

FCC Clarifies Aspects of Rural Radio Order

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On October 12, 2012, the Federal Communications Commission (FCC or Commission) released a Second Order on Reconsideration (Second Recon Order) of the Second Report and Order (Rural Radio Order) released in March 2011. As described in a previous Client Alert, the Rural Radio Order restricted allotment of new stations in urban areas and further limited a station's ability to change its community of license. The Second Recon Order denied several petitions for reconsideration, granted in part other petitions, and clarified the Commission's policies for evaluating mutually exclusive applications and considering changes to a station's community of license under Section 307(b) of the Communications Act.

Tuck Factor Clarification

In the Rural Radio Order, the Commission established the rebuttable Urbanized Area Service Presumption (UASP), which for new stations or community of license change could be rebutted by a showing based on the three-pronged Tuck test with emphasis on the first two prongs. Concerning the Tuck factors, the Second Recon Order agreed that the presence of a dedicated ZIP code as an indicator of community independence should be given little weight. In addition, the FCC clarified that applicants would be provided wide latitude in presenting facts to rebut the UASP beyond the Tuck factors.

Clarification of Standards for Community of License Applications

The Commission made several clarifications of its procedures for evaluating community of license applications, including:

- Calculation of the contours for determining gain and loss areas for FM stations;

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- Calculation of the reception services in gain and loss areas;
- Which stations should count for the gain and loss calculations in Priority (4) analyses;
- In which situations Tuck showings will not be required.

Cases Subject to the New Rules

The Second Recon Order clarified that the Rural Radio Order's procedures would not apply to either (1) applications for minor modification of a station for a new community of license filed before April 20, 2009; or (2) FM allotment proceeding where the petition for rule making had been filed prior to April 20, 2009.

Additionally, the Commission clarified that the revised Section 307(b) procedures would not apply to any pending community of license change application or FM allotment proceeding in which a decision on the application, or allotment Report and Order, was released prior to March 3, 2011. The FCC said it would also entertain requests for waiver of the revised procedures on a case-by-case basis should there be other inequities in previously filed applications.

Denial of Petition Arguments

The Commission denied several petitions that the agency claimed repeated arguments that it already rejected as part of the Second R&O and rejected arguments that the rules were arbitrary and capricious.