



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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2018 FM Translator Filing Window for AM Stations Opens January 25; Freeze on Certain Applications Begins January 18

The FCC's FM translator auction filing window for certain AM stations to apply for new FM translator station construction permits will open from **January 25 to January 31, 2018**. The window is open to any AM station that did not participate in either of the 2016 FM translator modification windows or the 2017 FM translator filing window (discussed below). Important details about this upcoming window for AM stations are below.

Note that, in connection with this filing window, the Media Bureau will institute a freeze on and will not accept Low Power FM and FM translator minor change applications and FM booster construction permit applications between **January 18 and January 31, 2018**. Any such applications filed during this freeze will be dismissed.

Background. Broadcasters will recall that the FCC opened two filing windows in 2016 for AM stations seeking to acquire and/or modify existing FM translators (the “2016 Windows”), and the FCC also opened a filing window in summer 2017 for AM stations to propose new FM translator facilities (the “2017 Window”). All three of those windows have now closed. The filing window that will open from January 25 to January 31, 2018, is the second of two auction filing windows (the 2017 Window was the first) that the FCC is opening for AM stations seeking to establish *new* FM translator stations in order to retransmit their signals on a full-time basis.

When is the Filing Window Open? The auction filing window will open on January 25, 2018, and will close at 6 p.m. Eastern Time on January 31, 2018.

Stations Eligible to File. Any AM station licensee or permittee (including but not limited to a Class A or B AM station licensee or permittee) wishing to file an application to establish a new FM translator to retransmit its AM station signal full time is eligible to file in this upcoming window, provided it has not already applied for a cross-service FM translator in either of the 2016 Windows or in the 2017 Window. So, if a station filed during one of the 2016 Windows or the 2017 Window, it cannot file during the January 2018 window. During the filing window, a licensee or permittee may propose only one FM translator for each AM primary station to be rebroadcast. An applicant may designate any non-reserved FM channel (channels 221 through 300, 92.1 to 107.9 MHz) for its proposed cross-service FM translator.

Mutually Exclusive Applications. In the event that FM translator proposals filed during the upcoming window are determined to be mutually exclusive (MX) and the MX situation is not resolved through a future opportunity for settlement or technical amendments, the FCC will resolve those proposals through competitive bidding. This auction will be designated as Auction 100. (The 2017 Window was designated as Auction 99.)

Two FCC Forms Required. Each AM station applicant proposing a new FM translator station must file electronically an FCC Form 349 for each proposed FM translator. Only Section I, the Tech Box of Section III-A, and the Section VI certification of FCC Form 349 must be completed during the filing window. An applicant must also file one FCC Form 175 listing all proposed FM translator stations(s) for which it files an FCC Form 349 proposal.

Online Tutorial. The FCC posted an online tutorial to provide an overview of the application filing requirements for AM stations seeking to file for a new FM translator in the upcoming window. The online tutorial is available on the FCC’s Auction 100 website at www.fcc.gov/auction/100 under the “Tutorial” section.

We strongly recommend that stations interested in participating in this auction consult with legal counsel and/or a consulting engineer.

FCC Seeks Comment on Updating Manner in Which Broadcasters Notify MVPDs of Carriage Elections

Comment dates are now set on a [Notice of Proposed Rulemaking](#) (“Notice”) that the Commission adopted at its December meeting. The Notice considers revisions to several rules requiring broadcast stations and cable providers to provide certain types of notices in writing. Of most interest to broadcasters, the Notice seeks comment on whether and how to update the current requirement that broadcast stations make their triennial retransmission consent/must-carry elections to MVPDs in written notices sent via certified mail. (The Notice also addresses a number of rules that require cable systems to communicate certain information to subscribers in writing.) The Notice contemplates changes that would allow broadcasters (and cable companies) to communicate via email (or, in some cases, methods such as website postings), so long as certain safeguards remain in place.

The Notice, part of the Commission’s Modernization of Media Regulation Initiative, asks whether the Commission should update the retrans consent/must-carry election notice rule to allow broadcasters to use email, online notices, express delivery services, or other alternative methods to communicate the triennial carriage elections. The Notice seeks comment on whether any or all of these alternatives to notification via certified mail would ease burdens on broadcasters, increase efficiency, ensure that notices reach MVPDs in a timely manner, and allow broadcasters to document that they’ve met the retrans/must-carry election deadline. Some broadcasters have advocated a rule allowing the posting of carriage election notices online, arguing that online notices would be easier, more efficient and cost-effective, and consistent with “the Commission’s recent shift toward Internet-based solutions.”

In addition, the Notice contemplates allowing cable companies to provide certain information (e.g., subscriber privacy notices, basic service tier notices, etc.) in a similarly “modernized” manner, via email or online notices.

Comments on the Notice are due February 15, 2018, and Reply Comments are due 15 days later, on March 2, 2018.

2018 Brings Increase in SoundExchange Royalty Rates

The Copyright Royalty Board (“CRB”) recently [announced](#) an increase in the sound recording royalty rates that noninteractive webcasters pay to SoundExchange, effective January 1, 2018. Each year, the CRB is required to adjust the royalty rates it previously adopted for the 2016-2020 time period based on increases in the Consumer Price Index.

To Whom Do These Rates Apply? The royalty rates discussed below apply to all noninteractive webcasters (as opposed to interactive webcasters) who pay SoundExchange for Section 114 statutory licenses. A Section 114 (that’s Section 114 of the Copyright Act) license covers the public performance of digital audio transmissions. Noninteractive services do not allow a user to

choose which song the user will hear. Interactive services, on the other hand, allow a user to select a particular song upon request.

2018 Rates for Commercial Webcasters. The 2018 rate per performance for nonsubscription webcasters is \$0.0018, an uptick from the 2017 per-performance rate of \$0.0017. Note that most broadcasters who simulcast online fall into the nonsubscription category. For subscription webcasters, the rate will be \$0.0023 per performance, an increase from 2017’s \$0.0022 rate.

2018 Rates for Noncommercial Webcasters. Noncommercial webcasters will continue to pay a flat, \$500 per year and will also pay at the \$0.0018 per-performance rate for streams that exceed the monthly limit of 159,140 aggregate hours.

These rates apply through the end of 2020, unless a cost-of-living adjustment must be made before then. The CRB will convene a new proceeding starting next year to determine the royalty rates for 2021–2025.

Main Studio Rule Eliminated as of January 8, 2018

The Main Studio Rule was officially eliminated as of January 8, 2018. Stations will recall that the FCC adopted a [Report and Order](#) (“Order”) last year eliminating the Main Studio Rule and several requirements associated with it, including the requirement that broadcasters have full-time management and staff present at the main studio during normal business hours. Although the Rule itself is gone, some related requirements remain.

Local Telephone Number Still Required. Broadcasters must still maintain a phone number that is toll-free or local to a station’s community of license. And, calls made to the designated telephone number must be answered during business hours. The FCC has encouraged, but is not requiring, stations to use voicemail or other mechanisms for the public to leave messages outside of regular business hours. Stations must post their phone numbers in their online public files, but nowhere else (the FCC has acknowledged that stations already make their phone numbers available in other ways, including on station websites).

Remaining Vestiges of Paper Public File Records Must Still Be Made Available. Notwithstanding the elimination of the Main Studio Rule, every station must continue to maintain and make available for public inspection at an “accessible place” within its community of license during regular business hours any portion of its public file that is not yet online. Broadcasters have some discretion here; the “accessible place” could be a station office or studio or it could be a different location, such as a public library or another local office or business, so long as it is located within the community of license and is accessible during business hours. For such stations, the FCC encourages broadcasters to provide the address of their paper public file’s “accessible place” on station websites; and, if a community member asks a station about the location of the physical file, the station is required to promptly provide such information within one business day.

Stations Must Continue to Serve Their Local Communities. In the wake of the Main Studio Rule’s elimination, the FCC has reminded broadcasters of their obligation to serve their local

communities, regardless of whether they have local studios or originate local programming. Related to that bedrock obligation, the FCC will still look to a station's quarterly Issues/Programs lists and will determine whether a station has aired programming responsive to the needs and interests of its community of license at license renewal time.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

Stephen Hartzell, Editor

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