



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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FM Translator Windows for AM Stations: First Window Closes July 28; Second Window Opens July 29

As we have previously reported, the FCC has offered two filing windows in 2016 to AM broadcasters who wish to apply to move an FM translator up to 250 miles to supplement and enhance their AM band operations. The first of these windows—which is available only to Class C and Class D AM stations—will close at 11:59 p.m. Eastern Time on July 28, 2016. The second of the windows—which is available to any AM station that does not file in the first window—will open on July 29, 2016. AM broadcasters that are interested in filing in one of the windows should review both of the FCC's public notices on the subject (the first [Public Notice](#) was released in October 2015, and the [second Public Notice](#) was released in December 2015) and should focus on the filing requirements immediately.

AM Stations May Move an FM Translator up to 250 Miles. During the windows, the FCC is allowing AM stations to acquire and move existing FM translators (licensed *or* unbuilt construction permits) **up to 250 miles** and to specify **any rule-compliant non-reserved band FM channel**. The 250-mile distance is measured from the existing translator transmitter site to the proposed transmitter site (i.e., the distance is *not* measured from the translator transmitter site to the AM station's transmitter site). This new policy is a limited waiver of the rule that generally limits relocations to areas where the new FM translator contour would overlap with its old contour, and to first, second, or third adjacent channels. Under the new limited waiver, the move must still

satisfy the AM/FM translator “fill-in” service restrictions. That is, the FM translator’s proposed 60 dBu contour must be contained within the AM station’s 2 mV/m daytime contour and may not extend more than 25 miles from the AM station’s transmitter site. FM translators relocated pursuant to this limited waiver will be required to rebroadcast the AM primary station for a period of **at least four years**.

250-Mile Filing Windows in 2016. The First Window opened in late January and will close at 11:59 p.m. ET on July 28, 2016. The Second Window will open on July 29, 2016, and will close at 5:59 p.m. ET on October 31, 2016.

The First Window is only for Class C and Class D AM stations, and the Second Window will be for all AM stations that did not file during the First Window. As set forth above, the First Window has been open for six months, and the Second Window will be open for three months. In these windows, each eligible AM station will be limited to relocating **one** (and only one) non-reserved band FM translator station. The windows are first-come/first-served, which means that early applications may impact later application opportunities, and it also means that if two applications are filed for the same channel on the same day, they will be considered mutually exclusive by the FCC. In a case of mutual exclusivity, the applicants will have an opportunity to resolve the situation through settlement or technical amendment, including an amendment to move to a different non-reserved band channel.

Nonetheless, broadcasters filing during one of these windows must be very careful and diligent in making their filings; the December 2015 Public Notice discusses whether a station may re-file its application if the first application is dismissed or rejected (or if an application to acquire the translator fails to obtain a grant) and concludes, in no uncertain terms: **“Only one application may be filed by/on behalf of each AM station in either of the windows; applicants will not be given an opportunity to re-file under any circumstance.”** Thus, while certain amendments will be allowed, dismissal and re-filing of an application will not be permitted.

How Can AM Stations Find an FM Translator to Move? To take advantage of these window opportunities, you must identify an existing FM translator (license or construction permit) within 250 miles that can be moved to a location that satisfies the “fill-in” service restrictions for your AM station, and arrange for either the purchase or lease of the translator.

The FCC has developed tools to assist AM stations to locate eligible translator stations and identify rule-compliant FM translator channels. The translator search tool allows an AM licensee to input preferred relocation sites at or near its AM transmitter site. The tool then identifies all translator stations authorized at locations up to 250 miles away. The translator channel finder identifies channels that are tentatively available for use by FM translators at any location. Detailed information about the tools is available at www.fcc.gov/media/radio/am-revitalization. These translator tools are intended to assist applicants in tentatively identifying translators and channels. Broadcasters interested in filing during a window should consider using a consulting engineer or an otherwise qualified party to determine the technical acceptability of its application.

FM Translator Auction Windows Opening in 2017. In 2017, the FCC will open two additional filing windows, for those AM licensees and permittees that do not file an application

during the 2016 windows. The 2017 windows will be FM translator application “auction” windows, with the first being made available only to Class C and Class D AM stations that did not participate in the 2016 windows. The second 2017 auction window will be open to all AM station licensees and permittees that have not participated in any of the prior three windows.

The windows opening in 2017 will be for AM permittees and licensees to propose a brand-new FM translator, which must comply with the FCC’s “fill-in” service restrictions for AM stations, and any FM translator acquired during the 2017 auction windows will be permanently linked to the associated AM station. Applicants that propose mutually exclusive facilities during the 2017 auction windows will have an opportunity to resolve the mutual exclusivity through settlements or technical resolutions before progressing to an auction for remaining mutually exclusive proposals.

AM Stations Interested in FM Translators Should Begin Work Immediately. Given that next week marks both the closing of the First Window and the opening of the Second Window, and given that the FCC will process applications on a first-come/first-served basis, any AM station interested in obtaining and/or moving an FM translator should get to work right away.

Final Reminder: TV Station Copyright Royalty Claims Due July 29, 2016

As we advised last month, television station distant signal copyright royalty claims for 2015 must be filed **no later than 5:00 p.m. on July 29, 2016**. When a television station’s copyrighted programming is retransmitted by cable or satellite as a “distant” signal, the station may be entitled to receive payment of copyright royalties. A television station is considered the copyright owner of its locally produced programming, such as news and public affairs coverage. The United States Copyright Royalty Board collects copyright royalties from cable systems and satellite carriers and then distributes them to the copyright holders.

The deadline is typically July 31; this year July 31 falls on a Sunday. Normally, when a deadline falls on a weekend, the deadline becomes the next business day. For this filing—where thousands of dollars and more are at stake for each station—July 29 should be treated as the filing deadline. Meeting the deadline is serious business: A copyright owner once lost \$10 million in copyright fees because the claim for copyright royalties was filed late.

Copyright law generally defines “distant” carriage as follows:

Cable Systems: With respect to cable systems, a station’s programming is considered “distant” if it is carried on a system that is (1) outside of the station’s DMA, (2) at least 35 miles from the station’s community of license, (3) outside the station’s predicted Grade B (now digital noise limited service) contour, **and** (4) in a county where the station is not “significantly viewed.”

Satellite Carriers: With respect to satellite carriers, a station is considered “distant” if it is provided by the satellite carrier to subscribers located outside of the station’s DMA.

To claim copyright royalties, a station’s locally produced programming must satisfy at least one of the above definitions. In order for television stations to receive their 2015 copyright royalties for distant carriage, stations must file a claim with the Copyright Royalty Board by the deadline referenced above. If a station can claim both cable and satellite royalties, the station must file a separate claim for each type of distant carriage.

Stations may wish to confer with their communications counsel for information about how to timely complete and file their claim(s).

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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