

[Restrictions on Moving Radio Stations From Rural to Urban Areas May Be Coming - What's The Potential Impact?](#)

by [David Oxenford](#)

Posted on February 23, 2011

At the FCC meeting next week, the Commission will be considering an item dealing with radio stations that serve rural areas, and the ability of licensees to make technical modifications to those stations that would change the communities which they serve. While, as [we wrote last week](#), most of the attention of broadcasters has centered on the television issues to be considered at the meeting as the Commission is to begin an inquiry on the **retransmission consent process**. The **rural radio issue** poses real concerns for radio operators - especially those contemplating a move of a radio station from a community outside of a metropolitan area to one in a metro. In the name of protecting service to rural areas, the Commission may well restrict minority groups, specialty programmers, and other new entrants from bringing new services to metropolitan areas - permanently entrenching those companies who currently have major market stations as the only competition in those markets. A proposal to protect service to rural areas may well have the impact of decreasing diversity in large markets.

In virtually every large market, there is little or no potential to add new channels for FM service both because of interference protections that need to be accorded to stations in the market and because of protections to stations outside of the market but close enough to be short-spaced to any potential station in the metro area. In some cases, creative engineering has found ways for some of these non-metro stations to be moved into the metropolitan area, or at least close enough to provide some service to those markets. "Move-in stations" have allowed new entrants, some with specialized programming, to provide service to large cities - when such entrants could never afford the price of an existing in-market station, even if one was for sale. Even "rim shots", those move-ins that don't provide full coverage of a metro area, may be very worthwhile for groups with unique formats (religion, Spanish language, and other targeted programming) trying to reach a small audience that is not otherwise going to get service in such markets.

Spectrum congestion is usually not as acute in more rural areas so, to the extent that an area loses service when a station is moved into a larger market, if that service is needed (or can be profitable), another frequency can often be moved in to back-fill any service loss. Of course, a station moving closer to a larger market may still provide some service to rural areas. And Commission rules already preclude (except in rare circumstances) moving a community's only station out of that community, and prohibit the creation of "white areas" and "gray areas" - areas

where residents will receive primary service from no radio stations (a "white area") or only one radio service (a "gray area"). So a baseline of service is already established by the rules.

Rumor has it that the new rules circulating at the Commission may require a greater number of stations be left in every community before any station from that city can be moved. They may also require more reception service beyond white and gray areas, and may generally prohibit the movement of stations from rural areas into metros. If this is in fact the case, the Commission may ignore the fact that all "communities" are not created equal. Some rural areas may be in sparsely populated areas, where multiple stations cannot economically thrive. The definition of "community" should also be considered, as in any metro, there may be many "communities", not all defined by political boundaries. Some communities - defined by various social or economic or ethnic classifications, may well be deserving of service not provided by the existing stations in a market. Putting the stop on the movement of new stations into a metro area may forever deny such service. That is why virtually all broadcast groups, and several minority organizations, opposed such restrictions [when they were first proposed](#).

The rules and procedures of the allocation process are very detailed. The [changes made in this process four years ago](#), which made it easier to move stations from one city to another, are still subject to reconsideration petitions, and still have left several procedural issues unresolved. No one outside the FCC knows exactly what the new rules provide, so we don't know how they will interact with the existing rules, and whether they may be other unanticipated results. So broadcasters should watch this decision carefully, and determine what ramifications they may have on your future plans.

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.