of channels (Continued)

(3) Comments and counter-proposals (Continued)

The Commission is not confined to adoption of amendments as specifically proposed in Notices of Proposed Rule Making but may also consider and adopt counter-proposals falling within the general scope of the rule making proceeding of which other interested parties have had adequate notice. Proposed deletion of Channel 9 from Hatfield, Indiana was within the scope of a proposal to remove Channel 7 from nearby Evansville. Adequate notice was given of proposal to shift Channel 7 from Evansville to Louisville, Kentucky. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1586 [1957].

Counter-proposals relating to television channels not involved in a notice of proposed rule making, if presented in the form of comments, may be given consideration without the issuance of further notices of proposed rule making as long as interested parties have notice and adequate time to comment. Channel Assignment to Ainsworth, Nebraska, 15 RR 1617 [1957].

The Commission is not limited to the action tentatively proposed in a notice of proposed rule making but may also consider and adopt counter-proposals or other proposals falling within the general purview of its published notice. Adequate notice is given when the Commission clearly puts interested parties on notice of the general subject matter to be considered and ample opportunity is furnished all parties to submit comments on the Commission's proposal and any counter-proposals. Harrisburg Drop-In Case, 17 RR 1629 [1958].

(4) Hearing

State of New Jersey will not be given an opportunity for oral presentation in connection with its request for assignment of television channels for educational use in the state, no adequate showing having been made that the Commission cannot satisfactorily consider and dispose of the issues on the basis of the documents filed. State of New Jersey, 7 RR 754 [1951].

Motion for oral presentation in television allocation proceedings was denied where the only ground assigned for the motion was that the unusual position of the city in relation to its surrounding rural population could not satisfactorily be presented except through an oral presentation. Cornell University, 7 RR 755 [1951].

Request for oral hearing in the television allocation proceedings will be denied where no showing has been made that the issues cannot be satisfactorily considered and disposed of on the basis of written materials. Southern Illinois University, 7 RR 831 [1951].

The question of geographical assignment of television channels is properly determined in rule making proceedings. There is no requirement that an opportunity for an oral presentation be afforded in a rule making proceeding nor does due process of law require any particular form of hearing, if indeed any hearing at all, in rule making proceedings. Oral presentation will not be allowed as a matter of discretion where no showing is made that adequate presentation on written materials is not possible. Daily News Television Co., 7 RR 839 [1951].

G. Procedure in allocation of channels (Continued)

(4) Hearing (Continued)

There is no necessity for an oral hearing in a rule making proceeding for assignment of a VHF channel to an area. Ultra High Frequency Television Assn., 10 RR 174 [1954].

Rule making proceedings, such as those involving allocation of television channels, will not ordinarily be designated for an evidentiary hearing. Channel Assignment in Terre Haute, 16 RR 1643 [1958].

No evidentiary hearing is necessary in shift of Channel 7 from Pine Bluff to Little Rock, Ark. Channel Assignment in Little Rock, 17 RR 1599 [1958].

(5) Findings and conclusions

The television allocation proceeding was rule making and not adjudication and formal findings and conclusions were not requried. Rule making is not transformed into adjudication merely because the rule adopted may be determinative of specific situations arising in the future. Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F.(2d) 24, 10 RR 2008 [1954].

Section 4(b) of the Administrative Procedure Act does not require an agency at the conclusion of a rule making proceeding to issue a statement demonstrating that it has considered all relevant evidence submitted to it. The Commission in its Final Report and Order in the television allocation proceeding was not required to discuss each particular bit of evidence presented to it. Logansport Broadcasting Corp. v. United States, 93 U.S. App. D.C. 342, 210 F.(2d) 24, 10 RR 2008 [1954].

H. "Freeze" on television applications

(1) In general

See ¶51;371(B), supra.

The Commission's decision to adhere to the 1952 television allocation plan for the time being as reflected in its refusal to institute a freeze on construction permits for VHF stations to prevent competition with existing UHF stations, was within its statutory authority and the courts may not interfere with it. Such matters were committed by Congress to the discretion of the Commission as an expert administrative agency and as long as the Commission's action has a reasonable factual and legal basis the court may not overturn it. The court will not compel the Commission to delay existing adjudicatory proceedings conducted in accordance with the statute and valid regulations thereunder in order to await the outcome of rule making proceedings. Coastal Bend Television Co. v. FCC, 98 U.S. App. D.C. 251, 234 F.(2d) 686, 13 RR 2189 [1956].

(2) Rights of pre-freeze applicants or applicants who filed during freeze

Applicant for Channel 2 in Chicago did not waive its right to comparative consideration for that channel because it failed to appear and participate in a show cause proceeding involved in substitution of Channel 2 for Channel 4 in

H. "Freeze" on television applications (Continued)

(2) Rights of pre-freeze applicants or applicants who filed during freeze (Continued)

authorization of an existing station in Chicago and in the renewal and transfer proceedings involving that station's authorization. The Commission cannot by general public notices in a rule making proceeding compel a person with an established statutory right to protect that right, against penalty of forfeiture, by entering the rule making proceeding. Nor was intervention in the rule making proceedings necessary to avoid waiver, since the question of comparative consideration was not involved. Further, the applicant had filed pleadings in the rule making proceeding inconsistent with any idea of waiver. While the applicant could probably have intervened in the renewal and transfer of control proceedings, it was not required to do so. However, in any comparative consideration between the applicant and the former licensee of Channel 4, the Commission would have to consider the fact that the station had actually been transferred to another licensee, so that comparison would actually be between operation by applicant and operation by the new licensee of the station. Zenith Radio Corp. v. FCC, 93 U.S. App. D.C. 284, 211 F.(2d) 629, 10 RR 2001 [1954].

The question of geographical assignment of television channels is properly determined in rule making proceedings. That the action will have a substantial effect upon future and present applicants for television station licenses does not transform it into adjudicatory action. Parties whose applications were filed or heard prior to the institution of the television rule making proceedings have no greater rights than potential applicants in so far as the adoption of the allocation table is concerned, nor any right to separate procedural treatment. Daily News Television Co., 7 RR 839 [1951].

Whether or not an applicant for a particular television channel in a community is entitled to comparative consideration with an existing television station in the community whose license the Commission has proposed to modify to shift it to that channel cannot be determined until the applicant amends its application in accordance with the new television rules and regulations and the assignment of the channel to the city has become final, which cannot be until 30 days after publication of the Commission's Sixth Report and Order in the Federal Register. Peoples Broadcasting Co., 7 RR 1106 [1952]; Zenith Radio Corp., 7 RR 1110 [1952]. Hence, such applicant is not entitled to intervene in the show cause proceedings. Peoples Broadcasting Co., 8 RR 275 [1952].

Section 1.387(b)(3) of the Rules is not a bar to reassignment of television channels through appropriate rule making proceedings even though a hearing was held, prior to the television "freeze," which the change in the rules renders abortive. The fact that a hearing has been held cannot preclude the Commission from amending its rules in the public interest. An applicant who went through a hearing prior to the adoption of the new television rules and standards is in no different position from one filing its application thereafter. The Commission was not limited to making changes in television channels required for engineering reasons only. Applications heard before the television "freeze" were properly removed from the hearing docket after the adoption of the new television rules and allocations. Section 1.387(b)(3) does not vest applicants with any indefeasible rights once the cut-off date has been reached. Paramount Television Productions, Inc., 8 RR 459; Hearst Radio, Inc., 8 RR 634; Wisconsin Broadcasting System, Inc., 8 RR 641 [1952].

H. "Freeze" on television applications (Continued)

(2) Rights of pre-freeze applicants or applicants who filed during freeze (Continued)

Applicant for Channel 2 in Chicago waived any right to contest for that channel where it failed to appear and participate in show cause proceedings involved in substitution of Channel 2 for Channel 4 in authorization of an existing station in Chicago and in the renewal proceedings involving that station's license. If the applicant asserted a right to compete with the existing licensee for Channel 2, it had an affirmative duty to come forward with a timely request to intervene in the renewal proceeding. Zenith Radio Corp., 8 RR 883 [1953].

No special consideration will be given to an applicant for television facilities or the 20-day cut-off rule applied to it because it had been through hearing prior to the "freeze" and had always requested a specific channel which was still assigned to the community, although reserved for educational use, and because the community had only one television station in operation. The public interest must prevail over the equities of a particular applicant's individual position. Other applicants would have a right to apply for the channel even if the educational reservation was removed. There was no discrimination against the applicant in reserving the particular channel for educational use. Hearst Radio, Inc., 9 RR 145 [1953].

Applicant for Channel 2 in Chicago waived any right to comparative consideration for that channel where it failed to appear and participate in a show cause proceeding involved in substitution of Channel 2 for Channel 4 in authorization of an existing station in Chicago and in the renewal proceeding involving that station's authorization. The fact that the Commission did not on its own motion make the applicant a party to the renewal hearing cannot be determinative in view of the specific provisions in §1.388 of the Rules for the filing of petitions to intervene where the Commission has failed on its own motion to name as party to a hearing any persons specified in §1.387(b)(3). Section 1.387(b)(3) does not confer fixed rights which cannot be waived. A timely and clear assertion of a claim is essential as a protection to other parties. The applicant was aware of the course of events from the beginning but did not petition to intervene and, having permitted the other parties to proceed without notice that it claimed a right to do so, could not later nullify what had gone before. Zenith Radio Corp., 9 RR 181 [1953].

In connection with the allocation of television frequencies the Commission deleted Channel 4 from Chicago and in show cause proceedings directed Station WBBM, previously operating on Channel 4, to shift to Channel 2. Application of Zenith Radio Corporation for a construction permit for a new television station on Channel 2 was dismissed. Zenith appealed and the Court of Appeals stayed the Commission's order without prejudice to the issuance of a special temporary authorization for operation of a station on Channel 2 either jointly by CBS (the new licensee of WBBM) and Zenith under trusteeship or otherwise, or under lease of Zenith's apparatus to CBS, or by Zenith or CBS alone. Proposal for joint operation the Commission found to be impracticable because of CBS' refusal voluntarily to enter into a joint venture. Proposal for operation by a trustee was also rejected as infeasible and impractical. The status quo could not be maintained because public interest required prompt discontinuance of operations on Channel 4 in Chicago. As between CBS and Zenith,

H. "Freeze" on television applications (Continued)

(2) Rights of pre-freeze applicants or applicants who filed during freeze (Continued)

special temporary authorization should be issued to CBS, since it was the licensee of the existing station and there was no reason to require it to cease operating and authorize someone else to operate on Channel 2 without hearing. However, the authorization was so limited as to approximate the service being rendered by WBBM on Channel 4. Zenith Radio Corp., 9 RR 555 [1953].

I. Deintermixture cases

(1) In general - criteria employed

The Commission's decision to adhere to the 1952 television allocation plan for the time being as reflected in its refusal to institute a freeze on construction permits for VHF stations to prevent competition with existing UHF stations, was within its statutory authority and the courts may not interfere with it. Such matters were committed by Congress to the discretion of the Commission as an expert administrative agency, and as long as the Commission's action has a reasonable factual and legal basis the court may not overturn it. The court will not compel the Commission to delay existing adjudicatory proceedings conducted in accordance with the statute and valid regulations thereunder in order to await the outcome of the rule making proceedings. Coastal Bend Television Co. v. FCC, 98 U.S. App. D.C. 251, 234 F.(2d) 686, 13 RR 2189 [1956].

Denial by the Commission of petition by a UHF permittee for leave to intervene in proceedings on applications for VHF construction permits in the area, for stays and for reconsideration of denial of a previous petition for deintermixture was within the discretion of the Commission and will not be overturned by the court. The fact that the case involved two VHF stations rather than one, as in a previous case, that failure of the UHF station would leave its city without a local station, and that the proposal for deintermixture was area-wide and not city-by-city, do not require a reversal. Gerico Investment Co. v. FCC, 99 U.S. App. D.C. 379, 240 F.(2d) 410, 14 RR 2081 [1957].

It is for the Commission, not the courts, to pass on the wisdom of a channel allocation scheme, as long as the decision has an adequate legal and factual basis. The Commission was not arbitrary in determining to "deintermix" channel assignments in a particular city, even though it had rejected earlier proposals for such deintermixture, and in assigning a UHF channel to the successful applicant in a competitive hearing proceeding on applications for use of the sole VHF channel originally assigned to the city but deleted after a conditional grant of the application, where its action was based on its long range policy to encourage UHF and on its interim policy of improving opportunities for competition among a greater number of stations. It was not arbitrary to conclude that that goal would be better approached by allotting the city four technically equal UHF channels rather than one superior VHF channel and two inferior UHF channels. Considerations of fairness to the applicant, which had gone through a lengthy hearing for a VHF channel, did not outweigh the public interest considerations involved. WIRL Television Co. v. United States, 102 U.S. App. D.C. 341, 253 F.(2d) 863, 16 RR 2049 [1958].

I. Deintermixture cases (Continued)

(1) In general - criteria employed (Continued)

Action of the Commission in deleting Channel 2 from Springfield, Illinois, assigning it to St. Louis and Terre Haute, and assigning two UHF channels to Springfield, was taken upon the basis of a full hearing and after weighing the various factors involved. The Commission's decision was within its competence and was not arbitrary, capricious or otherwise illegal and will be sustained by the court. Sangamon Valley Television Corp. v. United States, 103 U.S. App. D.C. 113, 255 F.(2d) 191, 17 RR 2023 [1958].

It is impossible for the Commission to use rigid criteria as the basis for a decision to deintermix or not to deintermix any particular community, because of the widely varying circumstances in individual markets and the numerous factors which bear on the choice in each area. The problem is an evaluation of factors and the courts are not authorized to reappraise the merits of the Commission's conclusions. UHF licensees in an area do not have much ground to complain of licensing of VHF stations in the area or of refusal of the Commission to deintermix the area, where they took their licenses with full knowledge of the situation and were able to obtain them more quickly because their applications were not contested. The Commission followed the procedural requirements for rule making in refusing the deintermixture request. Its conclusion that deletion of a VHF channel in Hartford, Conn. and moving it to Providence, R.I. was not in the public interest was not arbitrary, unreasonable or without ample support. Springfield Television Broadcasting Corp. v. FCC, 104 U.S. App. D.C. 13, 259 F.(2d) 170, 17 RR 2059 [1958].

Order of the Commission denying, after rule making proceedings, proposals to amend television channel assignments in a particular area was affirmed by the court without discussion. Winnebago Television Corp. v. United States, 103 U.S. App. D.C. 311, 258 F.(2d) 163, 17 RR 2065 [1958].

The one VHF channel assigned to a community will not be reserved for educational use and the three UHF channels assigned for commercial operation in order to place the commercial licensees on an equal competitive bases. The Commission's allocation plan is based on the principle, among others, that UHF and VHF stations will be able to operate competitively in the same market. Radio Wisconsin, Inc., 8 RR 467 [1952].

Channels will not be assigned so as to avoid intermixture of VHF and UHF frequencies. The Commission's principles of television assignment will not be departed from because of some temporary adverse effect on private interests. Broadcast House, Inc., 10 RR 7 [1954].

The Commission in adopting its television allocation plan did not guarantee not to make any new assignments in any area which might adversely affect the existing balance between VHF and UHF assignments. A change in the intermixture ratio of VHF and UHF channels does not constitute an amendment of the licenses of existing stations. UHF licensees are not entitled to protection against the creation of competition by assignment of new VHF channels. Ultra High Frequency Television Assn., 10 RR 174 [1954].

I. Deintermixture cases (Continued)

(1) In general - criteria employed (Continued)

The only VHF channel assigned to an area will not be deleted on petition of a UHF licensee in the area, where a construction permit for use of the channel was granted six months before the petition was filed, the particular VHF channel could be employed only in that general area and deleting the channel would delay the establishment of a new television service in the area. Alleged adverse effects on existing UHF stations and expense to the public in converting receivers to VHF were not sufficient reason for deleting the channel. Arlington James Henry, 11 RR 322 [1954].

Assignment of a VHF channel in an area will not be deleted on petition of a UHF permittee who claims that it will not be able to compete with two VHF stations, where there is already one VHF station operating in the area and two applicants have prosecuted applications for the channel in question at considerable time and expense. Assignments will not be changed in this manner except on a clear showing that the public interest requires such a change. Central Texas Television Co., 11 RR 329 [1954].

Educational reservations will not be shifted to the only VHF channels in two communities in order to solve the intermixture problem in the area, where VHF signals are already received in the area, a number of VHF-only sets already exist in the area, a VHF station in the area has commenced commercial operation since filing of the petition and there is no indication that educators in the communities are ready to proceed to establish stations. Sir Walter Television Co., 11 RR 331 [1954].

Petition to remove the intermixture of commercial VHF and UHF channels in an area by shifting the educational reservation in the area to the only VHF channel assigned was denied where applications for the VHF channel had been prosecuted through the initial decision stage and no clear showing was made that public interest required such a change. Monona Broadcasting Co., 11 RR 477 [1954].

Deintermixture of commercial VHF and UHF assignments in an area will not be effected by deleting or reserving the only VHF channel assigned to the area where two parties have prosecuted applications for that channel through a hearing and no compelling showing is made that the public interest requires such action. West Central Broadcasting Co., 11 RR 482 [1954].

The Commission has power to modify the table of television channel assignments and it did not act arbitrarily in deleting Channel 2 from Springfield, Illinois and substituting UHF channels. Sangamon Valley Television Corp., 22 FCC 1173, 11 RR 814f [1957].

The only VHF channel assigned to a city will not be changed to non-commercial educational use in order to deintermix commercial VHF and UHF assignments where a VHF channel is assigned to a city 20 miles away, the assignments have been in effect for two and a half years, and other parties have prosecuted applications for the VHF channel at considerable expenditure of time, effort and money and an initial decision has been issued. Premier Television, Inc., 11 RR 909 [1955].

I. Deintermixture cases (Continued)

(1) In general - criteria employed (Continued)

Any modification of the Table of Assignments which would involve significant departures from the system of intermixed channel assignments requires a thorough reexamination of the entire television structure. For this reason deintermixture will not be ordered on a local or piecemeal basis. Whether or not a VHF station has commenced operation in a particular community is not determinative of whether deintermixture should be ordered. First Report on Deintermixture, 13 RR 1511 [1955].

The Commission did not violate Section 4(d) of the Administrative Procedure Act in denying various requests for piecemeal deintermixture of VHF and UHF assignments on the basis of a determination that the question should be decided on an overall basis, all the requests having been given careful consideration and oral argument having been heard on certain "pilot" petitions. There was no inconsistency or arbitrariness in denying the petitions while at the same ordering the "drop-in" of a channel in a particular area in conformity with existing rules and standards. Deintermixutre of Television Assignments, 13 RR 1526 [1956].

In evaluating various proposals for changes in television allocations the Commission has kept in mind the paramount need for more competitive services. No significant number of additional VHF channels can be provided using VHF frequencies under Commission control and now allocated to other services and proposals based on addition of VHF channels or suggesting an all-VHF service must be rejected. Authorization of VHF stations at substandard spacings would not adequately serve the Commission's long range objectives but would in many cases operate to place an artificial ceiling on the number of stations which may eventually be established. Deintermixture of VHF and UHF allocations is not practicable in a sufficient number of communities representing a sufficiently large segment of the total population to provide significantly enhanced opportunities for the fuller utilization of the UHF channels on a nationwide basis. The Commission will undertake a thorough, searching analysis of the possibilities for improving and expanding the nationwide television system through the exclusive use of the UHF band throughout or in a major portion of the United States. In the interim, the Commission will consider proposals to eliminate or add VHF commercial assignments in particular communities on the basis of specified factors. Also, the Commission will consider adding new VHF assignments where transmitter spacing requirements can be met by appropriate location of the new transmitter. The Table of Assignments will not be abandoned at the present time and assignments made on the basis of individual applications. Second Report on Deintermixture, 13 RR 1571 [1956].

Refusal of the Commissionto delete Channel 3 from Hartford, Connecticut is not inconsistent with its findings in other cases that existence of two VHF stations in an area would preclude the effective use of UHF. The Commission's primary purpose in its deintermixture proceedings was the effectuation of a television allocation in the particular communities and areas which would provide the most satisfactory service to the public, and to to protect UHF stations from competition or assist UHF. Hartford Deintermixture Case, 22 FCC 382, 15 RR 1549 [1957];

I. Deintermixture cases (Continued)

(1) In general - criteria employed (Continued)

The primary purpose of the Commission's deintermixture proceedings was not to protect particular UHF stations from competition or to assist UHF, but to effectuate television allocations in the specific communities and areas concerned that would be most likely to provide multiple television service to the public. Removal of Channel 3 from Madison, Wisconsin was not ordered since it was found that the objective of enhancing the opportunities for more effective competition among a greater number of stations could best be achieved by retaining Channel 3 as a commercial channel. Madison Deintermixture Case, 22 FCC 356, 15 RR 1572 [1957].

Deintermixture of the Evansville area through rule making proceedings was not illegal in that Evansville was arbitrarily selected for deintermixture. The Commission gave due consideration to the effect such rule making would have on the national television allocations structure. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1573 [1957].

No rigid general criteria can be adopted which can be automatically applied in specific deintermixture cases. Decision to deintermix or not to deintermix a particular area must be based upon a consideration of all the circumstances involved in the particular situation and not upon what was done in other areas where conditions are not the same. The purpose of the deintermixture proceedings was to enhance the opportunities for more extensive and more effective competition among a greater number of stations. This is not inconsistent with the view that the Commission cannot consider the competitive effects of a grant of a particular standard broadcast application. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1586 [1957].

The Commission may make judgments concerning the circumstances of UHF television operations in a particular area on the basis of its knowledge of UHF experience in other markets, taking into account differences between the various markets. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1586 [1957].

Deintermixture of the Evansville, Ind. area by shifting Channel 7 to Louisville, Ky. was ordered for the purpose of improving the opportunities for effective competition in the area and to encourage the utilization of UHF assignments in surrounding areas. It was not intended to afford economic protection to UHF stations. Evansville Deintermixture Case, 15 RR 1586e [1957].

Each deintermixture case must be decided on its own facts and the primary purpose is the effectuation of television allocations in communities and areas involved that would be most likely to provide as much television service as possible to the public. Refusal to deintermix a particular area is not necessarily inconsistent with deintermixture actions in other areas where the circumstances are not the same. Channel Assignments in Champaign-Urbana, 16 RR 1634b [1958].

(2) Particular areas

Action of the Commission in assigning UHF channels to Bakersfield, California and its failure to take action in certain other pending matters, held not to have been in error. Bakersfield Broadcasting Co. v. United States, 266 F. (2d) 697, 18 RR 2114 [U. S. App. D. C. 1959].

I. Deintermixture cases (Continued)

(2) Particular areas (Continued)

Petition for deintermixture of VHF and UHF assignments in the Connecticut River Valley by shifting the educational reservation in Hartford from a UHF channel to Channel 3 was denied where there was a VHF station on the air in New Haven and two applications for Channel 3 had been prosecuted through hearing and an initial decision was being awaited. No clear showing was made that the public interest required the change. General-Times Television Corp., 11 RR 625 [1954].

A first VHF channel will not be assigned to Moses Lake, Washington since all the assignments in that area are in the UHF band and the area can be adequately served by UHF. However, a UHF channel will be assigned to the community of Moses Lake. Walla Walla will not be made a UHF area by deleting from commercial use the two VHF channels assigned there. Operation of VHF stations in Walla Walla would not have serious adverse effect on UHF operations in the Moses Lake area. Channel Assignment in Moses Lake, Washington, 14 RR 1529 [1956].

Channel 9 will be deleted from Elmira, New York and Channel 30 substituted therefor. The Elmira area is predominantly UHF; the terrain is not so severe that UHF cannot serve the area; the vast majority of sets are equipped for UHF; a number of UHF stations in the area are serving the public, and significant populations would not be without service if Channel 9 was deleted. Elmira Deintermixture Case, 22 FCC 307, 15 RR 1515 [1957].

Channel 2 will be deleted from Springfield, Illinois in order to make the Springfield-Decatur area all-UHF. The area is predominantly UHF, the terrain is satisfactory for UHF propagation, the vast majority of sets in the area are capable of receiving UHF, and a number of UHF stations are in operation. Additional UHF channels in the lower portion of the spectrum are available for assignment and can provide satisfactory service. Establishment of a VHF station in the area would seriously detract from the ability of the UHF stations to continue to provide service and might destroy effective competition. UHF channel was also being deleted from Peoria, a partly overlapping area. Channel 2 could also be employed effectively in other areas. Springfield Deintermixture Case, 22 FCC 318, 15 RR 1525 [1957].

Channel 8 will be deleted from Peoria and assigned to Davenport-Rock Island-Moline, UHF channels 25 and 31 being assigned to Peoria. The Peoria area is predominantly UHF, the terrain is satisfactory for UHF propagation, the vast majority of sets in the area are equipped for UHF, several UHF stations are operating in the area, and significant populations would not be without service if Channel 8 were deleted. Advent of a VHF station in Peoria would create an unequal competitive situation which could seriously impair the ability of the existing UHF stations to continue to provide service. Reception of VHF signals from other areas would not seriously impair UHF in Peoria. In addition, assignment of Channel 8 to Davenport-Rock Island-Moline would improve the competitive situation in that area. Assignment of Channel 8 to a smaller community in south central Illinois, or reserving it for education, would not further the Commission's program. Peoria Deintermixture Case, 22 FCC 342, 15 RR 1550c [1957].

I. Deintermixture cases (Continued)

(2) Particular areas (Continued)

Channel 7 will be deleted from Evansville and assigned to Louisville, Channel 31 being substituted in Evansville. The Evansville area is predominantly UHF the terrain is satisfactory for UHF propagation, the vast majority of sets are equipped to receive UHF, several UHF stations are operating in the area, and the population that will lose its only service in the Evansville area will be largely or completely offset by the population that will gain its first service from a Louisville station on Channel 7. For the same reasons Channel 9 will be removed from Hatfield, Indiana and reserved for educational use in Evansville, and Channel 56, presently reserved for educational use in Evansville, will be shifted to Owensboro, Kentucky for commercial use in the Owensboro-Hatfield area. Evansville Deintermixture Case, 22 FCC 382, 15 RR 1573 [1957].

Channel 12 will be deleted from Fresno, California and assigned to Santa Barbara, Channel 30 being substituted in Fresno. The Fresno area is predominantly UHF, the terrain is satisfactory for UHF propagation, the vast majority of sets in the area are capable of receiving UHF, several UHF stations are operating in the area, and significant populations would not be without any service if Channel 12 was deleted. Removal of the VHF channel will improve the competitive situation in Fresno while assignment of the channel to Santa Barbara will provide an additional local outlet. Assignment of Channel 12 to Bakersfield would not be in the public interst, since that area is largely UHF. Fresno Deintermixture Case, 22 FCC 365, 15 RR 1586i [1957]; vacated, 18 RR 2033.

Channel 5 will not be deleted from Raleigh, North Carolina and assigned to Rocky Mount, North Carolina, in order to "deintermix" the Raleigh-Durham-Chapel Hill area. The area is one of strong VHF concentration and removal of Channel 5 would not significantly change this fact. Channel Assignment in Raleigh, N. C., 15 RR 1653 [1957].

Channel 9 will not be deleted from Charlotte, North Carolina and Channels 20 and 77 added to that city. The Charlotte area is one of strong VHF concentration and removal of Channel 9 from the area would not significantly change this fact. Channel Assignment in Charlotte, N. C., 15 RR 1659 [1957].

Channel 5 will not be shifted from Fort Smith to Fayetteville, Arkansas in order to deintermix the Fort Smith area. A station on Channel 5 in Fayetteville would provide VHF service to much of the Fort Smith area. Channel Assignment in Fort Smith, Arkansas, 15 RR 1678 [1957].

Petition to substitute Channel 13 for Channel 44 as educational reservation in Biloxi, Mississippi, in order to make all commercial channels in the area UHF, is denied. The Biloxi-Gulfport area is now predominantly VHF, with very little UHF service anywhere in that area, and the proposed deletion of Channel 13 would not, in the circumstances of this case, enhance the establishment of competitive television services in the area. Channel Assignments in Biloxi-Gulfport, Mississippi, 15 RR 1704b [1957].

Deletion of VHF channel 12 from Jacksonville, Florida would not further the Commission's objective of enhancing the opportunity for more effective competition among a greater number of stations. Channel Assignments in Jacksonville, Florida, 15 RR 1732 [1957].

I. Deintermixture cases (Continued)

(2) Particular areas (Continued)

Petition for rule making to make the Louisville, Kentucky area all UHF and the Evansville, Indiana area a four-VHF area, or to add a third VHF assignment to Louisville by deleting a VHF station from Bloomington, Indiana, will be dismissed. Deintermixture of Louisville would require substantial expenditure for receiver conversion, the terrain in the Louisville area is less favorable for UHF propagation than the Evansville area, and the deletion of VHF assignments from Louisville would create substantial "white areas." The alternative plan would worsen the competitive situation in the Indianapolis market in order to improve the Louisville situation. Channel Assignments in Evansville, Indiana, 15 RR 1771 [1957].

Rule making will not be ordered on proposal to delete Channel 3 from Champaign, Illinois. Champaign-Urbana is not a predominantly UHF community but receives VHF service from a number of stations including the Channel 3 station in Champaign. Deletion of Channel 3 would not make the area a "UHF island" in view of service from a Channel 10 station and a proposed Channel 2 station in Terre Haute. It was not shown that Channel 3 could be used more effectively elsewhere or that it should be left unassigned. Nor was there merit in the proposal to reserve Channel 3 for education in place of Channel 12, on which an educational station is operating in Urbana, and relocate Channel 12 in Lafayette, Ind. for commercial or educational use. A commercial station in Lafayette would continue to serve Champaign-Urbana and there was no demand for an educational channel in Lafayette. Channel Assignments in Champaign-Urbana, Ill., 16 RR 1630 [1958].

Channels 5 and 8 are deleted in Walla Walla, two UHF channels being substituted making Walla Walla all UHF, thus increasing opportunities for competition in the area among a larger number of stations, particularly since any increased coverage of VHF stations (none yet on the air) would fall in sparsely settled mountainous areas and since Walla Walla presently receives no satisfactory VHF signal from any source as evidenced by the existing community antenna system there. Walla Walla Deintermixture Case, 16 RR 1636 [1958].

Channel 10 will not be shifted from Terre Haute, a predominantly VHF area, to Lafayette, Ind. or Danville, Illinois, both of which are located in UHF areas and operating UHF stations which might be put out of business if a VHF channel were assigned. Channel Assignments in Terre Haute, Ind., 16 RR 1640 [1958].

Channel 12 will not be deleted from Erie, Pa. and shifted to another area. Deletion of Channel 12 would not result in effective deintermixture in much of the authorized service areas of the Erie stations, and other relevant factors did not call for a shift of the channel. Erie, Pa.-Flint, Mich. Channel 12 Case, 17 RR 1509 [1958].

I. Deintermixture cases (Continued)

(2) Particular areas (Continued)

Channel 9 will not be deleted from Hot Springs, Ark. in order to permit assignment of Channel 10 to Shreveport, La. The public interest would not be served by deleting Hot Springs' only VHF channel in order to permit assignment of a third VHF channel in Shreveport. Deintermixture to all-UHF in the Hot Springs area would not be practicable since it receives VHF signals from Little Rock. It cannot be concluded that any Hot Springs station would be forced by economic necessity to move into Little Rock. Channel Assignment in Hot Springs, Ark., 18 RR 1517 [1959].

THE NEXT PAGE IS PAGE M-3733

¶10:307 Allocation of facilities; term of licenses (Continued)

F. "Fair, efficient and equitable distribution" of radio facilities

NOTE: Cases dealing with the present language of Section 307(b) are classified under ¶53:24(A), infra. As to the necessity for or right to comparative hearing where questions under Section 307(b) are raised, see ¶51:387, infra.

Where mutually exclusive applicants seek authority to serve different communities, the Commission first determines which community has the greater need for additional services and then determines which applicant can better serve that community's need. The Commission is not required first to find that the applicants are approximately equal in their ability to serve their respective communities. In choosing between applicants for AM stations in different communities, neither of which would serve the other community, the Commission did not err in preferring applicant which would afford a second outlet for local self-expression to its community, rather than applicant whose community already had three AM stations, even though the latter community was almost three times larger and growing at a greater pace. Federal Communications Commission v. Allentown Broadcasting Corp., 349 U.S. 358, 12 RR 2019 [1955].

The Commission had authority to adopt a nationwide television allocation plan. Section 307(b) of the Communications Act, authorizing the Commission to distribute frequencies in response to individual applications, does not preclude the Commission from defining in advance the conditions upon which licenses will issue, and defining them so as to confine all applicants in a given community to a specified frequency or frequencies. The Commission did not abuse its discretion in doing this in the television service. Logansport Broadcasting Corp. v. United States, 93 U.S.App.D.C. 342, 210 F.(2d) 24, 10 RR 2008 [1954].

In applying the "choice of local service" principle in choosing between applicants for new standard broadcast station authorizations in different communities, the Commission erred in finding that the ability of the applicants to satisfy community needs was substantially equivalent, where (1) it was unclear whether or not the successful applicant would seek a network affiliation and there was no information in the record as to what proposed local programs would be scrapped in the event of a network affiliation; (2) witnesses for the successful applicant had displayed reluctance, evasiveness and lack of candor, and (3) the Commission had not given proper consideration to the factor of concentration of control of communications media. Allentown Broadcasting Corp. v. Federal Communications Commission, 222 F.(2d) 781, 10 RR 2086 [1954], rev'd 349 U.S. 358, 12 RR 2019 [1955].

A party may not urge for the first time on appeal that a "hyphenated" community is two communities for purposes of Section 307(b) of the Act. The issue must have first been presented to the Commission. The Commission did not hold that two communities were involved because of general references to "communities" in a discussion of main studio location. Pinellas Broadcasting Co. v. FCC, 97 U.S.App.D.C. 236, 230 F.(2d) 204, 13 RR 2058 [1956].

Action of the Commission in deleting Channel 2 from Springfield, Illinois, assigning it to St. Louis and Terre Haute, and assigning two UHF channels to Springfield, was taken upon the basis of a full hearing and after weighing the various factors involved. The Commission's decision was within its competence and was

¶10:307 Allocation of facilities; term of licenses (Continued)

F. "Fair, efficient and equitable distribution" of radio facilities (Continued)

not arbitrary, capricious or otherwise illegal and will be sustained by the court. Sangamon Valley Television Corp. v. United States, 255 F.(2d) 191, 17 RR 2023 [U.S.App.D.C. 1958].

Action of the Commission in denying a request for rule making to shift VHF channel 3 from Philadelphia to Atlantic City, thus making a VHF station available to the latter, was within the Commission's discretion and will not be set aside by the court. Mackey v. United States, 255 F.(2d) 898, 17 RR 2037 [U.S.App.D.C. 1958].

Where the Commission has considered Section 307(b) factors in originally allocating television channels and again in a rule making proceeding involving the particular area, it is not required to review them in an adjudicatory proceeding on applications for use of a VHF channel allocated to an area, because a UHF licensee contends that authorization of a VHF station will result in a nearby community losing its only local television station, a UHF station. Gerico Investment Co. v. FCC, 255 F.(2d) 893, 17 RR 2049 [U.S.App.D.C. 1958].

The contention that the Commission may provide for a fair efficient and equitable distribution of radio facilities only through licensing proceedings and may not do this by the promulgation of rules and regulations is without merit. The Yankee Network, Inc., 12 FCC 1043, 4 RR 412a [1948].

No issue as to fair, efficient and equitable distribution of facilities is presented by an application for extension of a construction permit to construct a television station, merely because granting the extension will permit an additional service to be brought to the community. City of Jacksonville, Florida, 6 RR 826 [1950].

Section 307(b) of the Act is applicable to applications for the removal of a station from one commun ity to another separate community, even though no competitive application is involved. Section 309(a) of the Act does not prevent the Commission from considering comparative needs of the two communities in such a case. Ark-Valley Broadcasting Co., Inc., 7 RR 77 [1951].

Section 307(b) of the Act, requiring the Commission to make fair, efficient and equitable distribution of radio facilities, does not prevent the Commission from adopting a television allocation table by rule making proceedings. Section 307(b) provides a substantive standard which may be implemented either through adoption of general rules or in consideration of proceedings on individual applications. Validity of Television Allocations, 7 RR 371 [1951].

Section 307(b) of the Act does not require a mathematical equality in the distribution of VHF television channels among the several states. Assignment of VHF Channel 10 to Terre Haute, Indiana, in preference to Logansport and Owensboro, Kentucky, was proper. An equitable assignment of VHF assignments among the two states was made and other factors, such as population, economic and cultural importance, favored Terre Haute. It was not shown that assignment of the channel to Logansport and Owensboro would in fact result in service to any substantial white area which would not otherwise be served. No rigid application of the priorities proposed in the Third Notice of Proposed Rule Making was intended. Logansport Broadcasting Co., 8 RR 401 [1952].

¶10:307 Allocation of facilities; term of licenses (Continued)

F. "Fair, efficient and equitable distribution" of radio facilities (Continued)

Where two applicants seek authority to establish television stations in different communities which are "hyphenated" for purpose of the Table of Assignments, the applications should be considered in the light of Section 307(b) of the Act. Lufkin Amusement Co., 8 RR 518 [1952]; Head of the Lakes Broadcasting Co., 8 RR 859 [1953].

Section 307(b) of the Act applies only where there are in fact separate communities competing for a facility. The type of facility sought, the coverage each applicant would provide and the location and importance of the municipality in relation to nearby cities and towns are factors considered in determining the applicability of Section 307(b). In television, an area wide, rather than a localized service, is contemplated. Section 307(b) is not applicable where competing applicants seek authorization for a television channel in St. Louis, Missouri, and East St. Louis, Illinois, respectively, since East St. Louis is part of the St. Louis metropolitan area, a single economically and culturally integrated community. Each applicant sought to serve substantially the same area and whichever applicant prevailed, it would be licensed to serve the needs of persons residing within the entire service area of the station. St. Louis Telecast, Inc., 22 FCC 625, 12 RR 1289 [1957].

Even if a grant of a new station for Flint, Michigan would result in stations in Cadillac and Saginaw, Michigan, ceasing operation, no violation of the spirit or letter of Section 307(b) of the Act would result. A service in one community is not protected from economic competition of a service in another community unless there is some overriding public interest consideration. WJR, The Goodwill Station, Inc., 25 FCC 159, 13 RR 763 [1956].

Where an applicant cannot sustain the burden of proof on the issues whether overlap of the 2 and 25 mv/m contours exists, it is disqualified and not entitled to a comparative hearing on an issue of equitable distribution of facilities under Section 307(b) of the Act. Courier-Times, Inc., 14 RR 817 [1957].

The standard of "fair, efficient and equitable" distribution of television facilities has been achieved in the Commission's Table of Assignments. A UHF licensee cannot contend, in the context of an adjudicatory proceeding on application for a VHF construction permit, that the table of assignments is contrary to the public interest, convenience and necessity and violates the standard of fair, efficient and equitable distribution of facilities. Adjudication may not be transformed into rule making merely because the distinction between them may involve difficulties of recognition in a given case. Any improvements in the television allocation structure must be sought through rule making proceedings. WKAT, Inc., 15 RR 939 [1957].

Section 307(b) of the Act does not preclude the authorization of stations to serve, maintain studios in and identify themselves in station announcements with more than one principal community. Main Studios and Station Announcements, 15 RR 1613 [1957].

Change of transmitter site of a Daytona Beach television station to a point nearer to Orlando, a larger city, is not contrary to the provisions of Section 307(b) of the Act where operation from the new site will result in service to

¶10:307 Allocation of facilities; term of licenses (Continued)

F. "Fair, efficient and equitable distribution" of radio facilities (Continued)

increased areas and population, will provide a stronger signal to those areas receiving A and B service from the original site, and will cause no loss of service to any areas served from that site. Telrad, Inc., 24 FCC 191, 16 RR 231 [1958].

Where applicant has raised a question whether dual city proposal of competing applicant should be permitted and issues have been enlarged to include this question, the issue in competitive hearing relating to the requirements of 307(b) is amended to reflect the new issue, particularly to compare proposal of one applicant for main studios in both cities with proposal of another for a main studio in one city and an auxiliary studio in the other. Charles R. Bramlett, 17 RR 81 [1958].

Where Commission approves application to move studio and transmitter of television station from a site three miles from the center of Santa Fe to a studio location in Santa Fe and to a transmitter site 43 miles southwest of Santa Fe and fourteen miles northeast of Albuquerque, Commission denies without an evidentiary hearing that portion of a protest of an Albuquerque television station which sought to have determined on the merits whether the Albuquerque market was capable of supporting a fourth television station. On these facts there is not involved the type of 307(b) question which would fall within the exception to the ruling of the Commission that it does not have the power to consider on the merits the effect of legal competition. Video Independent Theatres, Inc., 17 RR 149 [1958].

G. Quotas and zones

NOTE: Court and Commission decisions dealing with the repealed provisions of Section 307 relating to zones and quotas have not been included in this digest. See FRC v. Nelson Bros. Bond & Mtg. Co., 289 US 266 [1933]; Reading Broadcasting Co. v. FRC, 48 F.(2d) 458 [App.D.C. 1931]; Durham Life Ins. Co. v. FRC, 55 F.(2d) 537 [App.D.C. 1931]; Pacific Development Co. v. FRC, 55 F.(2d) 540 [App.D.C. 1931]; WHB Broadcasting Co. v. FRC, 56 F.(2d) 311 [App.D.C. 1932]; Strawbridge & Clothier v. FRC, 57 F.(2d) 434 [App.D.C. 1932]; WGN, Inc. v. FCC, 68 F.(2d) 432 [App.D.C. 1933]; Magnolia Petroleum Co. v. FCC, 76 F.(2d) 439 [App.D.C. 1935]; Radio Service Corp. v. FCC, 78 F.(2d) 207 [App.D.C. 1935]; Eastland Co. v. FCC, 92 F.(2d) 467 [App.D.C. 1937].

H. Renewal of license or denial thereof

NOTE: Cases dealing with the particular criteria upon which the Commission bases its decisions in renewal cases are classified under ¶53:24.

In view of the limited radio facilities available and the confusion that would result from interference, it is clear that Congress had power in the Radio Act of 1927 to authorize the Radio Commission to establish an equitable distribution of broadcasting facilities among other things by deleting existing stations where

¶41 NORTH AMERICAN REGIONAL BROADCASTING AGREEMENT

See also ¶¶53:31 et seq., infra.

¶41:2 Purpose and scope of agreement

The engineering standards of allocation proposed by the Havana Agreement, not then effective, are applicable only to allocation problems between the countries involved and consequently are not binding on the Commission in its consideration of domestic allocation problems. State of Wisconsin, 6 FCC 357 [1938].

¶41:5 Priority of use of clear channels by countries

A licensee's contention that certain Commission action was prejudicial to the priority rights of the U.S. under paragraph B-8(d) of Part II of NARBA, and could not be taken without affording hearing to the licensee, is incorrect. The treaty vests rights only in the signatory governments, not in licensees. Matheson Radio Co., Inc., 8 FCC 411 [1941] rev'd 319 U.S. 239 [1943].

The North American Regional Broadcasting Agreement contemplates the assignment of Class I-B stations by any country on any clear channel provided that protection is given in accordance with the terms of the agreement to the stations given priority on that channel. It does not mean that a country may assign Class I-B stations only on those I-B channels to which it has been given priority of use. Section 3.25 of the Rules will not be amended to delete 940 kc from the list of assignments available for Class I stations on the ground that a Class I-B assignment on 940 kc is a practical impossibility, since changes in existing assignments might make possible a Class I-B assignment and in any event the matter is in issue in the Clear Channel Proceeding. John M. Norris, 5 RR 697 [1949].

¶41:7 Service and interference

The North American Regional Broadcasting Agreement does not require protection within the United States to the skywave service of a Mexican Class I-B station. James A. Noe, 11 FCC 953, 3 RR 828 [1947].

Since NARBA provides for the assignment on the frequency 1550 kc of a Class I-B station in the Province of Ontario, Canada, and since NARBA defines a Class I-B station as one which operates with power of not less than 10 kw nor more than 50 kw and which has its primary service area free from objectionable interference from other stations on the same and adjacent channels and its secondary service area free from objectionable interference from stations on the same channel, application from Charlotte, North Carolina, for construction permit to change frequency to 1550 kc and to increase power to 50 kw unlimited time was denied since the proposed operation nighttime would not afford adequate protection, as required by NARBA, to the secondary service area of a Class I-B station which might be assigned in the Province of Ontario. Radio Station WSOC, Inc., 12 FCC 767, 3 RR 1921 [1948].

Where terms of the North American Regional Broadcasting Agreement entitle Mexican station to be protected to its existing limitation, application for modification of construction permit will be denied where 5 kw nighttime operation

¶41:7 Service and interference (Continued)

of proposed station would raise the RSS of Mexican station from 5.41 mv/m to 9.66 mv/m, and 1 kw nighttime operation would raise the Mexican station's RSS to 6.50 mv/m, constituting a 78% and a 20% increase, respectively, in the RSS limitation, which would result in excessive interference to the Mexican station. Such interference would also be inconsistent with Commission's more liberal Standards. James A. Noe, 3 RR 1954 b [1947].

¶41:13 Expiration date

Oral argument in a proceeding on applications for use of 690 kc in Georgia or Florida was continued indefinitely in view of the pendency of negotiations for a new North American Regional Broadcasting Agreement and the fact that Cuba had made proposals for future use of 690 kc. Savannah Broadcasting Co., 5 RR 1164b [1949].

¶41:14 Adherence

Station may not be authorized to operate on 900 kc prior to local sunrise since this conflicts with the "Gentlemen's Agreement" with Mexico. P. C. Wilson, 9 RR 142 [1953].

¶41:14 Appendix I

The North American Regional Broadcasting Agreement contemplates the assignment of Class I-B stations by any country on any clear channel provided that protection is given in accordance with the terms of the agreement to the stations given priority on that channel. It does not mean that a country may assign Class I-B stations only on those I-B channels to which it has been given priority of use. Section 3.25 of the Rules will not be amended to delete 940 kc from the list of assignments available for Class I stations on the ground that a Class I-B assignment on 940 kc is a practical impossibility, since changes in existing assignments might make possible a Class I-B assignment and in any event the matter is in issue in the Clear Channel Proceeding. John M. Norris, 5 RR 697 [1949].

Final action will not be taken on an application which would involve objectionable interference with a Cuban station operating on a channel assigned to Cuba with priority of use under NARBA, until conclusion of negotiations for a new international agreement. Pioneer Mercantile Co., 5 RR 1355 [1950].

The Commission will adhere to the "Gentlemen's Agreement" with Mexico pending negotiation of a new broadcasting agreement with that country. A station will not be allowed to operate on 900 kc with more than 1 kw power even though it would deliver less than 5 microvolts per meter at the Mexican border. Rollins Broadcasting, Inc., 9 RR 71 [1953].

Even though NARBA has expired and Mexico is not a party to the new NARBA now pending ratification, the Commission will adhere to agreement with Mexico on assignment of standard broadcasting frequencies. Tri-Suburban Broadcasting Co., 9 RR 1017 [1953].

¶41:16 Special conditions affecting the United States

Because of the peculiar situation with respect to one station operating on 770 kc, applications for use of that channel will not be dismissed as in conflict with §3.25 of the Rules but will be placed in the pending file. Acceptance of such applications cannot jeopardize rights of the United States with respect to 770 kc under NARBA and the Interim Agreement. Eugene P. O'Fallon, Inc., 4 RR 1342 [1949].

The Class I-A status of 770 kc cannot be lost by operation of a I-B station on that frequency under a special service authorization, such operation being temporary only. Albuquerque Broadcasting Co., 4 RR 1419 [1949].

¶41:19 Protected service contours and permissible interference signals

An application will not be granted where it would result in limiting a Canadian Class III-B station to its 6.1 millivolt contour, since such stations under NARBA are protected in their nighttime service to their 4.0 millivolt contour. Portland Broadcasting System, Inc., 8 FCC 257 [1940].

Application was denied where it would result, together with two other authorized U. S. stations, in limiting a Canadian Class III-A station to its 6.0 millivolt contour at night, since under NARBA such stations are entitled to nighttime protection to the 2.5 millivolt contour. Spokane Broadcasting Corp., 8 FCC 271 [1940].

Mutual interference resulting from simultaneous operation of a proposed U. S. station and a Mexican station is not objectionable where the interference to the Mexican station would be to service rendered by that station within the United States, and interference to the proposed station (so far as the U. S. is concerned) will take place along the Mexican border in an area with practically no population. Worcester Broadcasting Corp., 8 FCC 316 [1940].

Applications for a license to cover a construction permit and for authority to determine operating power by direct measurement were granted, although proof of performance and other tests made since the grant of the construction permit had made it obvious that strict conformity with NARBA could not be met by applicant, in view of the fact that Canada had informally advised that no objection to operation of the station would be made providing certain condition were met. Seaboard Radio Broadcasting Corp., 11 FCC 135, 3 RR 114 [1946].

Applicant's proposed operation was in violation of NARBA where it would cause interference to two Mexican stations which were entitled to nighttime protection to the 4.0 mv/m contour, resulting in a clearly excessive increase in the nighttime limitation of one station from its 3.56 mv/m contour ot its 6.06 mv/m contour, and an increase in the limitation of the other station from its 4.02 mv/m contour to its 4.41 mv/m contour. Gulf Broadcasting Co., 11 FCC 1420, 3 RR 1251 [1947].

Application for construction permit will be denied for violation of the North American Regional Broadcasting Agreement, where it would increase the RSS limitation on a Class II Cuban station from 5.19 to 6.35 mv/m, in violation of the provision in NARBA that Class II station is normally protected to its 2.5 mv/m contour, but if Class II stations are limited by Class I stations to

¶41:19 Protected service contours and permissible interference signals (Continued)

higher values, than such values shall be the standard established with respect to interference from all other classes of stations. Syndicate Theatres, Inc., 3 RR 1803 [1947].

Under NARBA and §3.25 of the Rules and Regulations, the frequency 1010 kc is designated as a clear channel with priority of use to Canada. The frequency may not be assigned for nighttime use to a United States station less than 650 miles from the Canadian border. The fact that nighttime skywave interference to the eastern area of Canada already exists from two other United States stations operating on 1010 kc with the consent of Canada and that the proposed operation would create interference only in that area does not justify a grant in violation of NARBA and the Rules. The rules must be adhered to not only to assure the orderly administration and fulfillment of treaty obligations but also to assure fair treatment to all persons interested in applying for use of frequencies. Radio-Television of Baltimore, Inc., 4 RR 137 [1948].

The North American Regional Broadcasting Agreement does not consider interference from another co-channel I-B station in the computation of interference from a Class II to a Class I-B station, nor does it provide for the use of 20-to-1 ratio in the computation of interference to the skywave service of a I-B station. Times-Picayune Publishing Co., 4 RR 1212 [1949].

Expiration of NARBA and the Interim Agreement does not relieve the Commission from the duty of considering interference to foreign stations in passing on applications. Article 44 of the Atlantic City Convention recognizes that "harmful interference" should not be caused to foreign stations. The Commission can apply its own Standards in determining the existence of "harmful interference" during the period that a regional broadcast agreement is not in effect. Under these Standards, a proposal cannot be granted which would increase the total RSS of a Mexican station from 3.94 to 4.44 mv/m, or from 3.65 to 4.18 mv/m under the Commission's Standards, the Mexican station's normally protected contour being 2.5 mv/m. Louisiana Broadcasting Co.,4 RR 441 [1949].

Expiration of NARBA and the Interim Agreement does not relieve the Commission from the duty of considering interference to foreign stations in passing on applications. Article 44 of the Atlantic City Convention recognizes that "harmful interference" should not be caused to foreign stations. The Commission can apply its own Standards in determining the existence of "harmful interference" during the period that a regional broadcast agreement is not in effect. Under these Standards, a proposal cannot be granted which would increase the total RSS of a Mexican station from 4.72 mv/m to 5.11 mv/m, or from 3.76 to 4.2 mv/m under the Commission's Standards, the Mexican station's normally protected contour being 2.5 mv/m. Mid-State Broadcasting Co., 5 RR 250 [1949].

While an increase in the limitation of a Special Class II Canadian station would not require denial of an application where the resulting interference would not be within the station's 2.5 mv/m protected nighttime contour, nevertheless, it was appropriate to prefer a competing applicant which would provide a higher degree of protection and which protected the Canadian station under the domestic 50% exclusion rule. Scripps-Howard Radio, Inc., 5 RR 810 [1950].

¶41:19 Protected service contours and permissible interference signals (Continued)

Amendment of an application will be allowed after hearing but before issuance of an initial decision where the amendment is for the purpose of removing a conflict with assignments to Cuban stations under the new NARBA, which was negotiated after the hearing in the matter. This is the proper procedure to be followed in cases of this sort. Delta Broadcasters, Inc., 7 RR 688 [1951].

Amendment of an application will be allowed after issuance of an initial decision where the amendment is for the purpose of seeking relief from a situation which arose out of execution of the NARBA after the hearing in the matter. Robert Hecksher, 7 RR 690 [1951].

¶41:45 Expiration date

See Louisiana Broadcasting Co., 4 RR 441, and Mid-State Broadcasting Co., 5 RR 250, digested under ¶41:19 supra.

¶41:104 Agreement between United States and Mexico

The fact that under the North American Regional Broadcasting Agreement, the frequency 1220 kc was designated as a clear channel for priority of use by Mexico, was no bar to the granting of application for construction permit for 50 kw operation on that frequency despite an interference increase of 10% with the Mexican station in the New York area, since the provision in Executive Agreement, Series 196, that the United States station assigned to that frequency would protect the coverage of the Mexican station in the United States as much as possible, does not require the domestic station to protect any signal of the Mexican station in the New York area, and the Mexican signal being not of sufficient strength to overcome the noise level in the New York area is of such doubtful value as to render inconsequential an interference increase of 10%. Allen T. Simmons, 11 FCC 1160, 3 RR 1029 [1947].

Special service authorizations to operate on the frequencies 730,800, 900, 1050, 1220 or 1570 kc at night will not be issued since this would be in contravention of the "Gentlemen's Agreement" with Mexico and of ¶53:25. WPIT, Inc., 6 RR 57 [1950].

The "Gentlemen's Agreement" with Mexico under which the United States agrees not to assign stations operating during nighttime hours to specified frequencies is still in effect and will be adhered to. Potomac Broadcasting Corp., 6 RR 559 [1950].

The Commission will adhere to the "Gentlemen's Agreement" with Mexico pending negotiation of a new broadcasting agreement with that country. A station will not be allowed to operate on 900 kc with more than 1 kw power even though it would deliver less than 5 microvolts per meter at the Mexican border. Rollins Broadcasting, Inc., 9 RR 71 [1953].

Station may not be authorized to operate on 900 kc prior to local sunrise since this conflicts with the "Gentlemen's Agreement" with Mexico. P. C. Wilson, 9 RR 142 [1953].

¶41:104 Agreement between United States and Mexico (Continued)

Even though NARBA has expired and Mexico is not a party to the new NARBA now pending ratification, the Commission will adhere to agreement with Mexico on assignment of standard broadcasting frequencies. Tri-Suburban Broadcasting Co., 9 RR 1017 [1953].

The fact that the United States had notified Mexico of the continued utilization of 1240 kc at Harlingen, Texas with call letters KSOX does not preclude reassignment of the frequency to another location, where no objectionable interference would be caused to any Mexican station and the new assignment would be farther from the border than Harlingen. Border Broadcasters, Inc., 13 RR 463 [1956].

¶41:131 U. S.-Mexico Television Allocations

Grant of an application for authority to transmit television programs to a Mexican station which competes with United States stations is not a violation of the agreement with Mexico on channel assignments. American Broadcasting-Paramount Theatres, Inc., 13 RR 1248 [1956].

¶41:141 U. S. - Canada Television Allocations

Channel 13 will not be assigned to Rochester, N. Y. until the U. S. - Canadian television agreement can be amended. Assignment of Channel 13 to the Albany area does not substantially affect eventual use of the channel in Rochester. Albany-Schenectady-Troy Deintermixture Case, 15 RR 1514m [1958].

THE NEXT PAGE IS PAGE M-501

¶53:24 SHOWING REQUIRED ON APPLICATION FOR BROADCAST FACILITIES (Continued)

A. Fair, efficient and equitable distribution of facilities

(1) Applicability of the standard
(2) Factors to be considered
(3) Findings by the Commission
(4) Applications involving different communities in same area
(5) Applications involving change of station location
(6) Effect of agreement between parties
(7) Auxiliary studios
(8) FM stations
(9) Television stations
(10) Zones and quotas
(11) Application of the standard in particular cases

(1) Applicability of the standard

(See also (4) and (5), infra).

A party may not urge for the first time on appeal that a "hyphenated" community is two communites for purposes of Section 307(b) of the Act. The issue must have first been presented to the Commission. The Commission did not hold that two communities were involved because of general references to "communities" in a discussion of main studio location. Pinellas Broadcasting Co. v. FCC, 97 U.S.App.D.C. 236, 230 F.(2d) 204, 13 RR 2058 [1956].

Where the Commission has considered Section 307(b) factors in originally allocating television channels and again in a rule making proceeding involving the particular area, it is not required to review them in an adjudicatory proceeding on applications for use of a VHF channel allocated to an area, because a UHF licensee contends that authorization of a VHF station will result in a nearby community losing its only local television station, a UHF station. Gerico Investment Co. v. FCC, 103 U.S.App.D.C. 141, 255 F.(2d) 893, 17 RR 2049 [1958].

Deletion of a specific Section 307(b) issue after one of two mutually exclusive applicants in the hearing had withdrawn did not remove 307(b) considerations from the case insofar as interference with an existing station, party respondent in the hearing, was concerned. The applicant was still required to show, and the Commission to find, that the 307(b) criteria had been met in spite of interference to the other station. The respondent was not deprived of due process since it participated fully in the hearing and did not contend that it was in a position to offer any additional evidence on the 307(b) issue. Interstate Broadcasting Co., Inc. v. FCC, 265 F.(2d) 598, 18 RR 2083 [U.S.App.D.C. 1959].

Section 307(b) of the Act relating to fair, efficient and equitable distribution of broadcast facilities, has no application to a case where the question is whether extension of construction time shall be granted to a permittee of a television station, the frequency in question having already been allocated to the area. Raytheon Manufacturing Co., 14 FCC 694, 5 RR 408c [1950].

A. Fair, efficient and equitable distribution of facilities (Continued)

(1) Applicability of the standard (Continued)

A segment of the population of a city cannot be regarded as a "community" within the meaning of Section 307(b) of the Act. A "community" is a legally definable geographic area. Hirsch Communication Engineering Corp., 7 RR 1112 [1953].

A beach settlement with a population of 722 cannot be regarded as a separate community for purpose of equitable distribution of facilities where it is contiguous to a larger city, the frequency involved is a regional one, the coverage proposal is of a regional character and a considerable number of broadcast transmission and reception services are available. Absence of a transmission facility in a contiguous community does not constitute a showing of substantial need for a local radio transmission service where the frequency involved is a regional one and the principal city already has three radio stations. Gulf Beaches Broadcasting Co., 8 RR 476 [1954].

The concept of "community," as used in Section 307(b) of the Act, connotes at least three ideas: (1) a group of people; (2) common organization or interests; (3) a definite location. "Greater Endicott," New York cannot be regarded as a separate community where it has not been defined except by the Chamber of Commerce, and there is no common organization or common interests among the people living in Greater Endicott. Southern Tier Radio Service, Inc., 11 RR 143 [1954].

While the Commission regards it as desirable that there be more than one service available to radio listeners, this does not mean that in all cases where such a result would be achieved by granting an application, all countervailing factors are to be held of secondary significance. Where the number to receive a second service is relatively small, the number who would lose service from existing stations is relatively large, those who would receive a second service already have their own local service, and the new service will emanate from a station located in another town, the public interest will be better served by preserving the existing situation even though this will cause the withholding of a second service to some people. Newport Broadcasting Co., 24 FCC 19, 13 RR 236c [1958].

No issue as to fair, efficient and equitable distribution of broadcast service is presented where the question is as to possible modification of a station's license by authorization of a new station which would cause interference. The mandate of Section 307(b) calls for grant of an application which would bring a first primary nighttime service to at least 6903 persons, a third transmission service and a third nighttime primary service to a city of 32,898 and a first local primary service to 10,132 persons, even though interference would be caused to the nighttime primary service of a Class I station and a violation of §3.28 of the Commission's Rules would result. Accomplishment of the objective of bringing an adequacy of choice to the public, urban and rural, is of more concern than a slight reduction of a large variety of choices to a greater number of persons in another section of the country, regardless of any unique service which the station interfered with might render to the interference area. E. Weaks McKinney-Smith, 22 FCC 232, 13 RR 477 [1957].

A. Fair, efficient and equitable distribution of facilities (Continued)

(1) Applicability of the standard (Continued)

There is no hard-and-fast rule by which it can be judged whether a particular population grouping is to be classified as a community for the purpose of making the choice required by Section 307(b). All the relevant facts in each case must be weighed before a valid answer can be forthcoming. The fact that an area is incorporated is not enough in itself to justify its treatment as a separate community; nor does the absence of incorporation compel the conclusion that an area is not a "community". The corporate status of a community is only one factor to be considered. The unincorporated Levittown-Fairless Hills area, which is located about 10 miles from the Philadelphia city limits and 3 miles from the Trenton city limits and contains its own civic organizations and clubs, telephone exchange, telegraph office, libraries, schools, a local newspaper, shopping centers, post offices, etc., is a "community", and this despite its newness and residential character. Contention of competing applicant that Levittown must be denied status as a "community" because of the alleged exclusion of negroes failed for lack of proof, and in any event the Commission did not see how a policy of segregation would be fostered by the authorization of a local broadcast outlet in the area. Mercer Broadcasting Co., 22 FCC 1009, 13 RR 891 [1957].

There is no hard and fast rule by which it can be ascertained whether a particular population grouping is to be classified as a community for 307(b) purposes. All the relevant facts in each case must be weighed. Manchester, Connecticut should be treated as a separate community from Hartford, Connecticut where a Class IV facility is involved, i.e. one designed to render service primarily to a city or town and the suburban and rural areas contiguous thereto, the respective proposals will not serve substantially the same areas, and the applicants will not serve the other applicants' communities except to a limited extent during the day. Manchester is geographically separate from Hartford and East Hartford with a rural area intervening. Hartford and East Hartford are also to be treated as separate communities for purposes of a Class IV station where neither applicant will serve all or nearly all of the other community at night and the two communities are politically separate even though divided only by a river. Manchester Broadcasting Co., 24 FCC 199, 14 RR 219 [1958].

The standard issues on areas and population which may be expected to gain or lose primary service from a proposed operation do not encompass a determination of comparative gains and losses in population which would receive primary service from the applicant's station. Where no issue was specified as to this matter, and no request for enlargement of issues was made, the hearing examiner erred in denying an application for modification of facilities on the ground that part of the applicant's existing service area and population would no longer receive service from the station. Gillespie Broadcasting Co., 25 FCC 807, 15 RR 878 [1958].

Where a regional channel is involved, the "community" to be served, for 307(b) purposes, may encompass more than the area within the corporate limits of the principal city. Broadcasters, Inc., 16 RR 295 [1957].

A. Fair, efficient and equitable distribution of facilities (Continued)

(1) Applicability of the standard (Continued)

The statutory standard imposed by Section 307(b) of the Act is not solely a comparative one but is absolute in the sense that any grant must meet the standard of fair, efficient and equitable distribution. Deletion of a 307(b) issue after dismissal of competing application does not remove 307(b) considerations from the case insofar as they may be involved in determining issue as to interference to an existing station and compliance with §3.28 of the Rules. The tests imposed by Section 307(b) are implicit in these issues and it is not Commission practice to include a specific reference to Section 307(b) where issues of this sort are specified. The interfered-with station was not misled by deletion of the Section 307(b) issue. E. Weaks McKinney-Smith, 24 FCC 112, 16 RR 917 [1958].

A determination as to which of two applications would better provide a fair, efficient and equitable distribution of radio service need not be made if the simultaneous operation of both proposals will not cause excessive interference, and both applications may be granted. Allegan County Broadcasters, 25 FCC 1083. 17 RR 373 [1958].

No issues as to fair, efficient and equitable distribution of facilities is presented where the grant of two applications would result in mutual adjacent channel interference to less than 3% of the area and population within the proposed 0.5 mv/m normally protected contour of one station and less than 1% of same contour of the other, the entire overlap area receives primary service from at least three stations, and neither applicant objects to the grant of the proposal of the other. Oregon Radio, Inc., 25 FCC 1053, 17 RR 772 [1958].

(2) Factors to be considered

Where mutually exclusive applicants seek authority to service different communities, the Commission first determines which community has the greater need for additional services and then determines which applicant can better serve that community's need. The Commission is not required first to find that the applicants are approximately equal in their ability to serve their respective communities. In choosing between applicants for AM stations in different communities, neither of which would serve the other community, the Commission did not err in preferring applicant which would afford a second outlet for local self-expression to its community, rather than applicant whose community already had three AM stations, even though the latter community was almost three times larger and growing at a greater pace. FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 12 RR 2019 [1955].

While the Commission is required by Section 307(b) of the Act to consider power and hours of operation of existing stations in determining the allocation of new broadcast facilities among communities, it is not required to make a mathematical evaluation of existing service or to assign particular point values to each feature of each station. It is sufficient to recite that the Commission did give consideration to these factors without attempting to state how much weight it gave to the factors of power and hours of operation or in what fashion. Easton Publishing Co. v. FCC, 85 U.S. App. D. C. 33, 175 F. (2d) 344, 4 RR 2147 [1949].

A. Fair, efficient and equitable distribution of facilities (Continued)

(2) Factors to be considered (Continued)

In deciding upon the relative need of different communities for AM facilities the Commission is not required to assign to FM stations in the respective communities the same values and thus the same consideration as to AM stations. A new pattern for the new FM service may be designed which cannot because of its physical nature be superimposed upon the old AM pattern and conversely an extension of AM service need not necessarily contemplate the pattern of development of FM. The existence of FM service must be given consideration but FM stations are not required to be given the same weight as AM. In addition, service allocated to and being received by an entire area cannot be wholly assigned to one spot or another for the purpose of evaluating the services available to each separate community in the area. Easton Publishing Co. v. FCC, 85 U.S. App. D.C. 33, 175 F. (2d) 344, 4 RR 2147 [1949].

Authorization of a new station which will cause substantial interference to an existing station is in fact and in legal effect a modification of the existing station's license, and while such a modification is permissible if it will promote public interest, convenience and necessity, under §3.24(b) of the Rules the Commission must consider not only the public benefit from the operation of the new station but also any public loss which it might occasion. The Commission cannot consider the public need for the service of the new station and fail to consider the need for the service of the existing station. The fact that the new station's signal will replace that of the existing station in the interference area or that the interference area will continue to receive service from other stations does not make a comparative consideration unnecessary. It is not incumbent on the existing station to offer evidence on comparative need in the interference area. Democrat Printing Co. v. FCC, 91 U.S. App. D.C. 72, 202 F. (2d) 298, 7 RR 2137 [1952].

Findings of fact must be supported by substantial evidence on the record as a whole. Where the key issue in a case is the comparative need of two communities for a new radio station, the Commission cannot find that one community's need is greater or less than the others without substantial evidence as to those needs. In addition, where there is an issue as to interference with an existing station, the Commission must receive evidence of the need for the service which would be lost as against the need for the service proposed by the new facility. Programming evidence is an essential element in testing comparative community needs, and Commission expertise cannot take place of evidence. The fact that the parties agreed to limit comparative consideration to engineering statistics does not excuse the absence of evidence which is essential to sustain the Commission's findings. The Commission cannot make findings which differentiate between applicants on issues upon which there is no supporting evidence, as it did in preferring a community which already had one local station over a smaller community with no local station but which was near to a larger community with six stations. Star of the Plains Broadcasting Co. v. FCC, 267 F. (2d) 629, 18 RR 2072 [U.S. App. D.C. 1959].

The term "radio service" as indicated by the history of the Communications Act and of the so called "Davis Amendment," providing for mechanical rules to enforce geographic equality (later repealed) refers to transmission as well as reception and includes consideration of the sources from which the programs

A. Fair, efficient and equitable distribution of facilities (Continued)

(2) Factors to be considered (Continued)

are derived as well as number of stations which can be heard. Equitable distribution of radio service is not determined by relative distribution of transmitter sites alone or by the number of stations whose programs can be heard in a given area. The proper test is which of several communities is in greatest need of the additional service and it is no argument, if the communities are in fact different and have separate interests and requirements, to point out that one community is able to receive all or most of the programs broadcast by stations located in and serving the particular interests of the other community. Newark Broadcasting Corp., 11 FCC 965, 3 RR 839 [1947].

As between mutually exclusive applications for a construction permit, applicant from Newark, which had three stations, would be preferred over applicant from New York, which had sixteen stations. In determining that Newark had the greater need, consideration was given (1) to the sources from which the programs were derived as well as the number of stations which could be heard (2) to the number of stations licensed to service the interests of each community, whether network, foreign language, religious, locality or municipal in their emphasis, (3) to the fact that the New York applicants would not serve all of New York City during the nighttime hours while the Newark applicant would serve all of Newark and practically all of Essex County. Newark Broadcasting Corp., 11 FCC 965, 3 RR 839 [1947].

The fact that five out of sixteen New York stations rendered more or less specialized service to one or more particular groups within the New York City area or were key stations in national network organizations would not eliminate them from consideration as stations serving New York City in decision based upon Section 307(b) of the Act since all sixteen of such stations, whether classified as network, foreign language, religious, locality or municipal in their principal emphasis, were licensed to serve the interest of the population of New York City or some segment of it and since, even under the aforesaid classification, the particular segments or population they served were integral parts of the New York City area rather than Newark or Essex County. Newark Broadcasting Corp., 11 FCC 965, 3 RR 839 [1947].

The fact that one or more of several radio stations located in the New York area were not serving the needs of the area might appropriately be the subject of inquiry in other proceedings before the Commission, but it would not be, itself, a reason for making another assignment to New York City in preference to another community where the facilities might better be used. Newark Broadcasting Corp., 11 FCC 965, 3 RR 839 [1947].

In appraising the broadcast needs of a community service from stations located in another state is not an adequate substitute for local service. Tri-City Broadcasting Co., 11 FCC 1283, 3 RR 1123 [1947].

While the Commission must and does give consideration to each of the three factors of "fair, efficient and equitable" distribution of facilities, there is no requirement that the Commission give equal weight to each criterion without regard to the facts of a particular case and the substantial compliance of such facts with the criteria of Section 307(b) when viewed in the light of the mandate of the Communications Act requiring the Commission to provide the most

A. Fair, efficient and equitable distribution of facilities (Continued)

(2) Factors to be considered (Continued)

widespread and effective broadcast service possible. Northwestern Ohio Broadcasting Corp., 13 FCC 231, 3 RR 1945 [1948].

The "unit-quota" system of allocating radio facilities was found to be cumbersome and unadapted to the achievement of equitable distribution of services and was abandoned by the Commission after Congress deleted the Davis Amendment from the Communications Act in 1936. A revival of this principle or a reversion to arithmetical formulae for fair, efficient and equitable allocation of radio facilities would be undesirable. While FM facilities should be considered as one of the factors bearing upon equitable distribution of AM facilities it must be borne in mind that FM receivers are not yet as widely distributed as AM receivers. Easton Publishing Co., 12 FCC 758, 4 RR 176 [1948].

The requirement that the Commission make "efficient" distribution of service to states and communities means that the frequency is to be used so as to provide service to the greatest population and area possible, and that it is to be allocated with appropriate consideration being given to the interference problems involved and the character of existing service in the areas to be served in order to produce the maximum service. The Commission is required to consider only the requested frequency, the communities requesting it, and the existing radio service, and is not required to consider availability of another frequency whose assignment would be more efficient. There is no presumption that the grant of an application filed in compliance with the Rules would result in a fair, efficient and equitable distribution of radio service entitling a competing applicant to introduce evidence to rebut such a presumption. Grand Haven Broadcasting Co., 14 FCC 1351, 4 RR 1313 [1950].

The presence of a fulltime FM station in a city is not controlling on the issue of fair, efficient and equitable distribution of facilities where the city has only daytime-only AM station and the other city involved has a fulltime station. Kokomo Pioneer Broadcasters, 6 RR 285 [1950].

As between Easton and Allentown, Pennsylvania, the requirement of fair, efficient and equitable distribution of broadcast facilities calls for a grant of a second local standard broadcast station in Easton rather than a fourth station in Allentown (a daytime-only station also being located in Bethlehem, adjoining Allentown). A choice of locally originated programs is an important element in applying the standard of fair, efficient and equitable distribution. The fact that the Allentown area has a population three times that of the Easton area, that the proposed Allentown station would serve a considerably greater number of people, and that Easton receives service from outside stations, do not weaken the conclusion that Easton has the greater need; nor do the facts that two FM stations are located in Easton and a construction permit has been granted for a television station there, since the need of the people in the Easton community who have only standard broadcast receivers for a second standard broadcast service is the dominating factor. Only the Easton station proposed to originate programs in and for the Easton community and to provide a primary service to that community although the Allentown applicant would also serve Easton, the two communities being only 14 miles apart. Easton Publishing Co., 8 RR 31 [1953].

A. Fair, efficient and equitable distribution of facilities (Continued)

(2) Factors to be considered (Continued)

Where original decision had been set aside by the court and the matter remanded to the Commission, the Commission in making a further determination as to which of two communities had the greater need for broadcast service did not err in considering grants made subsequent to the completion of the original hearing several years earlier. Easton Publishing Co., 9 RR 887 [1953].

In determining which of two communities had the greater need for a new standard broadcast service under Section 307(b) of the Act, the Commission was not required to consider the fact that a construction permit for a television station in one community was outstanding. Easton Publishing Co., 9 RR 887 [1953].

The availability of television service to an area to which an applicant proposes to render a first primary AM service is not a matter to be considered. Section 307(b) of the Act contemplates an equitable distribution of broadcast service in each class of service. Television is not a substitute for a standard broadcast service. Nor is secondary service rendered to a proposed service area the equivalent of primary service which would be rendered by a proposed operation. Tupelo Broadcasting Co., Inc., 12 RR 1233 [1956].

Evidence relating to programming, background and experience of principals and proposals for management and operation of competing applicants is not admissible under issues as to fair, efficient and equitable distribution of radio service and the term "service" as used in such issues does not include a showing of FM and television service. However, showing on needs of areas to be served should not be limited to areas to be served, populations and communities in those areas, and services available, but should include relevant evidence on agricultural or industrial character of the communities, educational, cultural or other institutions and organizations therein, etc. Courier-Times, Inc., 13 RR 1290 [1956].

Issues in a case involving mutually exclusive applications to serve different communities 100 miles apart will not be enlarged to permit a comparison of programming proposals or other comparative qualifications of the applicants where it appears that the case can be decided on the basis of "fair, efficient and equitable distribution of facilities" and no showing is made that one applicant's service will be inadequate. Courier-Times, Inc., 13 RR 1292 [1956].

Refusal to specify a Section 307(b) issue in a non-comparative case does not mean that the Commission will not take 307(b) considerations into account. Denial of an application on the ground that the need for the service is not greater than the need for the service to be lost through interference is a denial in accordance with Section 307(b) even though the section is not explicitly referred to. Newport Broadcasting Co., 24 FCC 19, 13 RR 236c [1958].

The Commission is not required to make findings on standard comparative issues when the relative need of one of the communities involved is determinative under Section 307(b) of the Act, nor is the Commission required to go into matters of comparative qualifications of the applicants as part of the 307(b) determination. Miners Broadcasting Service, Inc., 23 FCC 408, 13 RR 1163 [1957].

A. Fair, efficient and equitable distribution of facilities (Continued)

(2) Factors to be considered (Continued)

Comparison of applicants on the usual comparative grounds is unnecessary and inappropriate where Section 307(b) considerations are determinative and none of the applicants would furnish a satisfactory grade of local service to the community to be served by the other applicants. Manchaster Broadcasting Co., 24 FCC 199, 14 RR 219 [1958].

While the Commission has a policy of fostering the establishment of at least one local broadcast facility in each community of appreciable size, this policy is not without limitations and each case must be decided on the basis of all the facts. The importance of providing a first local broadcast service to a community of 5000 is lessened by its small size and its location within a large metropolitan area with a substantial number of services, while the importance of providing a second local outlet to a community of 14,000 persons is enhanced by the fact that that community is not similarly located. Grant was made to the applicant for the latter community on the basis of these considerations and the further fact that the competing application involved destructive interference to a portion of the service area of an existing station, whereas the successful applicant would cause no destructive interference to any station. Plainview Radio, 24 FCC 405, 15 RR 364 [1958].

Where the decisive question in a proceeding is whether one community or the other, proposed to be served by the respective applicants, has the greater need for the service proposed, and neither applicant will serve the city of the other, programming and other comparative issues as between the two applicants will not be included. Birney Imes, Jr., 15 RR 553 [1957].

In a case which has been set for hearing on issues as to fair, efficient and equitable distribution of radio service, evidence on various comparative matters as to the respective applicants is not admissible, although some evidence, e.g. as to proposed programming, might be relevant under the Section 307(b) issue if offered for the purpose of determining the "community" to be served and the nature of its program needs, and if two of the applicants propose to serve substantially the same "community", a comparison between them would be appropriate. Broadcasters, Inc., 15 RR 559 [1957].

Where an application for changed facilities has been set for hearing on issues relating to areas and populations to gain or lose service from the proposed operation, availability of other primary service to such areas and populations, and interference with other stations, the hearing examiner is not required to and should not compare populations and areas which will gain or lose service of the particular station. KCBQ, Inc., 15 RR 882 [1957].

Comparative issues, including issues as to comparative superiority of past operation, will not be considered in the usual Section 307(b) case. Enterprise Broadcasting Co., 16 RR 205 [1957].

An issue as to areas and populations which may be expected to gain or lose primary service from the proposed modified operation of a station will not be amended to substitute "receive" for "gain or lose" because of the fact that the station is a Class IV station on a Class III frequency and not protected from interference from Class III stations. The station has a presently definable

A. Fair, efficient and equitable distribution of facilities (Continued)

(2) Factors to be considered (Continued)

service area and future changes are too speculative to form a proper foundation for changing the issues in this manner. Henderson County Broadcasting Co., 17 RR 943 [1958].

Issues in a comparative hearing relating to a 307(b) determination will not be deleted where a legitimate question exists as to whether or not Newark and New York City are separate and distinct communities for the purposes of Section 307(b). Data as to the areas and populations within the contours of the proposed stations and the availability of other service to them must be adduced as evidence before a determiation of the 307(b) issue can be reached, if such information cannot be obtained from an analysis of the subject applications. Newark Broadcasting Corp., 18 RR 37 [1959].

An issue under Section 307(b) of the Act is properly included in the hearing order on applications for television stations in Lake Charles or Lafayette, La., in view of the distance between the communities, the separateness and distinctness of the communities, the fact that none of the applicants proposes to make studios available to the other community, the fact that each proposal would place only a Grade B signal into the other community, and the determination of the Commission in allocating the channel that the issue as to its proper assignment should be decided in an adjudicatory hearing. The issue will therefore not be modified to permit a preliminary determination of whether 307(b) considerations are applicable. While a choice under 307(b) may be difficult, the standard comparative issue will not be added on the possibility that the case may not be decided under 307(b). KTAG Associates, 18 RR 71 [1959].

Where the issue is as to relative needs of two communities for a broadcast station, evidence may be offered relating to the extent that local needs of each community are being satisfied by local or nearby stations, as to the community of interest and relationship, if any, between one of the communities and a nearby larger city, and as to how the programming proposal of either applicant would better serve the needs of the other applicant's community, if it can be shown that either station would provide primary service to the other applicant's community. Programming evidence of the respective applicants is not admissible for the purpose of determining whether one applicant would serve the needs of its community better than the other applicant would serve the needs of its community. Plainview Radio, 18 RR 671 [1959].

(3) Findings by the Commission

Where mutually exclusive applicants seek authority to serve different communities, the Commission first determines which community has the greater need for additional services and then determines which applicant can better serve that community's need. The Commission is not required first to find that the applicants are approximately equal in their ability to serve their respective communities. In choosing between applicants for AM stations in different communities, neither of which would serve the other community, the Commission did not err in preferring applicant which would afford a second outlet for local self-expression to its community, rather than applicant whose community already had three AM stations, even though the latter community was almost three times larger and growing at a greater pace. FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 12 RR 2019 [1955].

A. Fair, efficient and equitable distribution of facilities (Continued)

(3) Findings by the Commission (Continued)

In deciding to which of two communites new radio facilites should be awarded the Commission must make findings of fact which make clear the reason for the choice and make the choice a rational conclusion from the facts. It is not sufficient to find that one community is in greater need of another station than the other without indicating why the need is greater and without making findings as to the service presently available to each community in terms of radio programs, and as to the comparative quality of the program proposals of the applicants, the lack of any particular type of service in either community or the greater ability of either applicant to meet the need. Easton Publishing Co. v. FCC, 85 U.S. App. D.C. 33, 175 F.(2d) 344, 4 RR 2147 [1949].

Findings of fact must be supported by substantial evidence on the record as a whole. Where the key issue in a case is the comparative need of two communities for a new radio station, the Commission cannot find that one community's need is greater or less than the other's without substantial evidence as to those needs. In addition, where there is an issue as to interference with an existing station, the Commission must receive evidence of the need for the service which would be lost as against the need for the service proposed by the new facility. Programming evidence is an essential element in testing comparative community needs, and Commission expertise cannot take the place of evidence. The fact that the parties agreed to limit comparative consideration to engineering statistics does not excuse the absence of evidence which is essential to sustain the Commission's findings. The Commission cannot make findings which differentiate between applicants on issues upon which there is no supporting evidence, as it did in preferring a community which already had one local station over a smaller community with no local station but which was near to a larger community with six stations. Star of the Plains Broadcasting Co. v. FCC, 267 F.(2d) 629, 18 RR 2072 [U.S. App. D.C. 1959].

Deletion of a specific Section 307(b) issue after one of two mutually exclusive applicants in the hearing had withdrawn did not remove 307(b) considerations from the case insofar as interference with an existing station, party respondent in the hearing, was concerned. The applicant was still required to show, and the Commission to find, that the 307(b) criteria had been met in spite of interference to the other station. The respondent was not deprived of due process since it participated fully in the hearing and did not contend that it was in a position to offer any additional evidence on the 307(b) issue. Interstate Broadcasting Co., Inc. v. FCC, 265 F.(2d) 598, 18 RR 2083 [U.S. App. D.C. 1959].

(4) Applications involving different communities in same area

The Commission did not err in preferring one of two mutually exclusive applicants on the basis of local ownership and integration of ownership and management, and in holding that no question of fair, efficient and equitable distribution of facilities under Section 307(b) of the Act was involved, where one applicant proposed a station in Los Angeles and the other in Huntington Park, a suburb of Los Angeles but a separate community, but each proposed Class II operation and each would serve not only Huntington Park but almost all of the Los Angeles metropolitan district. The situation was not one in which

A. Fair, efficient and equitable distribution of facilities (Continued)

(4) Applications involving different communities in same area (Continued)

two separate communities were competing but the applicants were competing for the right to render service to the whole Los Angeles community. Huntington Broadcasting Co. v. FCC, 89 U.S. App. D.C. 222, 192 F.(2d) 33, 7 RR 2030 [1951].

Section 307(b) of the Act, requiring the Commission to effect a fair, efficient and equitable distribution of radio service, contemplates not merely the availability of reception service to communities but also the availability of transmission facilities in order to provide media for local expression. Where mutually exclusive applications are made for construction permits in Utica and Rome, New York, and Utica already has a broadcast station of the same class as that sought by the applicants, whereas Rome has none, neither community receiving primary service at night from outside stations, the public interest is better served by a grant to the Rome applicant. A grant of a construction permit for another station in Utica on condition that a booster be provided in Rome would not provide the most fair and equitable distribution of radio service. The fact that the two cities are located in the same metropolitan district does not diminish their separate identity. Utica Observer-Dispatch, Inc., 11 FCC 383, 3 RR 265 [1946].

In the case of mutually exclusive applications for construction permits in adjoining communities, where applicants propose to serve substantially the same areas and populations, an applicant from community which already had available the facilities of a radio station as a medium of community expression was denied a construction permit in favor of applicants from community in which no radio station was located. Southern Media Corp., 11 FCC 688, 3 RR 554 [1946].

Public interest, convenience, and necessity would best be served by granting, as between mutually exclusive applications for stations in Cleveland Heights, Ohio, and Cleveland, Ohio, the Cleveland Heights application, where it appears that Cleveland already had several broadcast stations, whereas Cleveland Heights had none, and the planned programs of proposed Cleveland Heights station would meet needs of Cleveland Heights and adjoining communities, whereas no programs particularly directed to such communities were presented by the existing stations or planned by the other applicants and any station located in Cleveland would have small listener appeal because of the weak signal it would have, particularly nighttime, in such communities. WMAK, Inc., 11 FCC 850, 3 RR 694 [1947].

Section 307(b) of the Act is not applicable in a situation where a licensee of a station in Pawtucket, Rhode Island seeks to move the main studio to Providence, Rhode Island, the frequency involved being a regional one. While Pawtucket and Providence are separate cities with their own governments and civic organizations, they are contiguous to each other and form one integrated urban area, so that programs geared to meet the needs of the citizens of either city would also meet the needs of the citizens of the other, and stations located in either community would afford the residents of both with availability of broadcast facilities for local self-expression. Pawtucket Broadcasting Co., 4 RR 1345 [1949].

A. Fair, efficient and equitable distribution of facilities (Continued)

(4) Applications involving different communities in same area (Continued)

As between two applications for new standard broadcast stations, one in San Antonio, Texas and the other in Alamo Heights, a separate community in the San Antonio metropolitan district, the requirement of fair, efficient and equitable distribution of broadcast facilities called for a grant to Alamo Heights. San Antonio already had eight standard broadcast stations while Alamo Heights had none. The frequency involved was a Class IV frequency and Class IV assignments to cities or communities within a metropolitan district are made where a need for such assignment is shown. Metropolitan Broadcasting Co., 14 FCC 706, 5 RR 532 [1950].

No choice could be made between two applicants on the basis of fair, efficient and equitable distribution of facilities where one applicant proposed operation in Los Angeles and the other in Huntington Park, California, each as a Class II station. Huntington Park is part of the Los Angeles metropolitan district and is contiguous to Los Angeles, and while it has individual entity as a separately incorporated city with its own civic, educational and governmental organizations it is an integral part of Los Angeles. Each station would serve a large percentage of the population of the City of Los Angeles and of the Los Angeles metropolitan district. While Huntington Park had no local transmission facility, this did not constitute a showing of substantial need for radio service since the frequency involved was not a local frequency and a station located either in Los Angeles or Huntington Park would render almost identical coverage of Los Angeles and Huntington Park. Stations located in a particular city are licensed to serve not only the needs of the population of that city but also the needs of persons residing within the station's entire service area, and the programs of a station located in either of the contiguous communities if geared to the needs of the people of the city of its location would also be geared to serve the needs of the people in the adjacent community. Huntington Broadcasting Co., 14 FCC 563, 5 RR 721 [1950], aff'd, Huntington Broadcasting Co. v. FCC, supra.

Application to move station from Morrisville, Pennsylvania to Trenton, New Jersey was granted where it appeared that Morrisville was in effect a suburb of Trenton and that the station would continue to meet the needs of Morrisville. While some persons would lose service, a much greater number would gain service, and those who would lose service were served by other stations. Morrisville Broadcasting Co., 6 RR 77 [1950].

In allocating frequencies under Section 307(b) of the Act the Commission is not required to consider a principal city and a suburb as two different communities regardless of the type of frequency involved or the coverage proposed by the applicants. Where both applicants propose to serve substantially the same areas and populations, the term "communities" in Section 307(b) is not limited in meaning to separate municipalities but may include a metropolitan district. What constitutes a "community" in any given case is determined in the light of a combination of factors. Huntington Broadcasting Co., 6 RR 569 [1950].

The provisions of Section 307(b) of the Act requiring fair, efficient and equitable distribution of broadcast facilities, are not applicable to a situation where

A. Fair, efficient and equitable distribution of facilities (Continued)

(4) Applications involving different communities in same area (Continued)

the two communities involved are contiguous and the smaller community was an integral part of the principal city, and each applicant would provide primary service to practically all of the principal city and to all of the contiguous community as well as substantially the same coverage of the metropolitan district. Rossmoyne Corp., 7 RR 117 [1951].

As between two mutually exclusive applications, application would be preferred which would provide a first radio outlet to a community as against application for improvement of facilities of a station in a nearby community. The two communities could not be regarded as one where they were separate and independent of each other and in different counties. An auxiliary studio cannot serve as adequately as an independent radio outlet. Delta Broadcasters, Inc., 7 RR 1196 [1953].

Where a television channel is allocated to two hyphenated communities, either applicant will probably provide equally acceptable service over the area encompassing both communities, and a transmission facility located in either city will probably be available to the residents of both cities, a specific determination should be made as to whether the Commission is required to make a choice between the two proposals on the basis of Section 307(b) of the Act. Head of the Lakes Broadcasting Co., 9 RR 1072 [1953].

Under appropriate circumstances the Commission may regard a larger political or geographical unit such as a county or a New England-type "town" as the "community" in terms of which the need for a first local transmission service is to be ascertained, but some special facts and circumstances must be shown to exist before this will be done. AM stations are generally allocated in terms of service to individual villages or cities rather than larger political or geographical entities. The presence or absence of service from other stations in the nearby area, however it is designated, will of course be evaluated in deciding a case in terms of Section 307(b). That one community is unincorporated whereas another is a municipality with a commission form of government is not a basis for a distinction. Great South Bay Broadcasting Co., Inc., 24 FCC 487, 15 RR 257 [1958].

Section 307(b) considerations are not controlling in deciding between various applications for a channel allocated to two communities by a hyphenated assignment, where the allocation contemplated an area-wide service, the main studio of each applicant is reasonably accessible to its station community and for area-wide expression opportunities, and each of the applicants proposes area-wide expression opportunities. The scattered locations of the main studios does not change this conclusion. The principal community to be served by an applicant is not determined by the location of the main studio but is determined under §3.607 of the Rules. Each of the applicants had been granted a waiver of the main studio requirements of §3.613. Triad Television Corp., 25 FCC 848, 16 RR 501 [1958].

Where applicant has raised a question whether dual city proposal of competing applicant should be permitted and issues have been enlarged to include this question, the issue in competitive hearing relating to the requirements of

A. Fair, efficient and equitable distribution of facilities (Continued)

(4) Applications involving different communities in same area (Continued)

307(b) is amended to reflect the new issue, particularly to compare proposal of one applicant for main studios in both cities with proposal of another for a main studio in one city and an auxiliary studio in the other. Charles R. Bramlett, 17 RR 81 [1958].

(5) Applications involving change of station location

A change in transmitter site of a television station which results in a diminution of service to the area the station is authorized to serve, eliminating service to some areas and some people and down-grading service to those who will continue to receive the signal, is not in the public interest. This may be offset by other factors, but the Commission must make findings on the existence and effect of such factors. Hall v. FCC, 99 U.S. App. D.C. 86, 237 F.(2d) 567, 14 RR 2009 [1956].

Application for removal of radio station from a relatively small city located within primary service range of several broadcast stations to a manufacturing city, with a population of approximately 100,000, not located in good service area of any station, was granted where it appeared that applicant was financially able to establish his station at the new location, with adequate capital to render a meritorious service to many more people, that there was much more local talent and commercial advertising available for applicant and that the removal would bring about a more equitable distribution of broadcast facilities among communities without materially depriving listening public of old location of radio service. Albert S. Moffat, 1 FCC 160 [1934].

Application for removal of share-time station from one city to another was denied where it appeared that applicant was the only station located in the community, a vicinity which had no other dependable service or good signal quality other than applicant's station. Peoria Broadcasting Company (WMBD), 1 FCC 167 [1934].

Application for authority to move station from Wichita Falls, Texas, to Fort Worth, Texas, was granted, where Wichita Falls would not be adversely affected, since it appeared that it received primary service from another station of the same strength and nature as that given by applicant, and that applicant would continue to broadcast programs originating in Wichita Falls through remote control, applicant's signal had reached only a small number of communities protesting removal, such removal would enable applicant to increase its listening audience substantially, and it appeared that Fort Worth could well support another station with respect to advertising and local talent. Wichita Falls Broadcasting Co. (KGKO), 3 FCC 386 [1936].

Removal of station from small community in one state to metropolitan center in neighboring state, with no change in operating assignment, was authorized where it appeared that applicant's operating assignment could be best utilized to serve a large center of population and the surrounding rural areas, that as presently situated applicant's station could not render such service as well as at the requested location, that the metropolitan population of city to which it was proposed to move was approximately 120,000 and received primary service from only two full-time stations, that the rural areas surrounding

A. Fair, efficient and equitable distribution of facilities (Continued)

(5) Applications involving change of station location (Continued)

it received primary service from four stations, that the small community in which station was presently located received primary service from one full-time station in addition to applicant's and its rural areas received primary service from six or seven stations. Granting of the application would place another station in a large metropolitan center, shown to have need for the additional station, as well as the talent resources and civic activities to support it, and would remove from a small community which already had primary service from one full-time station, and whose rural areas received adequate primary broadcast service, a station which it scarcely had talent or civic activity to support. Farmers and Bankers Broadcasting Corp. (KFBI), 7 FCC 232 [1939].

Section 307(b) of the Act requires that fair, efficient and equitable distribution be made among the several states and communities of licenses, frequencies, hours of operation and power, only when and insofar as there is demand for the same, and consequently, in the absence of conflicting demands by applicants for different communities, Section 307(b) was no bar to the grant of an application to change studio and transmitter location from a city in which licensee's station was the only one to a city in which it would become the sixth station. Had licensee relinquished its license and thereafter filed an application for a new station at the other location, thus seeking its objective in two steps, Section 307(b) would have been obviously inapplicable. The fact that licensee sought its objective in one step did not change the result. In any event, it was questionable whether the issue could be raised by another licensee whose only interest in the matter derived from a possibility of cross-modulation or inter-modulation between it and the other licensee. Coeur D'Alene Broadcasting Co., 12 FCC 77, 3 RR 1337 [1947].

Application to move transmitter site and main studio location from Tuscola to Decatur, Illinois, was granted where, although the station was the only one in Tuscola, that city would continue to receive primary service from it daytime and would continue to have the facilities of the station available to it as a local outlet through an auxiliary studio to be maintained at Tuscola. Grant of the application would give a second daytime service to Decatur and the urban areas within the metropolitan district, which received only one daytime AM and FM primary service, and would result in an increase of 77,000 in population served by the station. The area which would lose service received a number of other broadcast services. A grant of the application would enable the station to produce additional farm programs, provide better news coverage and increase the use of live talent. WDZ Broadcasting Co., 13 FCC 578, 4 RR 302 [1948].

Section 307(b) of the Act is not applicable in a situation where a licensee of a station in Pawtucket, Rhode Island seeks to move the main studio to Providence, Rhode Island, the frequency involved being a regional one. While Pawtucket and Providence are separate cities with their own governments and civic organizations, they are contiguous to each other and form one integrated urban area so that programs geared to meet the needs of the citizens of either city would also meet the needs of the citizens of the other, and stations located in either

A. Fair, efficient and equitable distribution of facilities (Continued)

(5) Applications involving change of station location (Continued)

community would afford the residents of both with availability of broadcast facilities for local self-expression. Pawtucket Broadcasting Co., 13 FCC 806, 4 RR 1345 [1949].

Application for change of location of a station from Jersey City to New York City was denied where the effect of granting the application would have been to add one more to the 14 or more radio stations in New York while depriving Jersey City of its only standard broadcast station. Jersey City, with a population of 300,000, had a need for local transmission facilities which outweighed the factors of reduced expense to the applicant in elimination of its Jersy City studios and elimination of the "nuisance" of announcing the station as located in Jersey City with studios also in New York. While it was true that the station had been devoting a very small percentage of its time to local service to Jersey City, that matter was not at issue in the proceeding and the need for local service clearly existed. Atlantic Broadcasting Co., Inc., 5 RR 512 [1949].

Application of a Pontiac, Michigan station to change its hours of operation from daytime to full time, to increase power from 1 kw to 50 kw day and 10 kw at night, and to move from Pontiac to Detroit was granted. While the station was the only one in Pontiac and Detroit had five stations, the station proposed to continue to serve Pontiac and to maintain a permanent auxiliary studio there. Granting the application would provide a more efficient use of the frequency and the station would be permitted to afford the residents of Pontiac with an opportunity for local self-expression during more desirable and important nighttime listening hours. The cities were located in the same metropolitan district, although 15 miles apart. WCAR, Inc., 5 RR 753 [1950].

Application to move station from Morrisville, Pennsylvania to Trenton, New Jersey was granted where it appeared that Morrisville was in effect a suburb of Trenton and that the station would continue to meet the needs of Morrisville. While some persons would lose service, a much greater number would gain service, and those who would lose service were served by other stations. Morrisville Broadcasting Co., 6 RR 77 [1950].

Section 307(b) of the Act is applicable to applications for the removal of a station from one community to another separate community, even though no competitive application is involved. Section 309(a) of the Act does not prevent the Commission from considering comparative needs of the two communites in such a case. Ark-Valley Broadcasting Co., Inc., 7 RR 77 [1951].

Application for a permit to change the transmitter site of a television station will be granted where the only significant loss of service, to relatively small areas deprived of their only Grade B signal, is compensated for by substantial gains in areas which would be brought second and third Grade B signals and substantial areas and population would gain Grade A and principal city grade signals. In computing the population that will lose service, no probative weight will be given to the fact that certain localities will receive their only service from a station that operates a lesser number of hours than does the applicant. The license of that station permits unlimited operation, its operation is in compliance with the requirements of the Rules and therefore its total operation is a subject of licensee discretion subject to change at any time. M&M Broadcasting Co., 26 FCC 35, 17 RR 1255 [1959].

A. Fair, efficient and equitable distribution of facilities (Continued)

(6) Effect of agreement between parties

The granting of applications so as to provide a "fair, efficient, and equitable distribution of radio service" to each of the communities of the United States in accordance with Section 307(b) of the Communications Act of 1934, is to be governed by the sound discretion of the Commission and cannot be limited by private contracts or agreements between licensees of broadcast stations or applicants therefor. Consequently, where granting of application by time-sharing station for increase in hours of operation would result in removal of another time-sharing station from the air, Commission denied the application even though the two stations had previously entered into a contract whereby other stations had agreed not to oppose a request by applicant for increased operating time. Moreover, it appeared that it was the intention of the parties at the time of making the agreement to provide for an equitable distribution of broadcast time subject to the approval of the Commission and not to contract for deletion of the station. Agricultural and Mechanical College of Texas (WTAW), 6 FCC 679 [1939].

(7) Auxiliary studios

Application to move transmitter site and main studio location from Tuscola to Decatur, Illinois, was granted where, although the station was the only one in Tuscola, that city would continue to receive primary service from it daytime and would continue to have the facilities of the station available to it as a local outlet through an auxiliary studio to be maintained at Tuscola. WDZ Broadcasting Co., 13 FCC 578, 4 RR 302 [1948].

The fact that an applicant proposes to maintain auxiliary studios in two communities without local transmission facilities and that the permittee of a station in another community had some plans for a secondary studio in one of the communities involved was not controlling in determining the fair, efficient and equitable allocation of facilities between three communities since the location of the main studio is determinative, secondary studios being removable at the will of the licensee. Connecticut Electronics Corp., 5 RR 469 [1949].

Application of a Pontiac, Michigan station to change from daytime to full time, to increase power and to move from Pontiac to Detroit was granted. While the station was the only one in Pontiac and Detroit had five stations, the station proposed to continue to serve Pontiac and to maintain a permanent auxiliary studio there. WCAR, Inc., 5 RR 753 [1950].

An auxiliary studio cannot serve as adequately as an independent radio outlet. Delta Broadcasters, Inc., 7 RR 1196 [1953].

The fact that an auxiliary studio is maintained in a community without a station of its own is not significant since auxiliary studios may be removed at the discretion of the licensee without permission of the Commission. Lawton-Fort Sill Broadcasting Co., 7 RR 1216 [1953].

Where applicant has raised a question whether dual city proposal of competing applicant should be permitted and issues have been enlarged to include this question, the issue in competitive hearing relating to the requirements of 307(b)

A. Fair, efficient and equitable distribution of facilities (Continued)

(7) Auxiliary studios (Continued)

is amended to reflect the new issue, particularly to compare proposal of one applicant for main studios in both cities with proposal of another for a main studio in one city and an auxiliary studio in the other. Charles R. Bramlett, 17 RR 81 [1958].

(8) FM stations

Where, at the time of proposed decision, there were nine applicants for the eight Class B FM channels available, applicant from city having no FM station or applications therefor and having a population of 25,120 and no metropolitan district was proposed to be granted a Class A FM station which, under §3.203(a) of the Rules, was designed for a community or city other than a principal city, rather than a Class B FM station which, under §3.204(a) of the Rules, was designed to service a metropolitan district or principal city since, under Section 307(b) of the Act and under the aforesaid rules, such grant of Class A station was more desirable and did not require allocation of a Class B channel all of which had been applied for. However, since at the time of final decisions, another Class B channel had become available for assignment, applicant was granted a Class B channel since this would provide a fair, efficient and equitable distribution of Class B FM facilities among the communities involved. United Broadcasting Co., 12 FCC 210, 3 RR 1522 [1947].

Where there were six applications, five from Bridgeport, Connecticut, and one from Danbury, Connecticut, for four Class B FM stations to be assigned to the general area, three stations were assigned to the applicants from Bridgeport, since the city with a population of approximately 147,000 persons had no existing FM station, and the other station was assigned to the applicant from Danbury, a city of approximately 22,000 persons with one authorized Class A FM station. If only three Class B FM channels had been available, all three would have been assigned to Bridgeport. Yankee Network, Inc., 12 FCC 501, 3 RR 1766 [1947].

In allocating five Class B FM channels to the New York metropolitan area, nine of the eleven Class B stations already authorized being in New York City and two in Northern New Jersey, the requirement of equitable distribution of facilities justified assignment of three channels to New York City, one to Newark and one to Paterson, New Jersey. Newark had one existing Class B station and Paterson had none. This distribution would result in Northern New Jersey, with 25.5% of the population of the metropolitan district, having 25% of the stations. In addition, a grant to Paterson, beside giving it a Class B FM channel, would also provide service to areas in Northern New Jersey without any FM service. Assignment of another channel to Newark would promote competition between FM broadcasters primarily concerned with Newark interests. Equitable distribution of radio service comprehends both transmission and reception of radio signals, and the fact that all of the New York City FM stations were audible in Paterson and Newark did not mean that these communities were adequately served in the absence of local outlets offering service directed primarily to the interests of the communities. The fact that Newark and Paterson each had Class A FM

A. Fair, efficient and equitable distribution of facilities (Continued)

(8) FM stations (Continued)

stations did not militate against a grant of Class B facilities since Class A stations serve limited areas and cannot cover tributary areas outside of the cities in which they are located. WBNX Broadcasting Co., Inc., 12 FCC 805, 4 RR 205 [1948].

Issues in a case involving mutually exclusive applications for FM Channel 294 at New York City and Huntington, Long Island, will be enlarged to permit a determination of areas and populations proposed to be served by the applicants and whether 307(b) considerations are applicable. Riverside Church in the City of New York, 17 RR 332 [1958].

Issues in a case involving mutually exclusive applications for FM Channel 294 in Los Angeles and Pasadena, California, will be enlarged to permit a determination of areas and populations proposed to be served by the applicants and whether 307(b) considerations are applicable. While the applications are for different cities, a question exists as to whether they form parts of the same community. Armin H. Wittenberg, Jr., 17 RR 388 [1958].

(9) Television stations

A change in transmitter site of a television station which results in a diminution of service to the area the station is authorized to serve, eliminating service to some areas and some people and down-grading service to those who will continue to receive the signal, is not in the public interest. This may be off-set by other factors, but the Commission must make findings on the existence and effect of such factors. Hall v. FCC, 99 U.S. App. D.C. 86, 237 F. (2d) 567, 14 RR 2009 [1956].

Where the Commission has considered Section 307(b) factors in originally allocating television channels and again in a rule making proceeding involving the particular area, it is not required to review them in an adjudicatory proceeding on applications for use of a VHF channel allocated to an area, because a UHF licensee contends that authorization of a VHF station will result in a nearby community losing its only local television station, a UHF station. Gerico Investment Co. v. FCC, 103 U.S. App. D.C. 141, 255 F. (2d) 893, 17 RR 2049 [1958].

Where seven television channels had been allocated to the New York metropolitan area, conformance with Section 307(b) of the Act made necessary and proper the assignment of at least one channel to a New Jersey applicant to serve more particularly the New Jersey segment of the area. Almost 3,000,000 persons resided in the New Jersey segment and Newark is in its own right a substantial trading center. Bamberger Broadcasting Service, Inc., 11 FCC 1242, 3 RR 1069 [1947].

Section 307(b) of the act relating to fair, efficient and equitable distribution of broadcast facilities, has no application to a case where the question is whether extension of construction time shall be granted to a permittee of a television station, the frequency in question having already been allocated to the area. Raytheon Manufacturing Co., 14 FCC 694, 5 RR 408c [1950].

A. Fair, efficient and equitable distribution of facilities (Continued)

(9) Television stations (Continued)

Where two applicants seek authority to establish television stations in different communities which are "hyphenated" for purposes of the Table of Assignments, the applications should be considered in the light of Section 307(b) of the Act. Lufkin Amusement Co., 8 RR 518 [1952].

Applications for the use of the same channel in different cities which are hyphenated in the Table of Assignments will be considered in the light of the requirement of fair, efficient and equitable distribution of service in Section 307(b) of the Act. Head of the Lakes Broadcasting Co., 8 RR 859 [1952].

The television standards and allocations adopted in the Sixth Report involve a determination that an operation meeting the minimum power and antenna height requirements therein provided represents an efficient use of the channels allocated to a particular community and will serve the public interest, convenience and necessity. The issue whether the grant of an application would prevent efficient use of television channels in other communities because of possible overlap of contours between commonly-owned stations if the stations in other communities should seek to operate with increased power and antenna height, will not be interjected into a proceeding. WGAL, Inc., 9 RR 110 [1953].

The principles applied by the Commission in effecting a "fair, efficient and equitable" distribution of radio facilities are equally applicable to television service. As between two communities within the same metropolitan area, the community which has no television station of its own and no foreseeable opportunity for such a station other than by a grant of one of two mutually exclusive applications, should be preferred over a community which has one station in operation and three additional channels assigned to it, all of which have been applied for. Mount Scott Telecasters, Inc., 9 RR 499 [1953].

Where a television channel is allocated to two hyphenated communities, either applicant will probably provide equally acceptable service over the area encompassing both communities, and a transmission facility located in either city will probably be available to the residents of both cities, a specific determination should be made as to whether the Commission is required to make a choice between the two proposals on the basis of Section 307(b) of the Act. Head of the Lakes Broadcasting Co., 9 RR 1072 [1953].

There was no violation of the Rules in selecting a transmitter site for a Muskegon, Michigan station which, while furnishing a signal of the required intensity to Muskegon, would also serve Grand Rapids, where it could not be said that the number of "local" programs devised to meet the needs of Muskegon was abnormally small considering its size; where it did not appear that applicant had planned or arranged for any programs, the interest in which would be confined to Grand Rapids; and where specific shows utilizing persons and topics of interest in Muskegon had been planned. The facts that applicant had taken pains to insure a high grade of service to Grand Rapids, that the transmitter site could be utilized for a Grand Rapids station, that the applicant had offered to share the transmitter site with the Grand Rapids Board of Education if that body should apply for the non-commercial educational channel allocated to that city, and that certain key personnel would

A. Fair, efficient and equitable distribution of facilities (Continued)

(9) Television stations (Continued)

reside in Grand Rapids and commute to Muskegon were not sufficient to require a different conclusion. Versluis Radio and Television, Inc., 9 RR 1123 [1954].

A Section 307(b) issue is not implicit in every television proceeding where conceivably a grant could be made premised thereon. The Commission's Table of Assignments was designed to provide a fair, efficient and equitable distribution of television service. However, where the case involves a community located within 15 miles of the community to which the channel has been assigned, a determination should be made as to whether considerations with respect to Section 307(b) are applicable and if so, whether a choice between the applicants can be reasonably based thereon. Southern Tier Radio Service, Inc., 10 RR 204 [1954].

Where a case involves a community located within 15 miles of the community to which a television channel has been assigned, a determination should be made as to whether considerations with respect to Section 307(b) of the Act are applicable and if so, whether a choice between the applicants can be reasonably based thereon. Arkansas Television Co., 10 RR 529 [1954].

The Commission is not required to grant enlargement to add an issue as to Section 307(b) of the Act in a case involving a community located within 15 miles of the community to which the channel has been assigned, nor does enlargement mean that the section is to be considered the determinative issue in the proceeding, but an issue will be added upon a proper showing permitting a determination whether the section is applicable and if so, whether a choice can reasonably be based thereon. This does not mean that evidence on comparative coverage must be considered. St. Louis Telecast, Inc., 10 RR 1000 [1954].

A Section 307(b) issue is appropriate in a case involving applications for Parma-Onondaga, Michigan, in which the various applicants propose widely scattered main studio locations. Triad Television Corp., 11 RR 1307 [1955].

Section 307(b) of the Act applies only where there are in fact separate communites competing for a facility. The type of facility sought, the coverage each applicant would provide and the location and importance of the municipality in relation to nearby cities and towns are factors considered in determining the applicability of Section 307(b). In television, an area wide, rather than a localized service, is contemplated. Section 307(b) is not applicable where competing applicants seek authorization for a television channel in St. Louis, Mo. and East St. Louis, Ill., respectively, since East St. Louis is part of the St. Louis metropolitan area, a single economically and culturally integrated community. Each applicant sought to serve substantially the same area and whichever applicant prevailed, it would be licensed to serve the needs of persons residing within the entire service area of the station. St. Louis Telecast, Inc., 22 FCC 625, 12 RR 1289 [1957].

While the Commission has always regarded local outlets for public self-expression as an important public interest consideration, the concept of service to needy population groups is of far greater public interest. An application for

A. Fair, efficient and equitable distribution of facilities (Continued)

(9) Television stations (Continued)

a satellite television grant will not be denied on the basis of protestant's contentions, not supported by record evidence, that establishment of the satellite station will prevent establishment of an independent UHF station in the area or that, if a VHF facility is assigned to the area as proposed by protestant, either the VHF facility of the satellite station must fail. Such issues may not be resolved on the basis of testimony of an economic expert. Denial of the satellite grant would serve only to deprive the area of needed television service which the applicant would bring it. A protestant against a satellite grant must make out a convincing factual case to show that the grant will preclude establishment of another station. Grant of a satellite application cannot be regarded as not in the public interest because the applicant uses the existence of the grant as a reason for opposing the allocation of a VHF channel to the city. Basin TV Co., 13 RR 392 [1956].

Applicant for channel allocated to San Francisco-Oakland which proposes to devote "full time" to the Oakland-East Bay area and to ignore any specific needs of the West Bay area is not entitled to a preference over applicants which propose to serve the entire area, although placing special stress on the needs of Oakland and the East Bay, but rather should be given a demerit. The fact, even if true, that existing television stations in the area had failed to give adequate attention to the needs and interests of the Oakland-East Bay area would not justify neglect of the needs of the West Bay area by the applicant. That there are five television stations in the West Bay area is not controlling. The channel was assigned to San Francisco-Oakland as a hyphenated assignment and a preference could not be given an applicant who proposed to ignore the needs of one of the hyphenated communities. Television East Bay, 22 FCC 1477, 14 RR 1 [1957].

Section 307(b) considerations are not controlling in deciding between various applications for a channel allocated to two communities by a hyphenated assignment, where the allocation contemplated an area-wide service, the main studio of each applicant is reasonably accessible to its station community and for area-wide expression opportunities, and each of the applicants proposes area-wide expression opportunities. The scattered locations of the main studios does not change this conclusion. The principal community to be served by an applicant is not determined by the location of the main studio but is determined under §3.607 of the Rules. Each of the applicants had been granted a waiver of the main studio requirements of §3.613. Triad Television Corp., 25 FCC 848, 16 RR 501 [1958].

Application for a permit to change the transmitter site of a television station will be granted where the only significant loss of service, to relatively small areas deprived of their only Grade B signal, is compensated for by substantial gains in areas which would be brought second and third Grade B signals and substantial areas and population would gain Grade A and principal city grade signals. In computing the population that will lose service, no probative weight will be given to the fact that certain localities will receive their only service from a station that operates a lesser number of hours than does the applicant. The license of that station permits unlimited operation, its operation is in compliance with the requirements of the Rules and therefore its

A. Fair, efficient and equitable distribution of facilities (Continued)

(9) Television stations (Continued)

total operation is a subject of licensee discretion subject to change at any time. M&M Broadcasting Co., 26 FCC 35, 17 RR 1255 [1959].

An issue under Section 307(b) of the Act is properly included in the hearing order on applications for television stations in Lake Charles or Lafayette, La., in view of the distance between the communities, the separateness and distinctness of the communities, the fact that none of the applicants proposes to make studios available to the other community, the fact that each proposal would place only a Grade B signal into the other community, and the determination of the Commission in allocating the channel that the issue as to its proper assignment should be decided in an adjudicatory hearing. The issue will therefore not be modified to permit a preliminary determination of whether 307(b) considerations are applicable. While a choice under 307(b) may be difficult, the standard comparative issue will not be added on the possibility that the case may not be decided under 307(b). KTAG Associates, 18 RR 71 [1959].

(10) Zones and quotas

NOTE: Cases arising under the former provisions of the Communications Act dealing with zones and quotas have not been included in this digest. See ¶10:307(G), supra.

THE NEXT PAGE IS PAGE M-1473

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases

Where the Commission has found, on the basis of substantial evidence, that the granting of an application would not result in equitable distribution of broadcast services and was otherwise not in the public interest, there is no error in refusing the grant. Simmons v. F.C.C., 79 U.S.App. D.C. 264, 145 F.(2d) 578 [1944].

The Commission committed no error in preferring, on the ground of fair, efficient and equitable distribution of radio facilities, an application for improvement of facilities of the only AM station in Lansing, Michigan, over an application for improvement of facilities of a station in Cincinnati, there being five fulltime stations operating in Cincinnati as compared with the one in Lansing. While the proposed operation of the Cincinnati station would result in a gain of a larger area and population than the proposed operation of the Lansing station, the former station would reach no areas or persons not already served by some station while the latter would serve 5,000 persons in an area of 550 square miles without any primary broadcast service during daytime hours. Radio Cincinnati, Inc. v. F.C.C., 85 U.S.App. D.C. 292, 177 F.(2d) 92, 5 RR 2035 [1949].

Application for removal of radio station from a relatively small city located within the primary service range of several broadcast stations to a manufacturing city, with a population of approximately 100,000 not located in the good service area of any broadcast station was granted where it appeared that applicant was financially able to establish his station at the new location, with adequate capital to render a meritorious service to many more people, that there was much more local talent and commercial advertising available for applicant and that the removal would bring about a more equitable distribution of broadcast facilities among communities without materially depriving listening public of old location of radio service. Albert S. Moffat (WLEY), 1 F.C.C. 160 [1934].

A station in Buffalo, New York, which had a meritorious program service, including foreign language broadcasts, but which was one of five stations serving its large metropolitan area was denied construction permit for change in operating assignment, increase in power and increase in time from daytime to limited time to sunset at Dallas, Texas, in favor of station in Cumberland, Maryland, operating on the same frequency requested by Buffalo station and which had also applied for increase in power and the same hours of operation, where it appeared that Cumberland station was the only station rendering consistent service to a sizeable agricultural and manufacturing area which received only intermittent service at night, that it proposed to use the additional time to serve farmers with agricultural programs of special interest to them, that 60% of the farmers listen to the radio after 5 o'clock, that the change in operating time for the Cumberland station would not involve an increase in objectionable interference to any other station, while grant of the Buffalo application was more likely to result in interference and that the New York nighttime assignment was already over-quota while Maryland was not. Howell Broadcasting Co., Inc. (WEBR), 1 F.C.C. 286 [1935].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

Since the transfer would tend to a more equitable distribution of radio facilities, application for construction permit to move station location from a city where licensee's recent broadcast operations had been unprofitable, and which had another local station and received some service from five other stations, to a larger city which had none but could amply support a local station, was granted. Lancaster Broadcasting Service, Inc. (WKJC), 2 F.C.C. 164 [1935].

In the case of an application for construction permit to change equipment, increase power and operate unlimited time by existing station and an application for construction permit for new station to operate unlimited time, each requesting the same frequency, although there was evidence that community served locally only by the existing station needed an unlimited time station in view of fact that that community received additional broadcasting service from several clear channel stations, Commission granted the application to construct new station in city which had no broadcasting station and which due to high noise level and static disturbances in the area did not receive satisfactory service from first applicant's station located 10 miles distant. Voice of Longview (KFRO), 3 F.C.C. 124 [1936].

Application for authority to move station from Wichita Falls, Texas, to Fort Worth, Texas, was granted, where Wichita Falls would not be adversely affected, since it appeared that it received primary service from another station of the same strength and nature as that given by applicant, and that applicant would continue to broadcast programs originating in Wichita Falls through remote control, applicant's signal had reached only a small number of communities protesting removal, such removal would enable applicant to increase its listening audience substantially, and it appeared that Fort Worth could well support another station with respect to advertising and local talent, Wichita Falls Broadcasting Co. (KGKO), 3 F.C.C. 386 [1936].

Since a much larger population would benefit from the grant, as between two mutually exclusive applicants in different cities for authority to change frequencies and to increase power, applicant which proposed to serve a locality with an approximate population of 22,000 and with 6,806 farms averaging 88 acres each was preferred, despite interference which would limit it to its 1.2 mv/m contour whereas stations of that class were normally protected to their 1 mv/m contours, over applicant which proposed to serve an area with an approximate population of 16,000 and with 1,498 farms averaging 469 acres each. KUJ, Incorporated (KUJ), 4 F.C.C. 141 [1937].

Under Section 307(b) of the Communications Act of 1934, providing for equitable distribution of radio service among states and communities, Niagara Falls, with a population of approximately 75,000 persons, receiving service from 3 stations with studios in Buffalo, 17 miles away, and with transmitters in the area between Niagara Falls and Buffalo, and also receiving service from 3 other stations in Buffalo and 3 more stations in other cities, was already receiving adequate service, and a grant for another station would not amount to equitable distribution of already limited radio facilities. Power City Broadcasting Corporation, 4 F.C.C. 227 [1937].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

Commission is required by Section 307(b) of the Communications Act of 1934 to make such distribution of the limited facilities available for broadcast use as will provide a fair, efficient and equitable service to the several states and communities. Consequently, where city had four unlimited time regional stations and received some additional service, application for additional station in the special broadcast band to be used primarily for experimental purposes was denied. The Journal Company, 5 F.C.C. 201 [1938].

In the case of mutually exclusive applications for construction permits, grant was made to applicant whose proposed operation would not cause any objectionable interference to any existing station and who proposed to serve city which had no satisfactory broadcast service in its business section and service from only one outlying station in its residential area rather than to applicant whose proposed operation would cause objectionable interference to clear channel station and who proposed to serve city which was receiving satisfactory service from two stations located in other cities. Sharon Herald Broadcasting Co., 5 F.C.C. 279 [1938].

As between mutually exclusive applications for a construction permit in different cities, applicant, whose operation as proposed would be limited to its 1.6 mv/m contour, but which would render radio service to over 2-1/2 times as many people as would the other applicant and which was located in a city whose business district did not receive satisfactory service from outside stations and whose residential section and thickly populated rural area received only some satisfactory service from a few of the outside stations would be preferred, because of the existence of greater need in the successful applicant's city, over an applicant whose operation would produce objectionable interference to the 1 mv/m contour at night of another station and which was located in a city receiving satisfactory service from outside stations, including distant clear channel stations. Westcoast Broadcasting Co. (KPQ), 6 F.C.C. 11 [1938].

Under Section 307(b) of the Communications Act of 1934 requiring the Commission to provide fair, efficient and equitable radio service among the several states and communities, application for construction permit for new station was denied since the community received primary service from three regional stations and therefore had already assigned to it an equitable share of regional broadcast facilities as contemplated by Section 307(b). El Paso Broadcasting Co., 6 F.C.C. 86 [1938].

Application by radio station to change frequency and power and to operate nighttime as well as daytime was granted where there was need for such additional service in that applicant was the only station servicing urban communities in the area and where such grant would not interfere with the fair, efficient and equitable distribution of radio service, as required by Section 307(b) of the Communications Act of 1934, there being 16 broadcast stations in the entire state. Astoria Broadcasting Co. (KAST), 6 F.C.C. 108 [1938].

As between applications for new stations in two communities, preference was given to applicant from community having no local station nor other station carrying programs of local interest or providing convenient outlets for the

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

local talent that was available rather than to applicant from community in a metropolitan area receiving service from two local stations and two outside stations since there was greater need in the former community for a broadcast station than for an additional station in the latter. Richard G. Casto, 6 F.C.C. 114 [1938].

Application by daytime radio station for modification of license to change frequency and to permit unlimited time operation with directional antenna in a large and important city, which was an educational and cultural center lacking not only a local nighttime station but also primary service from any source in the high noise level areas was granted despite the fact that proposed nighttime operation would be limited by an existing station to the 4 mv/m contour. The paramount need of the city would justify Commission's departure from allocation values and warrant the grant of the application and grant of the application would afford a fair, efficient and equitable allocation of radio facilities. City Broadcasting Corp., (WELI), 6 F.C.C. 250 [1938].

As between two mutually exclusive applications for new stations in different communities preference was given to applicant from community of over 72,000 people having no local broadcast station rather than to applicant from community of about 50,000 people having one local radio station. City Broadcasting Corp., (WELI), 6 F.C.C. 250 [1938].

Despite the fact that proposed station would be limited at night to the 4.1 contour whereas regional stations are normally protected to their 1 mv/m contours, application to change from local to regional frequency and to increase power was granted where the fact that the highly meritorious and largely unduplicated service rendered and proposed was not available to large sections of the community was sufficiently compelling to justify the Commission in departing from its allocation values and where the grant tended toward a fair, efficient and equitable distribution of radio facilities. L. L. Coryell, Sr., 6 F.C.C. 282 [1938].

Application for construction permit for new station in community in which the only available primary service came from stations located in the metropolitan area of a city in another state was granted where it appeared that these metropolitan stations did not render satisfactory service in providing a media of expression for the civic needs of the community and its suburban areas, that local business interests were adversely affected by the advantage enjoyed by metropolitan competitors in radio advertising and that applicant was proposing an educational, entertaining and constructive program service. Vancouver Radio Corporation, 6 F.C.C. 452 [1938].

In the case of application by A for change of frequency from 1210 kc to 1310 kc, by B, whose station shared time with A's on 1210 kc, for authority to operate unlimited time, and by C for construction permit for new station to operate on 1310 kc, B's application being contingent upon a grant of A's, and the applications of A and C being mutually exclusive, where the secondary service available to the three areas involved was approximately equal, Commission granted application of C and denied the applications of A and B, since

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

grant of C's application would make primary radio service available to a city not presently enjoying such service, while denial of A's and B's applications would not deprive the communities served by them of the part-time primary service presently available to them. Orville W. Lyerla, 7 F.C.C. 371 [1939].

In the case of mutually exclusive applications, one for construction permit for new station to operate specified hours in community A and the other by licensee of existing specified-hours station in community B, 10 miles distant from A, for modification of license to authorize operation full time on the same frequency, Commission granted application for expansion of service of existing station since it appeared that to grant the application for new station would mean that communities B and C would receive local broadcast only during hours 10:30 a.m. to 12:30 p.m. and 3:30 p.m. to 6:30 p.m. on weekdays and 9:00 a.m. to 7:30 p.m. on Sundays and that communities A and D would receive an intermittent local broadcast service only during hours 6:00 a.m. to 10:30 a.m.; 12:30 p.m. to 3:30 p.m. and 6:30 p.m. to 9:30 p.m. on weekdays and no Sunday service, while grant of application for increased hours of operation of station in community B, would provide B and C with full-time continuous local service. Moreover, there was no basis in the record for assuming that it would not be possible to provide full-time continuous local service in all four communities if applicant for new station in A were to operate on a different frequency. Consequently, that application was denied without prejudice to filing of another application requesting another frequency. Lane J. Harrigan, 7 F.C.C. 417 [1939].

As between two mutually exclusive applicants, the Commission will prefer the applicant which will serve more listeners and which is located in a city showing a greater need for the facilities. Portland Broadcasting System, Inc., 8 F.C.C. 257 [1940].

A grant of an application for nighttime operation on a Class I-A channel already assigned would not tend toward an equitable distribution of facilities contemplated by Section 307(b) of the Act since the Class I-A station on the frequency was the only clear channel station within an area comprising four states and included in its 0.5 mv/m contour, 1,000,000 square miles, much of which was not within the primary service area of any station, whereas broadcast services with at least the proposed coverage of the applicant were available throughout the area served by the applicant from 14 other stations. City of New York, Municipal Broadcasting System, 9 F.C.C. 169 [1942].

Application for increase of power was denied as not tending toward a fair, efficient, and equitable distribution of radio service as contemplated by Section 307(b) of the Communications Act, where, although proposed operation would enable applicant to extend its nighttime service to include an additional area of 231 square miles and 1,068 potential listeners without primary broadcast service, such gain would be at expense of 5,630 listeners who would lose service from a station in Texas, and although some of the latter population would receive service from another Texas station, there was no adequate showing as to the number or portion residing within the nighttime primary service area of such station. Dodge City Broadcasting Co., Inc., 9 F.C.C. 187 [1942].

A. Fair, efficient and equitable distribution of facilities. (Continued)

(11) Application of the standard in particular cases. (Continued)

The grant of an application for construction permit would not tend toward a fair, efficient and equitable distribution of radio service, where the proposed operation would cause interference to over 23% of the nighttime primary service area of an existing station and all of the listeners who would gain nighttime service from the proposed station had service available from at least two other stations while, although most of the listeners who would be affected by the interference had service available from one or more other stations, a small number would lose the only primary broadcast service available to them at night. WGAR Broadcasting Co., 10 FCC 222 [1943].

A grant of an application for modification of license would not tend toward a fair, efficient and equitable distribution of radio service as contemplated by Section 307(b) of the Communications Act where the effect of the grant would be to offer an additional service to 60,000 persons who already received satisfactory service from four other stations and to deprive of service from another station 40,000 persons who resided beyond the interference-free contour of that station and received primary service from two other stations. Martin R. O'Brien, 10 FCC 311 [1943].

An application for modification of license to change operating assignment was denied on the ground that it would not tend toward a fair, efficient and equitable distribution of radio service since the listeners who would be benefited by the proposed operation had service available from another station assigned to the area while those who would be affected by increased interference would lose service from the only station assigned to their area. Stuart Broadcasting Co., 10 FCC 336 [1943].

A grant of a construction permit to erect a third standard broadcast station in a metropolitan community which also received service from a number of other stations, did not contravene the requirement of fair, efficient and equitable distribution of radio service, since the change in frequency requested by petitioner, who operated the only station in a non-metropolitan community, would result in only a slight increase in service to an area and population which already received primary service day and night from several stations, and that increase would be offset by objectionable interference to a third station; whereas the grant authorized would result in the establishment of a new service to a very substantial population without objectionable interference to any existing service. Fetzer Broadcasting Co., 10 FCC 382 [1944].

Section 307(b) of the Act, requiring the Commission to effect a fair, efficient and equitable distribution of radio service, contemplates not merely the availability of reception service to communities but also the availability of transmission facilities in order to provide media for local expression. Where mutually exclusive applications are made for construction permits in Utica and Rome, New York, and Utica already has a broadcast station of the same class as that sought by the applicants, whereas Rome has none, neither community receiving primary service at night from outside stations, the public interest is better served by a grant to the Rome applicant. A grant of a construction permit for another station in Utica on condition that a booster be provided in Rome would not provide the most fair and equitable distribution of

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

radio service. The fact that the two cities are located in the same metropolitan district does not diminish their separate identity. Utica Observer-Dispatch, Inc., 11 F.C.C. 383, 3 RR 265 [1946].

Where there were mutually exclusive applications for construction permits in different communities, permit would be granted to applicant from community which received day and night service from one station in the community and primary day service from two outside stations in preference to applicant from community which received primary service from four stations, three of which were located in the community, since this grant would result in the establishment of a new and competitive radio service and would make for a more fair, efficient and equitable distribution of the use of radio service in accordance with Section 307(b) of the Act. Arkansas Democrat Co., 11 F.C.C. 480, 3 RR 358 [1946].

As between mutually exclusive applicants for station license, applicant who proposes operation in a city with a population of 54,000 receiving primary service from only one existing station will be preferred under Section 307(b) of the Act over applicant who proposes to operate in a city of 79,000 people receiving primary service from two existing stations, even though one of the stations is managed and partly owned by the first applicant. McKeesport Radio Co., 11 F.C.C. 494, 3 RR 395 [1946].

Section 307(b) of the Act contemplates availability of both transmission and reception. Where mutually exclusive applications are made for construction permit, one for Rochester, New York, and two for Geneva, New York, and Rochester already has 3 stations whereas Geneva has none, a more equitable distribution of radio service will be effected by a grant of one of the two Geneva applications. Finger Lakes Broadcasting System, 11 F.C.C. 528, 3 RR 406 [1946].

As between mutually exclusive applications for construction permits in different communities, permit would be denied applicant which would be unable to furnish nighttime service to a large population presently without it and which was located in a community receiving satisfactory broadcasting service from the applicant and two other radio stations in favor of applicants which would bring nighttime service to a large population presently without it and which would give the community presently without a radio station a medium for local and inter-community expression in furtherance of the policy of equitable assignment of radio facilities set forth in Section 307(b) of the Act. Valley Broadcasting Association, Inc., 11 F.C.C. 584, 3 RR 464 [1946].

As between mutually exclusive applications for construction permits in different communities, applicant which was located in a community having no existing station and receiving no serviceable signal from any station during nighttime was granted a permit in preference to applicant which was located in a community having three broadcast stations, each with network affiliation. James F. Hopkins Inc., 11 F.C.C. 600, 3 RR 487 [1946].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

Where there were six applications for new stations, five from N and one from M, and only two could be granted, a permit would be granted the applicant from M which had no radio station and which had no access to broadcast transmission facilities adaptable to community needs rather than grant two applications for N where three radio stations were located. Nashville Radio Corp., 11 F.C.C. 639, 3 RR 515 [1946].

As between mutually exclusive applications for construction permits respectively at Lake Charles, which had only one radio station, and at New Orleans, which had five radio stations, permit was granted the Lake Charles applicant. Granting of the Lake Charles application would make available primary service to a rural area not receiving such service. Frank R. Gibson, 11 F.C.C. 547, 3 RR 529 [1946].

As between mutually exclusive applications for construction permits in different cities, applicant who, though widely experienced in the affairs of the area, did not demonstrate an awareness of the responsibility of a broadcast licensee but committed himself to familiarize himself completely with such responsibility would be preferred in spite of the more impressive qualifications of the unsuccessful applicant as well as its plans and consciousness of the public service responsibilities and duties of a broadcast licensee because of the policy of equitable distribution of licenses in favor of communities having the greater need. Frank R. Gibson, 11 F.C.C. 547, 3 RR 529 [1946].

As between mutually exclusive applications for construction permit applicant which proposed to give new primary day and night service to between 50,000 and 89,500 persons, having only one other primary service and to make available network programs that were not reaching the area would be preferred over applicant proposing to give daytime service to 7850 additional, or a total of 79,600, with a net loss of nighttime service to approximately 2500 persons. Old Dominion Broadcasting Corp., 11 F.C.C. 327, 3 RR 577 [1946].

As between applications for construction permits in three cities, city having no radio station has greater need of station than other cities, each of which has one station. FM Radio & Television Corporation, 11 F.C.C. 775, 3 RR 665 [1946].

As between mutually exclusive applications in two cities, Commission would prefer applicant for station in City A, where it appeared that greater public need existed for new station in City A, which had no nighttime service for the local area, than for increase of City B's power, which would enable B to serve population in an area already amply served with broadcast outlets, despite B's plan for allocating facilities to Cities A and C on different frequencies so as to permit three grants, since such plan would result in A receiving 250 watt station and B a 1000 watt station, rather than B retaining a 250 watt station and A receiving a 1000 watt station. FM Radio & Television Corporation, 11 F.C.C. 775, 3 RR 665 [1946].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

When four existing radio stations, located in different parts of the country, sought to change their operating assignment to the same frequency, the Commission determined that the community in greatest need was the community having no nighttime station of its own and no existing primary service at all in the area to be served; the next greatest need was in the community having no nighttime station of its own and receiving no nighttime primary service for portions of its business district; and as between the third and fourth communities, both of which had the same number of stations and received a number of signals from outside stations, the community whose aggregate power was less was considered in greater need. WWSW, Inc., 11 F.C.C. 654, 3 RR 744 [1947].

As between mutually exclusive applications to improve facilities by Durham and Raleigh, North Carolina stations, located only 23 miles apart, the Commission granted application of the Durham station where it appeared that a greater number of persons and a larger area would be served thereby and a greater gain of persons and area would be represented, and that most of the area to be gained by Durham station did not receive radio service from any existing Durham station, whereas the areas and populations which the Raleigh station proposed to gain were served by another Raleigh station. Durham Radio Corporation, 11 F.C.C. 980, 3 RR 815 [1947].

As between applications for the same frequency consideration of equitable distribution of radio facilities among the various communities would favor the applicant which would serve a substantial number of people presently without any primary day and night service over applicants which would serve listeners who had available a number of primary day and night services from existing stations. Newark Broadcasting Corporation, 11 F.C.C. 965, 3 RR 839 [1947].

As between applicants for construction permits for mutually exclusive facilities in two cities, an applicant was preferred from the industrial and agricultural center eight times the larger, though already having three stations, in view of the fact that no new competitive service would be offered to the other district except for comparatively small areas which were already receiving primary service. Wichita Broadcasting Co., 11 F.C.C. 1010, 3 RR 865 [1947].

As between applicants for construction permits for mutually exclusive facilities in two cities, a permit was granted to the applicant from the city which was four times larger and which was the state capital, and whose operation would provide a new and fulltime radio service for that city, in preference to the applicant in whose city there existed an adequate nighttime service and an adequate daytime service was being authorized, and whose proposed station would cause interference to a third existing station. Wichita Broadcasting Co., 11 F.C.C. 1010, 3 RR 865 [1947].

As between mutually exclusive applications by two existing stations with similar coverage for the use of a regional frequency, applicant will be preferred whose proposal would provide primary service to a substantially greater number of people, both of those presently receiving primary service and those receiving no primary service. WSAV, Inc., 11 F.C.C. 1076, 3 RR 909 [1947].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between applicants for construction permits for mutually exclusive facilities in two communities the Commission preferred the applicant whose community had no station of its own and, together with a large rural population in the surrounding area, only received primary service during the evening hours from one station, rather than the applicant in whose community there were six standard broadcast stations, all of which provided daytime service and five of which rendered nighttime service to the entire area proposed to be served by applicant. Charles W. Balthrope, 11 F.C.C. 1231, 3 RR 1090b [1947].

As between two mutually exclusive applicants for construction permit in different cities, applicant which proposed operation in a city which had no radio station and received no primary service from any station in the state, although it did receive service from out of the state, was preferred over applicant in a locality which had two full time local broadcast stations. In appraising the broadcast needs of a community, service from stations located in another state is not an adequate substitute for local service. Tri-City Broadcasting Co., 11 F.C.C. 1283, 3 RR 1123 [1947].

A community which had a population and commercial activities three times greater than another community, which, together with contiguous communities, was five times larger, and which had one fulltime station and one daytime only station, was more in need of a new station than the other community was in need of either a new station or extended service from its one existing station. Easton Publishing Co., 11 F.C.C. 1339, 3 RR 1225 [1947].

Although the Rules and Standards contemplate that regional channels should normally be assigned for use in metropolitan districts, as between two mutually exclusive applicants for regional frequency, applicant which proposed operation in a small city which had no local radio outlet was preferred over applicant in a metropolitan center which had four local stations, since the grant would result in a more equitable distribution of radio facilities under Section 307(b) of the Act. Newnan Broadcasting Co., 11 F.C.C. 1369, 3 RR 1237 [1947].

As between two mutually exclusive applicants for construction permits in similar sized communities in different states, applicant who proposes operation in a city which has one daytime non-commercial station and one fulltime station, with another under construction, but which has only one network service available, will be preferred over applicant who proposes operation in a city which has only one station but which receives all four network program services from a nearby large city. Radio Wisconsin, Inc., 11 F.C.C. 1402, 3 RR 1277 [1947].

As between two mutually exclusive applicants for construction permit in different communities, applicant proposing operation in a city which had no local station was preferred over applicant proposing operation in a city which had three existing stations. Hanford Publishing Co., 11 F.C.C. 1431, 3 RR 1281 [1947].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between mutually exclusive applicants for construction permits for stations in three communities, one applicant is to be less preferred than the other two where it appears that new station has already been authorized for its community, which thus will have local broadcast facilities, whereas other two communities have no local radio facilities. Elgin Broadcasting Co., 12 F.C.C. 784, 3 RR 1288 [1947].

As between Oak Park and Elgin, Illinois, construction permit for a new station would be granted to Elgin, a distinct community not located within the metropolitan district of any large city, although receiving service from 9 stations located in Chicago, over Oak Park, which is located in Chicago metropolitan district, immediately contiguous to the City of Chicago, and receives service from 12 stations located in Chicago. Elgin Broadcasting Co., 12 F.C.C. 784, 3 RR 1288 [1947].

As between two applicants for mutually exclusive construction permits, involving proposals to serve two different communities, A's application was preferred to B's where B's application involved proposed changes in operation which would reach an additional population which already received primary service and B's community had six existing stations, while A's application was for a new unlimited time service in a community which had but one existing broadcast station authorized for daytime service only. Golden Gate Broadcasting Corp., 12 F.C.C. 207, 3 RR 1301 [1947].

Where it appears that grant of Magnolia, Arkansas application would require denial of Hope, Arkansas and Ruston, Louisiana, applications because of objectionable interference, while latter two proposals might be granted if Magnolia were denied, a grant of both the Ruston and Hope proposals would result in more equitable and efficient use of available frequency, both in terms of offering a primary service for the first time to persons and areas not receiving such a service and of the total areas and number of persons to be served. Magnolia Broadcasting Co., 12 F.C.C. 14, 3 RR 1322 [1947].

The grant of an application to increase power and change studio and transmitter location from a city of 10,000 population, in which applicant was the only station, to a metropolitan area of 141,000 population, in which it would become the sixth station, would make for more efficient use of a regional frequency. Coeur D'Alene Broadcasting Co., 12 F.C.C. 77, 3 RR 1337 [1947].

As between two mutually exclusive applicants for the same frequency in different cities, applicant which proposes increased power to serve additional population, not served by any station in the city and receiving primary service from only three stations in a neighboring city, will be preferred over applicant which proposes added service to a population receiving primary service from eight or more stations in the area. KOVO Broadcasting Co., 12 F.C.C. 110, 3 RR 1346 [1947].

As between mutually exclusive applications for construction permits for daytime only stations in different cities, both of which received service from outside stations, a permit was granted to the applicant from the city which had no

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

standard broadcast station and which needed a local daytime station for local radio expression in preference to an applicant from the city which had two fulltime standard broadcast stations. I and E Broadcasting Co., 12 F.C.C. 96, 3 RR 1354 [1947].

On the basis of the comparative need for additional service of two communities of approximately the same size, applicant for construction permit in a city receiving primary service from only one outside station was preferred over competing applicant for construction permit in the other city which received daytime service from five outside stations and nighttime service from four of the same five stations. Torrington Broadcasting Co., 12 F.C.C. 1086, 3 RR 1394 [1947].

As between three mutually exclusive applicants for construction permit to improve existing facilities, applicant was preferred which proposed to serve daytime a slightly larger additional population than the other two applicants and, nighttime, a substantially larger additional population, where only a small part of the areas to be gained received any primary nighttime service at all. Penn Thomas Watson, 12 F.C.C. 180, 3 RR 1415 [1947].

As between three mutually exclusive applications from Grand Rapids and Battle Creek, Michigan, and Elyria, Ohio, greater need was found to exist in Battle Creek and Elyria rather than in Grand Rapids where Battle Creek, with a population of 43,453, had only one broadcast station, a network affiliate, and outside of this station, had no other source of primary night service; where there was no standard AM broadcast station in Elyria, with a population of 25,120 or in any other part of Lorain County, and the city of Lorain, with a population of 44,125 and without local broadcast facilities, would be included within the primary service area of the proposed Elyria station; and where Grand Rapids had three existing stations, one of which provided day and night primary service, would receive primary daytime service from two newly authorized stations in addition to such service presently provided by an outside station, and all of its rural areas received day and night service from a number of outside stations. Leonard A. Versluis, 12 F.C.C. 342, 3 RR 1562 [1947].

Commission will not predicate its determination upon considerations arising from Section 307(b) of the Act, where requirements thereunder for a fair, efficient, and equitable distribution of radio facilities appear to be too closely balanced as between two cities, as where proposed station in one city would serve between 1-1/2 to 2 times as many persons as the other and would in addition make more efficient use of the frequency, but comparison of the populations of the respective cities, the nature of existing stations located in the communities and other broadcast signals and program service available to the cities would indicate a slight preference for the other city. Southwestern Massachusetts Broadcasting Corp., 12 F.C.C. 363, 3 RR 1658 [1947].

Under the policy of equitable distribution of radio service preference would be given, as between two conflicting applications for construction permit to change facilities of radio stations in different communities, to applicant from

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

community which, with a local population of 78,653 and a metropolitan population of 110,000, had only one fulltime local station and another authorized 500 watt daytime only station, whose proposed operation would render service to an additional population of 220,000 during the day and of 223,000 during the night, over applicant from community which, with a local population of 455,016 and a metropolitan population of 789,309, had 5 fulltime stations (2 clear channel, 2 regional and one local), whose proposed operation would render service to an additional population of 861,711 during the day and of 631,852 during the night. The proposed operation of the preferred applicant would provide primary daytime service to 7,120 who received no such service at all from any station and the more acute need of this small but substantial number of people without any primary daytime service should prevail over the fact that the proposed operation of the other applicant would provide additional service to many more people all of whom already received one or more primary services. WJIM, Incorporated, 12 F.C.C. 406, 3 RR 1692 [1947].

As between mutually exclusive applications for same frequency in two cities, Commission, in the interest of effecting a more fair, efficient, and equitable distribution of radio frequencies among the various communities, would prefer grant to city A, where there would be a gain of 907,693 persons daytime and 42,084 persons nighttime, and where although these populations received service from several stations, most of them did not receive service from any other station located in City A's trade area, over grant for city B, where substantially more persons would be served than in city A, but where all such persons received service from a large number of stations, city B itself having 5 existing AM stations. Scripps-Howard Radio, Inc., 12 F.C.C. 701, 3 RR 1796 [1948].

Commission has consistently favored those applications which propose to render primary service to listeners not receiving any such service from any other station, and would regard as inconsistent with Section 307(b) applications which did not propose to render any primary service to listeners not receiving such service, and at the same time by interference would deprive other listeners of the only primary service they have. Scripps-Howard Radio, Inc., 12 F.C.C. 701, 3 RR 1796 [1948].

As between two applicants for construction permit in different localities, applicant proposing operation in a city having no existing local broadcast station was favored over applicant which proposed operation in a city with four fulltime and one part-time station. Syndicate Theatres, Inc., 3 RR 1803 [1947].

As between mutually exclusive applications for construction permits in three cities, Commission would prefer to grant construction permit to city receiving no primary service at night other than that provided by one fulltime station, which station was controlled by the publishers of the only two daily newspapers in the community, over the other two cities, having 9 and 5 stations respectively, and which were served by all four national networks as well as independent stations. Baltimore Broadcasting Corporation, 12 F.C.C. 716, 3 RR 1807 [1948].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between mutually exclusive applications for construction permit in Murray, Kentucky, and Paris, Tennessee, applicant from Murray, which had no local station and received no primary service whatever for its 5,187 population, would be preferred over applicant from Paris, somewhat larger community which had one licensed and operating daytime station and another authorized station, in accordance with the policy of equitable distribution of radio service enunciated in Section 307(b) of the Act. The fact that the Paris proposal would serve approximately 5,000 more persons at night than the Murray proposal and the fact that Paris, a somewhat larger community than Murray, might recieve no nighttime primary service and that Murray might receive a daytime primary service from the authorized operation at Paris were held to be overcome by the need for a first local outlet to provide an opportunity for community self expression at Murray before a third station should be authorized at Paris. Paris Broadcasting Co., 12 F.C.C. 652, 3 RR 1843 [1947].

In considering the policy of fair, efficient and equitable distribution of radio service between communities, the Commission found that the need for additional radio service was substantially the same in two communities, one with a local population of 210,718 and a metropolitan population of 271,513 which received interference-free service during the day from two local and 8 outside stations and during the night from two local and two outside stations, and the other with a local population of 282,349 and a metropolitan population of 341,663, which received interference-free service during the day from 3 local and 9 outside stations and during the night from 2 local and one outside station. Skyland Broadcasting Corporation, 12 F.C.C. 741, 3 RR 1865 [1948].

As between mutually exclusive applicants for construction permits, Commission preferred applicant which would provide the community with its only broadcast outlet and which would provide service in daytime to 262,087 people in an area of 7,230 square miles already receiving service, and at night to 28,788 in an area of 464 square miles, which received no other primary service, although the rural parts of such area received some service from two stations, over applicant seeking to extend its service and which would provide service to an increased population of 687,371 and area of 29,150 square miles daytime, and 2,252 persons in an area of 36 square miles nighttime, since such areas and populations already received primary service from at least two existing stations. Lee-Smith Broadcasting Co., 12 F.C.C. 589, 3 RR 1934 [1947].

The requirement of fair and equitable distribution of radio facilities includes transmission as well as reception and includes consideration of the sources from which programs are received, as well as the number of stations that can be heard. The listening public of a community with a substantial population is entitled to a choice of locally originating programs. As between Columbus and Lima, Ohio, preference would be given to Lima, where Columbus received five daytime and four nighttime services, all but one from Columbus stations, while Lima received three services day and night of which only one was from a Lima station, even though Columbus had seven times the population of Lima. While the Commission must and does give consideration to each of the three factors of "fair, efficient and equitable" distribution of facilities, there is no

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

requirement that the Commission give equal weight to each criterion without regard to the facts of a particular case and the substantial compliance of such facts with the criteria of Section 307(b) when viewed in the light of the mandate of the Communications Act requiring the Commission to provide the most widespread and effective broadcast service possible. Northwestern Ohio Broadcasting Corporation, 13 F.C.C. ____, 3 RR 1945 [1948].

Pursuant to Section 307(b) of the Act, as between two mutually exclusive applicants for construction permit in different localities, applicant which was favored because it offered less interference to existing stations than competing applicants, and which proposed a new service to approximately 258,000 people in a city which had no local broadcast station, although its urban residential area received fulltime primary service from one other station and eight other stations gave daytime service to the rural areas, was preferred over applicant which proposed to provide a new service to only approximately 108,000 persons in a city which had one existing broadcast station, a conditional grant for an FM station, and which received primary fulltime service from one other station and primary daytime service in the rural area from three other stations. Eagle Printing Co., 12 F.C.C. 640, 3 RR 2038 [1948].

As between two mutually exclusive applications for construction permit for new stations, applicant from community receiving primary service from several outside stations but having only one local part time station which, because of the limitations of time, was unable to satisfy the needs and requirements of the local educational, religious and civic organizations was preferred, under the provisions of Section 307(b) of the Act, over applicant from community having a part time local station as well as five full time stations, four of which were network affiliates while the fifth was a local station, providing a wholly local program service. A greater need existed for a single fulltime broadcast service in preferred applicant's community which did not have any fulltime local broadcast outlet for the expression of community activities than for a sixth fulltime station in unsuccessful applicant's community. Gifford Phillips, 12 F.C.C. 626, 3 RR 2046 [1948].

As between Philadelphia and Camden, the requirements of fair, efficient and equitable distribution of radio service called for a grant to Camden where Camden had only one local station, which might be deleted, whereas Philadelphia had ten standard broadcast stations rendering, in whole or in part, primary daytime and nighttime service to the metropolitan area. WOAX, Inc., 13 F.C.C. ____, 4 RR 344 [1948].

As between two mutually exclusive applicants for a new station in Springfield and for the improvement of facilities of a station in Holyoke, Massachusetts, no choice could be made on the basis of Section 307(b) of the Act where the proposed service areas of the two stations received substantially the same service from existing stations, Springfield with approximately three times the population had two stations, and a Boston station had its transmitter there while Holyoke had the one station which was an applicant, and each applicant proposed an efficient use of the frequency. While the Springfield applicant's 5 kw proposal would serve 100,000 more persons daytime, the Holyoke

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

operation would serve 17,000 more at night; the 1 kw operation alternatively proposed at Springfield would serve substantially less people night and day. Hampden-Hampshire Corporation, 4 RR 504 [1948].

As between mutually exclusive applications for regional facilities in different cities, the requirement of fair, efficient and equitable distribution of facilities requires a grant to the larger city, presently without a fulltime regional station, rather than to the smaller city which already had such a station. In addition, the preferred applicant would serve almost 50% more persons nighttime and a 23% larger area. The fact that the other applicant would serve 10% more people daytime was unimportant since all of these persons were served by numerous other stations. Booth Radio Stations, Inc., 4 RR 616 [1949].

As between Palo Alto and Alameda, both located in the San Francisco-Oakland metropolitan district and each without a local standard broadcast station, the requirement of equitable distribution of broadcast facilities calls for a grant to Palo Alto. While the population of Alameda is approximately twice that of Palo Alto and its neighboring communities, Alameda is a more integral part of the San Francisco-Oakland area and the three Oakland stations are available to it, whereas only a San Mateo station with an auxiliary studio in Palo Alto is available. In addition, Palo Alto receives fewer primary radio signals from out-of-town radio stations than Alameda. Times-Star Publishing Co., 4 RR 718 [1948].

As between mutually exclusive applications for standard broadcast stations in two communities, G and B, B was to be preferred since, while neither community had a local station, and while the G proposal would provide a daytime service to about five times as many persons and a nighttime service to about 2-1/2 times as many, B received no primary service day or night whereas G received primary service from three stations during the day. Both proposals would serve a rural area presently receiving service from several stations daytime but no nighttime service. William M. Drace, 4 RR 741 [1948].

As between an applicant for a new station at L and a licensee seeking to improve facilities at W, the requirement of fair, efficient and equitable distribution of facilities calls for a grant to L where a grant of that application would provide L with a second fulltime station, would make new daytime primary service available to 85,000 persons as against 29,000 persons under the W proposal and 31,000 at night as against 2,000, and where the population of L was four times that of W. Coastal Broadcasting Co., 4 RR 751 [1948].

The absence of a local transmission facility or of at least one primary radio service to a substantial population of the area proposed to be served by an applicant constitutes a substantial need for radio service outweighing a significant departure from the Standards of Good Engineering Practice, but where no such compelling need is shown significant deviations from the Standards will not be allowed. Baltimore Broadcasting Corporation, 4 RR 950 [1948].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between an application for a new station in Belleville, Illinois, and an application for improvement of facilities of a station in East St. Louis, Illinois, the requirement of fair, efficient and equitable distribution of facilities called for a grant to Belleville. Belleville was a separate community from East St. Louis and had a need for a first full time facility, and the applicant's program plans would meet the needs of the community for self-expression. From the standpoint of technical service the two applications were substantially equal and the availability of reception services was approximately the same. Belleville News-Democrat, 4 RR 1043 [1950].

As between Mitchell and Watertown, South Dakota, the requirement of equitable distribution of broadcast facilities called for a grant of an application for improvement of facilities of the only Watertown station rather than of an application for a new station in Mitchell, which already had one station and also received primary daytime service from a station in Yankton, South Dakota; the Watertown applicant, operating as proposed, would reach some listeners not receiving primary service from any station, while the Mitchell station would not reach any persons not presently receiving service. Midland National Life Insurance Co., 4 RR 1269 [1949].

As between Muskegon and Grand Haven, Michigan, the requirement of equitable distribution of facilities calls for a grant of a new station to Grand Haven, which has no local transmission facility, rather than an improvement of facilities to one of the three stations in Muskegon. Grand Haven Broadcasting Co., 4 RR 1313 [1949].

As between two mutually exclusive applications for improvement of facilities in Scranton and Wilkes-Barre, Pennsylvania, the Scranton proposal was preferred since it would serve substantially more persons day and night, would provide a more complete service to the metropolitan district and would furnish primary service to more people not presently receiving such service. Scranton, with a much larger population than Wilkes-Barre, received only one complete primary service at night and was partially servedby the applicant, whereas three Wilkes-Barre stations served substantially all of the city at night. Union Broadcasting Co., 4 RR 1384 [1950].

As between two mutually exclusive applications, one for a new station in Dallas, Texas and the other for improvement of facilities of a Houston station, the requirement of fair, efficient and equitable distribution of broadcast facilities called for a grant to Dallas. While Houston is about one-fourth larger than Dallas, it has eight standard broadcast stations, only one of which is a daytime station, while Houston has only five standard stations, two of which operate daytime only. A grant of the Dallas application would provide an entirely new primary service to over a million persons daytime and almost 650,000 at night, while a grant of the Houston proposal would provide no new service to Houston but would only increase rural population served from 375,000 to 425,000 persons; all of these rural areas already received primary service. In addition the Dallas proposal would provide the area with a meritorious new non-network service. Texas Star Broadcasting Co., 5 RR 144 [1950].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

Although it was impossible to reconcile conflicting testimony as to interference, to an existing station operating on an adjacent channel, even if the station's estimate of interference involving 69.5% of the population within its remaining interference-free service area was accepted a grant would be in the public interest where there was no loss of service, all of the interference area received service from other stations, the station would continue to render service to its local area, the interference area was wholly outside the state in which the station was located and in the trade area of the city in which the proposed station would be located, and a grant of the application would provide a fourth fulltime service to a large city and would furnish new primary service to over a million persons daytime and almost 650,000 persons at night. Texas Star Broadcasting Co., 5 RR 144 [1950].

As between mutually exclusive applications for new stations in Danbury, Connecticut, and Boston, and for improvement of facilities of a station in New Bedford, Massachusetts, the requirements of fair, efficient and equitable distribution of radio service called for a grant to Danbury. Danbury, with a population of 22,000, had only a daytime station; Boston had six fulltime stations and two daytime-only stations; and New Bedford, with a population of 110,000 had the one fulltime station involved in the proceeding. The Boston area received numerous primary radio signals. The Danbury applicant proposed to serve a population receiving four or more primary signals, while the New Bedford proposal would not provide any additional primary service to that city or improve the coverage of the station but would extend service to surrounding rural areas receiving two primary services at night. The need of Danbury for a first fulltime local transmission facility was the decisive factor. Even if, as contended, New Bedford received only one primary service at night instead of three, the result would have been the same especially since the New Bedford proposal would not result in any new service. Atlantic Radio Corporation, 5 RR 195 [1949].

As between Springfield and Peoria, Illinois, the requirement of fair, efficient and equitable distribution of facilities calls for a grant to Springfield where Peoria, with a population of 105,000, receives primary daytime and nighttime service from four stations located there and its residential areas receive additional primary service from three Chicago stations, daytime service also being received from applicant and from a station in Pekin, Illinois, whereas Springfield, with a population of 75,000 receives primary service from only two stations located there, additional primary service to the residential area being provided by a St. Louis station. The Springfield applicant would also serve 30,000 persons in surrounding rural areas not presently receiving primary service from either of the Springfield stations. The proposed Peoria operation would provide a new service to some 190,000 persons at night but daytime service to 180,000 present listeners would be lost, while the Springfield applicant would provide a new service to 552,000 persons daytime and 98,000 nighttime. Mid-State Broadcasting Co., 5 RR 250 [1950].

As between two communities of comparable size a grant of the application which would provide a first local transmission facility would better serve the public interest and comply with the requirement of fair, efficient and equitable

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

distribution of radio facilities than a grant to the other community which already had a fulltime station. Petaluma Broadcasters, 5 RR 275 [1949].

As between mutually exclusive applications for new stations in Manistee, Michigan, and Sturgeon Bay, Wisconsin, the requirement of fair, efficient and equitable distribution of radio facilities called for a grant to Manistee. Neither community had a standard station. The Manistee proposal would provide the first primary service to the city itself, with a population of some 8,700, a first primary daytime service to 10,050 persons and a first nighttime primary service to 8,700 persons. The Sturgeon Bay proposal would provide the city (population 5,500) with a first primary nighttime service and a portion of the rural area to be served with a first primary nighttime service. The area within the 0.5 mv/m contour of the proposed Sturgeon Bay station was served during the day by six stations, one of which served 100% of the area, while none of the six stations serving the proposed 0.5 mv/m service area of the Manistee station served 100% of the area and 8% was not served with an 0.5 mv/m signal. Both applications could not be granted, even though simultaneous operation would serve more people than single operation, because of the magnitude of the mutual interference and the degraded service which would result. The departure from the Standards was too great to be condoned even though there was a need for a station in each community. Manistee Radio Corp., 5 RR 302 [1950].

As between three applications for improvement of facilities, the requirement of fair, efficient and equitable distribution of broadcast facilities called for a denial of one application, which would serve no area not already receiving primary service, and for the granting of the other two applications which would each serve areas and populations without any primary service. The application which was denied involved prohibitive interference with one of the applications which was granted, and granting it would also prevent population within the latter applicant's nighttime service contour from receiving a first primary nighttime service. Fair, efficient and equitable distribution of facilities required allocation of the frequency involved so as to provide primary service to the largest number of persons in the greatest need of such service and particularly, to those persons not receiving any primary service. East Texas Broadcasting Co., 5 RR 413 [1949].

As between an application for improvement of facilities of a station at Savannah, Georgia, and an application for a new station at Jacksonville, Florida, the requirement of fair, efficient and equitable distribution of facilities called for a grant to Jacksonville. Both cities already had several standard broadcast stations and there was no impelling need for new or improved facilities in either community, but the Jacksonville operation would give 3,308 persons a first primary service at night and furnish an additional primary nighttime service to 203,091 persons and an additional primary daytime service to 542,260, while the Savannah operation, while it would give a first primary nighttime service to some 82 persons and an additional primary daytime service to 436,047, would result in the loss by 20,608 persons of primary nighttime service presently being received from the station. Savannah Broadcasting Co., 5 RR 454 [1949].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between three applicants for new Class II stations in Bridgeport, Connecticut, White Plains, New York, and Huntington, New York, respectively, the requirement of fair, efficient and equitable distribution of radio facilities called for a grant of Huntington. Bridgeport, with a population of 150,000 had two fulltime and one daytime station; White Plains had one fulltime station, with a population of 40,000 while Huntington, with a population of 31,000 had no broadcast station. Each community received service from several outside stations. The fact that the Bridgeport applicant proposed to maintain auxiliary studios in two other communities without local transmission facilities, and that the permittee of a station in Oyster Bay, New York, had some plans for a secondary studio in Huntington did not require a different result, since the location of the main studio is determinative, secondary studios being removable at the will of the licensee. The Connecticut Electronics Corporation, 5 RR 469 [1949].

As between applications for improvement of facilities of stations at Cincinnnati, Ohio and Lexington, Kentucky, the requirement of fair, efficient and equitable distribution of facilities called for a grant to Lexington. The Lexington proposal would serve a net additional population of 1,768,413 daytime and 85,195 at night, a large percentage of which did not receive service from either of the two other Lexington stations or the station at Versailles, Kentucky, and would serve a small area not within the 0.5 mv/m contour of any station. While the Cincinnati applicant would serve substantially more persons, all of them would receive service from a number of stations and Cincinnati itself had five stations. Scripps-Howard Radio, Inc., 5 RR 810 [1950].

As between two mutually exclusive applications, one for a new station in Atlantic City, New Jersey, and the other for a new station in Pleasantville, New Jersey, the requirement of fair, efficient and equitable distribution of facilities called for a grant to Pleasantville. Atlantic City had two existing stations and a construction permit for a third was outstanding, and the two existing stations catered primarily to the interests of Atlantic City. The city of Pleasantville had no standard station and the proposed station would be operated chiefly for the benefit and interests of Pleasantville and its neighboring areas. Seaside Broadcasting Co., 5 RR 930c [1949].

As between applications for new standard broadcast stations in two communities of comparable size, each without a standard station, and each applicant proposing to render primary service to areas and populations of substantially the same size, the requirement that an efficient distribution of broadcast facilities be achieved called for a grant to the applicant which would not cause co-channel interference to any existing station and only slight adjacent channel interference to one station not subject to other interference. The opposing applicant would increase the already high degree of co-channel interference received by an existing station, most of the interference area being in the trade area of the city in which the latter station was located and which as a local station it was intended to serve. While the preferred applicant would not comply entirely with the Standards in that it would not render a signal of 25 mv/m or more to the business area of its community and would not render primary service to the whole city at night, these factors were outweighed by the question of interference. As far as "fair and equitable" distribution of facilities was

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

concerned, even if the preferred applicant's city received one more out-of-town signal than the other applicant this also was outweighed by the interference to the existing station which the latter would cause. Mount Vernon Broadcasting Co., 4 RR 1471 [1950].

As between two equally qualified applicants for new stations, applicant located in a community without locally originating broadcast service, which had a need for a local medium of radio expression which the applicant's proposed program service would meet, was preferred over applicant located in a larger community with two unlimited time stations. Enid Broadcasting Co., 5 RR 1232 [1950].

As between two communities, the requirement of fair, efficient and equitable distribution of broadcast facilities called for a grant to the community which had only a daytime-only station rather than to the community which had a fulltime station, even though the latter city was somewhat larger and the former city's rural areas received somewhat more primary service from distant stations. The presence of a fulltime FM station in the preferred city was not controlling in view of the inequality of the two cities in AM facilities. Kokomo Pioneer Broadcasters, 6 RR 285 [1950].

As between two mutually exclusive applications, applicant which would bring a second station to a city of 50,000 presently having only a Class IV station would be preferred over applicant for improvement of facilities of the third station in a city of 80,000. Lake Huron Broadcasting Corporation, 6 RR 1185 [1951].

Application of a daytime-only station to change frequency and operate full time was denied where 5,199 persons residing within the normally protected daytime contour of the station would not be served, representing more than 35% of the population which would be served; substantial interference would be caused to three existing stations and to another proposed operation, and 23,107 persons presently served by the station, or 61.5% of the population served would lose the service of the station. A substantial number of persons with no nighttime primary service would be served by the proposed operation, whereas all the persons who would lose service received service from other stations, and the proposal would bring a first fulltime facility to the community, but these factors did not outweigh the inefficiency of the proposed use of the frequency or the seriousness of the daytime interference which would be caused to the three existing stations, affecting substantial populations situated fairly close to the respective stations. The requirement of fair, efficient and equitable distribution of broadcast facilities does not mean that the absence of broadcast reception or of local transmission facilities automatically requires the grant of an application, without regard to the ensuing impact upon existing stations or compliance with the Standards. The absence of nighttime primary service did not outweigh the substantial lack of compliance with the Standards or the grossly inefficient and inequitable allocation which would result from granting the application. North Plains Broadcasting Corporation, 7 RR 93 [1951].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between application for a new standard broadcast station and application of an existing station to change frequency, the former application was to be preferred since it would bring a new primary service to 200,000 persons daytime and 100,000 at night and would provide a new transmission facility to a city and metropolitan area of substantial population, whereas a grant of the other application would bring a new service to only 11,000 persons daytime and 1600 at night, about half of the daytime population being in an area separate from the community in which the station was located. Tribune Publishing Co., 7 RR 222 [1951].

Application to change from daytime only to full-time operation on a different frequency was granted where, although the number of persons to lose daytime service from the station and another station would slightly exceed the number to gain nighttime service, the areas to lose daytime service were served by from one to five other stations, whereas the area to gain nighttime service was not within the nighttime primary service area of any standard station. Melbourne Broadcasting Corporation, 7 RR 264 [1951].

Application of Class III-B station for change of frequency, full-time operation and change of transmitter location was denied where the station, operating as proposed, would receive interference to such an extent that the population between the normally-protected and interference-free contours during the day would equal 96% of the population which would receive interference-free service, and the percentage at night would be 184%. The station would also cause objectionable daytime interference to five existing stations and would suffer a loss of part of its existing daytime audience so that several times as many listeners would be deprived of existing broadcast services from various sources as would benefit from the extension of applicant's service. The requirement of fair, efficient and equitable distribution of broadcast facilities and the Commission's policy of providing for the establishment of a second fulltime outlet in every community of substantial size do not mean that the absence of a second nighttime transmission facility automatically requires the grant of an application without regard to the effect on existing stations or compliance with the Standards. That the interference to other stations will occur in areas located 100 miles or more from their transmitter sites, that those stations are network affiliates and that the interference areas receive numerous other services, including service from at least one station affiliated with the same networks, is insufficient to show that the need for the proposed service outweighs the need for the service which would be lost. Even if the need for the services to be lost were minimal, the application would have to be denied because of its departure from principles of sound engineering practice and allocation. WDZ Broadcasting System, 7 RR 443 [1953].

Two applications for authority to operate with increased power on the same frequency must be treated as mutually exclusive where if both applications were granted, the RSS limitation to one station would be raised from 9.4 mv/m to 19 mv/m, the nighttime service area of the station would be reduced 75% and the nighttime service population 23%, and a substantial nighttime white area would be created without any counter-balancing nighttime service to white areas. Frank E. Hurt & Son, Inc., 7 RR 540 [1951].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between two mutually exclusive applications, application was granted which would bring a new service to substantial areas and populations, day and night, and would provide a first primary service to 6250 square miles and 8259 persons daytime and 500 square miles and 8000 persons at night. A very small white area would be created, containing only 416 persons. The operation of the station would also be brought into conformity with the provisions of the Standards relative to service to the city in which it was located. The other proposal would serve substantial additional areas and populations daytime, including white areas, but at night its existing service would be substantially reduced, and a larger nighttime white area would be created than would be eliminated. In addition, a more efficient use of the frequency was proposed by the successful applicant (5 kw day and night) than by the other applicant (5 kw day and 1 kw night). Frank E. Hurt & Son, Inc., 7 RR 540 [1951].

Application of a Class III-B station to change from daytime only to fulltime was granted in spite of the facts that the percentage ratio of non-served to served persons within the normally protected contour would be 23% and that the number of persons in the metropolitan area who would be served at night would be equivalent to only 81.7% of the total population. A new primary service at night would be afforded to 360,000 persons who were being served by from two to five stations, all residents of the city would be served, service to the city's business and factory areas would be in substantial compliance with the Standards, and a more efficient use of the channel with higher power was not possible for technical reasons. No interference to other stations would be caused. A grant of the application would result in a fair, efficient and equitable distribution of radio service and would be in the public interest. Robert W. Rounsaville, 7 RR 692 [1952].

As between application for a new Class IV station at Nashua, New Hampshire, and application for change of frequency of an existing station at Gardner, Massachusetts, the requirement of fair, efficient and equitable distribution of radio facilities called for a grant to Gardner. While the Nashua proposal would provide that city with its first nighttime local transmission facility and would provide a new reception service to a greater population than the Gardner proposal, the area gaining service from the Nashua proposal had numerous reception services available to it whereas there was an inadequacy of reception services in the areas to gain service from the Gardner proposal. Further, a more efficient allocation and use of the frequency would result from a grant to Gardner; the Nashua applicant had located its proposed transmitter site on land owned by one of its stockholders without regard to the coverage provisions of the Standards or to affording the best possible coverage to the city, and better sites were probably available. The proposed change of frequency of the Gardner station would eliminate existing interference to two stations whereas the proposed Nashua operation would cause interference to two stations. City Broadcasting Corporation, 7 RR 1055 [1953].

As between applications for new stations in Sparta, Illinois, and St. Louis, Missouri, the requirement of fair, efficient and equitable distribution of broadcast facilities called for a grant to Sparta, which had no local standard broadcast facility, rather than to St. Louis, which had seven local stations, five of

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

them fulltime. The area proposed to be served by the St. Louis applicant received service from a considerable number of stations whereas the city of Sparta was served by only two stations day and night and a third station daytime only. A segment of the population of St. Louis cannot be regarded as a "community" within the meaning of Section 307(b) of the Act. A "community" is a legally definable geographic area. Hirsch Communication Engineering Corporation, 7 RR 1112 [1953].

As between two mutually exclusive applicants for improvement of facilities of stations in different communities and states, applicant was to be preferred which would bring a first primary service to 7410 persons daytime compared with 2160, day and night combined, who would receive such a service from the other applicant. In addition, the preferred applicant would furnish a new primary service to 41,654 persons and the other applicant only 26,583. That the area which would be served by the unsuccessful applicant received in varying portions a slightly lesser number of broadcast services than portions of the area to be served by the preferred applicant was not important since these areas in both cases received numerous broadcast services. Ark-Valley Broadcasting Co., Inc., 7 RR 1136 [1953].

Absence of a local transmission facility in a community constitutes a showing by an applicant of substantial need for radio service in that community. As between mutually exclusive applications for different communities, application which would bring a first local transmission facility was preferred over application which would bring a second station to the other community. The facts that the latter city had a substantially greater population and that the former city and surrounding areas received a greater number of broadcast services from outside stations did not outweigh the need for a first local station. The fact that an auxiliary studio was maintained in the former community was not significant since auxiliary studios may be removed at the discretion of the licensee without permission of the Commission. Lawton-Fort Sill Broadcasting Co., 7 RR 1216 [1953].

As between Toledo and Oak Harbor, Ohio, Toledo was to be preferred where there were portions of Toledo which received nighttime service from only one local station and where the rural areas which would be served by the Toledo applicants received primary service throughout from only two stations, whereas Oak Harbor received primary service from four stations at night and the entire area which the Oak Harbor applicant would serve received primary service from three stations and another station served 70%. Any of the Toledo applicants would serve a much larger population than the Oak Harbor applicant. Unity Corporation, Inc., 7 RR 1302 [1953].

As between Easton and Allentown, Pennsylvania, the requirement of fair, efficient and equitable distribution of broadcast facilities calls for a grant of a second local standard broadcast station in Easton rather than a fourth station in Allentown (a daytime-only station also being located in Bethlehem, adjoining Allentown). A choice of locally originated programs is an important element in applying the standard of fair, efficient and equitable distribution. The fact that the Allentown area has a population three times that of the Easton area,

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

that the proposed Allentown station would serve a considerably greater number of people, and that Easton receives service from outside stations, do not weaken the conclusion that Easton has the greater need; nor do the facts that two FM stations are located in Easton and a construction permit has been granted for a television station there, since the need of the people in the Easton community who have only standard broadcast receivers for a second standard broadcast service is the dominating factor. Only the Easton station proposed to originate programs in and for the Easton community and to provide a primary service to that community although the Allentown applicant would also serve Easton, the two communities being only 14 miles apart. Easton Publishing Co., 8 RR 31 [1953].

The fact that a grant of an application would provide a city with its first broadcast station and its first primary service, while important and persuasive, does not per se make a grant in the public interest. Frank D. Tefft, Jr., 8 RR 179 [1952].

As between applications for new standard stations in Farrell and New Castle, Pennsylvania, the requirement of fair, efficient and equitable distribution of facilities called for a grant to Farrell, which had no local transmission facility, rather than to New Castle which already had a fulltime station. The fact that the New Castle operation would not cause as much interference to existing stations did not require a different result. Greater New Castle Broadcasting Corporation, 8 RR 291 [1952].

Continued operation of station on 770 kc pursuant to special service authorization will be ordered, pending conclusion of proceedings for final assignment of the station, where the station has been operating on 770 kc under SSA for 12 years and requiring it to operate on 1030 kc, its licensed channel, would reduce primary service areas of the station in question and the dominant station on 1030 kc, cause a substantial diminution in the secondary service area of the dominant station, and create white areas depriving more than 125,000 persons of their only primary service. While removal of the station from 770 kc would enable the dominant station on that channel to furnish a new primary service at night to more than 1,000,000 persons, and secondary service to several million, no areas or populations would receive a first primary service. In addition, a change to 1030 kc would curtail the only secondary service furnished by a Boston or New England station, while adding a sixth skywave service to the area served by New York stations. Albuquerque Broadcasting Co., 9 RR 125 [1953].

The principles applied by the Commission in effecting a "fair, efficient and equitable" distribution of radio facilities are equally applicable to television service. As between two communities within the same metropolitan area, the community which has no television station of its own and no foreseeable opportunity for such a station other than by a grant of one of two mutually exclusive applications, should be preferred over a community which has one station in operation and three additional channels assigned to it, all of which have been applied for. Mount Scott Telecasters, Inc., 9 RR 499 [1953].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

As between two applications involving mutually destructive interference, Section 307(b) considerations require that the applicant who will provide a community, which has heretofore received primary service from only one station, with its first radio station and its second primary service must be preferred over one who merely proposes to extend its present service to areas at substantial distances from the city in which its station is located which already receive service from a minimum of two and a maximum of 9 stations. Dorsey Eugene Newman, 12 RR 211 [1956].

Two communities, H and R, were required to be considered as separate communities in evaluating need for radio service to be provided by a local channel under Section 307(b) of the Act, where they were 22 miles apart, in different counties, and not part of any metropolitan or urbanized area, although they were both in a general area having common economic interests and activities. The fact that H was the center of the trading area in which R was located and the transportation center of the area did not change the situation. As between H and R, there was a greater need for new service in R, which had no radio station and was the county seat of a county with no radio station, than in H, which had a radio and television station. While both applicants proposed to serve R, the applicant located in that city would better meet the needs of the city than the other applicant, which would emphasize the needs of H and would serve R only on a secondary basis along with other communities. The R proposal would also provide a first nighttime primary service to a substantial number of persons and would furnish a second nighttime primary service to a substantially larger number of persons than the H proposal. While the H proposal would provide a new service to a greater number of persons, and would cause less interference to existing stations, this was outweighed by the other considerations. Border Broadcasters, Inc., 13 RR 463 [1956].

Applicant is entitled to a slight preference which would furnish primary service to 3762 more persons than competing applicant and would provide a second primary service to 2390 more persons. Cherokee Broadcasting Co., 25 FCC 92, 13 RR 725 [1958].

A residential "community" of 33,440 persons which has no outlet for local self-expression has a greater need for a new standard broadcast station than a city with a population of 128,000 to which are now assigned three stations. Mercer Broadcasting Co., 22 FCC 1009, 13 RR 891 [1957].

As between two communities, A and T, A has a greater need for a new standard broadcast station where (1) A has a larger population (16,500 as against 9,450); (2) all of the borough of T receives a primary service signal from a station in a nearby community, while only 20% of A receives such service from another nearby station; (3) the main studio of the existing station serving T is substantially more accessible to the organizations, institutions and of T than is the main studio of the other station to the organizations, institutions and residents of A. The first factor is the most important one, since a more valuable and efficient use of the channel will be achieved by assigning it to the applicant which will serve the greater number of people. The second factor is of less importance; service by stations in nearby communities is of

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

some significance in determining the need of a community for a station of its own but this factor would be of deciding importance only if the relative need in terms of populations served were substantially equal. Service from a station in another community is not ordinarily an adequate substitute for a local station. Greater accessibility of the studio of such a station is of little importance where that station has not provided that amount of service to the community in question which would be of any significance as a factor diminishing the need of the community for a local outlet. Miners Broadcasting Service, Inc., 23 FCC 408, 13 RR 1163 [1957].

The application of an existing station to change frequencies and increase power will be granted where the proposed operation will gain within its normally protected 0.5 mv/m contour an area of 453 square miles with a population of 49,900, including areas and populations which now receive primary service from but one standard broadcast station and will bring the first locally oriented primary broadcast service to approximately 50 per cent of the area and 10 per cent of the population of the principal city to be served. Radio Herkimer, 13 RR 1206d [1956].

An application which proposes to establish a first broadcast facility for a community of 9,400 persons and a primary service to an area of 1,600 square miles within which there is a population of 164,545 persons will be granted despite the fact that the proposed station will cause interference to a proposed station in an area of 68 square miles with a population of 3,980 persons, particularly since all parts of the interference area receive primary service from a minimum of eight stations. Radio Herkimer, 13 RR 1206d [1956].

As between Hartford, East Hartford and Manchester, Connecticut, Hartford is in the poorest comparative position for 307(b) purposes since it has numerous local services, whereas the other communities have none. The fact that the Hartford applicant would serve a greater number of people cannot outweigh the need for a first local service in a community of substantial size. As between Manchester and East Hartford, Manchester is to be preferred since it receives fewer primary services and the residents of East Hartford have easily available to them for purposes of local self-expression the stations in Hartford, a separate community but one which is in close proximity to East Hartford and has a close community of interest with it. Manchester Broadcasting Co., 24 FCC 199, 14 RR 219 [1958].

Application for a construction permit for an AM station will be granted where the proposed operation will provide primary service daytime to 101,603 persons in an area of 5,380 square miles and a fourth standard broadcast service to 45,471 persons. Taylor Broadcasting Co., 14 RR 658 [1956].

Application for a construction permit for an AM station will be granted where the proposed operation will provide primary service daytime to 65,144 persons in an area of 241 square miles and nighttime to 2,620 persons in an area of 8.13 square miles and a first standard broadcast station to a city with a population of 2,580 persons. Taylor Broadcasting Co., 14 RR 658 [1956].

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

Where it is impracticable to differentiate between the needs of two cities for radio service in view of their respective populations, the absence of a station in either, and the comparable number of other stations available to the areas and populations which might be served, it must be concluded that no distinction can be drawn on the basis of the "fair and equitable" standards of Section 307(b). The mandate of Section 307(b), however, dictates the choice of the city as to which the proposals would serve in excess of 150,000 more than the proposal to serve the competing city. Grand Prairie Broadcasting Co., 22 FCC 251, 14 RR 1121 [1957].

Applicant who will provide a first locally originated service to a city of 4,750 persons which now receives primary service from only two stations is entitled to grant over an applicant who proposes to serve a city of almost 20,000 which already has a local station and receives primary service from four stations. Stephenville Broadcasting Co., 22 FCC 998, 15 RR 132 [1957].

As between mutually exclusive applications for new daytime-only stations in Islip, New York and Ridgewood, New Jersey, Islip will be preferred where a first local transmission outlet will be made available to 5254 persons who receive primary service from a minimum of 2 and a maximum of 4 stations and a third primary reception service to 9220 persons, whereas a grant to Ridgewood would furnish a first local transmission service to 17,481 persons who already have reception service from between 15 and 18 stations and a new 2 mv/m service to portions of Bergen County, New Jersey, receiving such service from a minimum of 11 or a maximum of 22 stations. While considerably more people would receive a first local service from a grant to Ridgewood, that area was already well served while the Islip area was underserved. The Ridgewood applicants are entitled to a preference on the ground that neither Bergen County nor Rockland County, a portion of which would be served, has a standard broadcast station, but such a preference is of very small significance. That Long Island communities and rural areas outside the immediate community but which would be served by the Islip applicant, presently receive little or no Long Island station service, is not significant in the absence of a showing that the needs and interests of those areas cannot be met by stations situated elsewhere. Great South Bay Broadcasting Co., Inc., 24 FCC 487, 15 RR 257 [1958].

As between mutually exclusive proposals to establish a first broadcast station in Lawrenceville, Illinois or Newburgh, Indiana, the Lawrenceville proposal will be preferred since more persons would receive a first local transmission service, Newburgh (population 1324) is so small that it cannot be considered a community of appreciable or substantial size and is located close to towns of much greater size, whereas Lawrenceville is a principal center of population, Lawrenceville receives primary service from only two stations whereas Newburgh is served by 14 stations, and the Lawrenceville applicant would bring a second primary service to 12,378 persons in other communities. While the Newburgh applicant would serve a larger number of people, this was mainly because of the proximity of Newburgh to Evansville, and any preference on this ground is entitled to little weight. A grant to Lawrenceville would also be more consistent with the use intended for Class III facilities under the Rules. While

A. Fair, efficient and equitable distribution of facilities (Continued)

(11) Application of the standard in particular cases (Continued)

the Lawrenceville application was inefficient in that it would not comply with the 10% Rule, this factor was outweighed by the other factors and the Newburgh proposal would also suffer substantial interference. Southern Indiana Broadcasters, Inc., 24 FCC 521, 15 RR 349 [1958].

In a comparative consideration between applications for Dallas and Concord, N. C., Dallas must be considered as a separate community and not as part of Gastonia. While Dallas is only three miles from Gastonia, which is some seven times larger, it is not an integral part of Gastonia. Dallas will be preferred under Section 307(b) of the Act since it has no local station and Concord has a station. Wayne M. Nelson, 26 FCC 539, 17 RR 356 [1959].

THE NEXT PAGE IS PAGE M-1551