



to the extent necessary to avoid being forced to modify their operation. Subject to this stipulation, NAB supports all of the Commission's proposed rule changes, except for the elimination of Section 73.316(d) concerning interference to nearby stations.<sup>3</sup>

**II. THE COMMISSION SHOULD ELIMINATE CERTAIN OUTMODED AND CONFLICTING RULES**

**A. The Commission Should Eliminate the Maximum Rated Power Limit for AM Transmitters**

Section 73.1665(b) of the rules establishes a maximum power rating for AM transmitters based upon the AM station's authorized power.<sup>4</sup> NAB agrees with the Commission that this rule can be eliminated because nearly all stations rely on direct measurement of antenna input power and, in any case, must not exceed the power authorized on their license.<sup>5</sup> The rated power of a transmitter has nothing to do with compliance with the station's license terms, and elimination of this rule is not likely to result in increased noncompliance. Further, elimination of this rule should broaden the market of transmitters available to stations and enhance the secondary market for AM transmitters by allowing stations of any class to use transmitters of any rated power. Elimination of this rule may also improve the economics of running an AM station and may reduce the number of transmitters scrapped. Thus, we support the FCC's decision to remove this equipment-based maximum rated transmitter power rule as unnecessary.<sup>6</sup>

**B. The Commission Should Clarify and Harmonize the Definition of NCE-FM Community of License Coverage**

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<sup>3</sup> 47 C.F.R. § 73.316(d); NPRM at ¶ 5.

<sup>4</sup> 47 C.F.R. § 73.1665(b).

<sup>5</sup> NPRM at ¶ 3.

<sup>6</sup> *Id.*

NAB agrees with the Commission that 47 C.F.R. §§ 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i) should be amended to align with 47 C.F.R. § 73.515. The requirement in the latter rule that stations cover at least 50% of the area or population of their community of license is more specific than the general threshold used in the former rules that stations must cover “a portion of the community.”<sup>7</sup> Further, the 50% requirement can be objectively determined and is consistent with more current coverage requirements in other broadcast services.

**C. The Commission Should Harmonize the Second-Adjacent Channel Protection Requirement for Class D (FM) Stations**

NAB agrees with the Commission that Section 73.509(b) of the rules, which sets out signal strength contour overlap requirements for NCE FM Class D stations, should be amended so that it is consistent with the more permissive standard under Section 73.509(a), which is applicable to other classes of NCE-FM operation.<sup>8</sup> NAB submits that the interference potential for Class D stations is no greater than for other classes and there is no reason to have a different second-adjacent channel protection requirement, particularly given the demonstrated success of the less restrictive requirements for other stations.<sup>9</sup> NAB also observes that few, if any, new Class D licenses have been granted in the past decade and therefore the impact of this rule change will be minimal.

**D. The Commission Should Eliminate Protection of Mid-Band Common Carrier Operations in Alaska**

NAB agrees with the Commission that Sections 73.501(b), 74.1202(b) and the second sentence of 74.702(a)(1) of the rules should be eliminated.<sup>10</sup> These rules all contain similar

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<sup>7</sup> 47 C.F.R. §§ 73.316(c)(2)(ix)(B) and 73.1690(c)(8)(i)

<sup>8</sup> NPRM at ¶ 6.

<sup>9</sup> *Id.*

<sup>10</sup> NPRM at ¶¶ 7-8.

language requiring broadcast services to protect grandfathered common carrier services in Alaska operating in the 76-100 MHz frequency band. While mid-band radiotelephone services to remote areas of Alaska filled a critical need forty or more years ago, connectivity is now provided by other means, including satellite. In addition, a review of the FCC ULS database found no common carrier stations authorized in Alaska in the mid-band (76–100 MHz), and the likelihood of new stations being built seems exceedingly low.

**E. The Commission Should Modify the Definition of “AM Fill-In Area”**

NAB agrees with the Commission that Section 12.1201(j) of the rules should be harmonized with Section 74.1201(g).<sup>11</sup> As the NPRM notes, the cross-service (AM to FM) translator rules were changed in 2017 to allow FM translators to be located within the 2 mV/m contour of an AM station or 40 kilometers, whichever is greater. However, one of the rule sections (47 C.F.R. § 74.1201(g)) continues to reflect a requirement of “whichever [distance] is less” and may therefore inadvertently prevent many AM stations from operating FM translators within their 2 mV/m contour.<sup>12</sup>

**III. THE COMMISSION SHOULD ENSURE THAT NO BROADCASTERS IN BORDER AREAS ARE HARMED BY THE PROPOSED RULE CHANGES**

**A. The Commission Should Ensure that Existing Stations in the Canadian Border Area Do Not Inadvertently Become “Short-Spaced”**

NAB observes that there are several changes in the required separation distances tabulated in the 1991 U.S.-Canada FM Broadcasting Agreement (1991 Agreement) compared with the 1997 Amendment to that Agreement (1997 Amendment).<sup>13</sup> Specifically, nearly all of

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<sup>11</sup> *Id.* at ¶ 9.

<sup>12</sup> *Id.*

<sup>13</sup> As a preliminary matter, NAB notes that the NPRM proposes “...to remove the reference to the 1991 U.S.-Canada FM Broadcasting Agreement. . . .” NPRM at ¶ 11. However, there is no such reference in the current rules. Based upon the remainder of paragraph 11 and

the required separation distances involving Class A stations have increased from those in the existing rules. The changes are not trivial, specifying increases of up to 19 kilometers and up to 25% greater distance over what is presently in the rules.<sup>14</sup> Under the 1991 Agreement, Class A FM stations have maximum parameters of 3 kilowatts ERP and 100 meters antenna height above average terrain. This definition is unchanged in the 1997 Amendment. It is unclear, then, why it should be necessary to substantially increase the required separation distances involving Class A stations.

NAB recognizes the need for the Commission to comply with international agreements and agrees that the Commission's rules should comport with those agreements to avoid confusion. However, in this case, the proposed changes will cause FM stations that are currently compliant with the existing rules to become "short-spaced" with respect to stations in Canada and potentially non-compliant with the proposed rules. For some of those newly short-spaced stations, a contour overlap analysis may demonstrate compliance but there is no indication that the Commission has considered this outcome. NAB believes that some U.S. stations will be unable to demonstrate protection of Canadian FM stations using either the proposed spacing requirements or contour protection. Existing U.S. broadcasters should not be responsible for performing such analysis or modifying their transmitting facilities if they are found to be non-compliant with the proposed rules. NAB urges the Commission to confer

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text of the proposed rule change, NAB believes that the NPRM is proposing "... to add a reference to the 1991 U.S.-Canada FM Broadcasting Agreement as amended." Similarly, the NPRM proposes "... to remove the reference to the 1992 U.S.-Mexico Broadcasting Agreement. . . ." *Id.* at ¶ 12. However, the text of the proposed rule change retains the reference to that Agreement, thus it appears that the discussion of removal of the reference to the Agreement was inadvertent. NAB asks that the Commission clarify or correct the discussions in paragraphs 11 and 12 of the NPRM.

<sup>14</sup> For example, for Class A to Class A stations, the existing co-channel spacing requirement is 132 km while the proposed spacing would be 151 km, an increase of 19 km. Similarly, the IF spacing requirement would increase from 8 to 10 km, representing an increase of 25 %.

“grandfathered short-spacing” status on all U.S. stations that are operating as of the effective date of the new rules and to assure existing broadcasters that no facility modifications will be ordered as a result of the proposed rule change.

We also note that the Commission states, in proposed rule section 73.207(b)(2), that Class C0 stations are considered to be Class C for Canadian compliance purposes.<sup>15</sup> We suggest that the Commission also include the same language for the corresponding section on Mexican compliance, confirming that Class C0 stations are considered Class C when applying Table C to paragraph 73.207(b)(3).

**B. The Commission Should Clarify How Spacing and Other Parameters are to be Calculated**

NAB notes that the calculation methods specified in the Agreements with Canada and Mexico are different in some respects from those used domestically. For example, the U.S.-Mexico FM Agreement<sup>16</sup> specifies that distance between stations is to be calculated using a spherical earth arc of 111.18 kilometers per degree.<sup>17</sup> However, FCC rules specify that distance between stations is to be calculated using a spherical earth arc of 111.13309 kilometers per degree of latitude and 111.41513 kilometers per degree of longitude.<sup>18</sup> The resulting differences in distances calculated can result in a “short spacing” determination using one method but a fully-spaced determination using the other method. Similar discrepancies exist between the 1991 U.S.-Canada FM Broadcasting Agreement and the Commission’s rules. NAB urges the Commission to clarify how the distance figures in the

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<sup>15</sup> NPRM at ¶ 11.

<sup>16</sup> “Agreement Between the Government of the United States of America and the Government of the United Mexican States Relating to the FM Broadcasting Service in the Band 88 – 108 MHz.”

<sup>17</sup> US-Mexico FM Agreement, Appendix 2.

<sup>18</sup> 47 CFR § 73.208(c).

existing and proposed rules with respect to cross-border stations are to be calculated. NAB believes that it may be appropriate for such calculations to be made in accordance with the respective bilateral agreements, not the method given in the rules.

Finally, NAB supports the Commission's proposal to allow increased power for FM translator stations in the U.S.-Canada and U.S.-Mexico common border areas.

#### **IV. THE COMMISSION SHOULD NOT ELIMINATE THE REGULATORY REQUIREMENT TO CONSIDER PROXIMATE TRANSMITTING FACILITIES**

The Commission proposes to eliminate section 73.316(d) of the rules, which provides that “[a]pplications proposing the use of FM transmitting antennas in the immediate vicinity (i.e. 60 meters or less) of other FM or TV broadcast antennas must include a showing as to the expected effect, if any, of such approximate operation.”<sup>19</sup> The Commission concludes that the rule is unnecessary because “broadcast radio antennas within this physical proximity are unlikely to create interference problems if they are otherwise compliant with the transmission system requirements set out in section 73.317 of the rules.”<sup>20</sup> The FCC characterizes section 73.316(d) as a “seldom-used” rules that rarely prevents interference.<sup>21</sup>

NAB respectfully disagrees. We submit that this requirement provides an important legal tool for defining interference protection rights. In most cases, compliance with this rule amounts to simply checking the “No” box on an Application for Construction Permit (CP) and curing any interference problems that may arise once the station is constructed but before it is licensed. No “interference showing” is typically provided at the CP stage because the extent of any expected effect on existing stations (or involving existing stations) is uncertain. A simple arithmetic calculation involving only the operating frequencies of the stations at the site may

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<sup>19</sup> NPRM at ¶ 5 citing 47 CFR § 73.316(d).

<sup>20</sup> *Id.* citing 47 CFR § 73.317.

<sup>21</sup> *Id.*

predict an interference problem, but engineering subtleties are lacking in such a calculation. The technical information necessary to accurately predict interference impacts is impractical to obtain at the CP stage because the necessary transmitter performance, filtering, antenna coupling and other parameters are highly variable with the specific installation and are difficult or impossible to determine prior to installation of the newcomer equipment. It is therefore common for applicants to “wait and see” if there are interference or other problems after the new station equipment is installed but before program testing begins.

That said, the rule helps to ensure that intermodulation distortion (IMD) products are not generated and radiated as a result of a newcomer station collocating (or nearly collocating) with existing stations. IMD is a common outcome of collocation, particularly when an FM station collocates with other FM stations and/or Channel 6 television stations and can result in interference to other broadcast stations as well as stations in the land-mobile (including public safety) and aviation services. Such interference can be generated in a pre-existing transmitter, the newcomer transmitter, or a passive component at the transmitter site. It is critical that such interference is anticipated, considered and corrected prior to the commencement of regular broadcasting.

NAB believes that eliminating the rule is tantamount to instructing applicants not to worry about the potential effects of their operation on existing stations. We further submit that, in the case of IMD interference generated in a pre-existing transmitter, the proposed reliance on Section 73.317 muddies whether the newcomer station is responsible for correction because that rule implies that any spurious emission from a licensee’s transmitter is solely the responsibility of that licensee. In fact, longstanding Commission policy holds that a newcomer station that causes an existing station to fall out of compliance is responsible for

restoring compliance of the existing station.<sup>22</sup> However, a policy does not carry the same weight as a rule and NAB believes that Section 73.316(d) provides important legal “teeth” to its longstanding, but uncodified, policy with regard to the responsibility of newcomer stations to correct any problems they create.

## V. CONCLUSION

NAB supports the Commission’s efforts toward elimination or amendment of outmoded or unnecessary regulations and supports all but one of the proposed changes. With respect to providing an enforceable rule codifying its “last in time, first in responsibility” policy, however, NAB urges the Commission to retain Section 73.316(d). Finally, NAB urges the Commission to grandfather the operation of any stations in the Canadian or Mexican border areas that may become short-spaced or otherwise non-compliant as a result of the proposed rule changes.

Respectfully submitted,

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<sup>22</sup> Western Slope Communications, FCC Mimeo 4431 (1983) (“Commission policy generally provides that broadcasters second in time are first in responsibility to resolve interference problems due to proximity.”).