



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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FCC Modifies Satellite Market of “Orphan” County Under New STELAR Procedure

The Commission recently released one its first [decisions](#) applying the new satellite market modification procedures adopted in the STELAR Reauthorization Act of 2014 (“STELAR”). In response to a request filed by the local Board of County Commissioners in La Plata County, the FCC granted the request to modify the satellite markets of four Denver television stations to include La Plata County, Colorado—one of two Colorado counties located in the neighboring Albuquerque-Santa Fe DMA. The decision demonstrates the significant—perhaps even dispositive—weight the Commission places on access to “in-state” programming in such proceedings and potentially opens the door to a wave of additional requests in other markets.

For decades, broadcasters and cable systems have been able to utilize federal law and Commission procedures to modify television markets for purposes of *cable* carriage. However, modifications to the *satellite* markets of television stations is new. One of Congress’s goals with STELAR was to address a concern with access to in-state programming by so-called “orphan counties,” or counties that, as a result of a local satellite market, are served “exclusively or almost exclusively” by television stations from a neighboring state. For example, La Plata County,

Colorado, is located at the northern edge of the Albuquerque-Santa Fe DMA, and, prior to the FCC’s recent decision, satellite subscribers received only New Mexico television stations. This is so due to the “local-into-local” rule whereby DISH and DIRECTV are generally only allowed to offer “local,” i.e., in-DMA, stations to subscribers in a particular market.

Congress chose in STELAR to use the same statutory factors to evaluate satellite market modification petitions that have applied for years in the cable context, plus one additional factor—whether modifying the local market of a television station would promote consumers’ access to television stations that originate in their state of residence. Four other statutory factors familiar from the cable context are also used, including historic carriage, local service, service by other local stations, and viewing patterns. Separately, the Commission must also determine whether offering the signals of the stations sought to be added to the local market is “technically feasible” for the satellite carriers.

In the recent decision, after initially determining the change to the local market was technically feasible based on the certifications of DISH and DIRECTV, the Commission reviewed the evidence and applied the statutory factors in a way that may have ripple effects in other markets. First, in spite of “standardized evidence” that is generally required to be submitted in market modification proceedings for both cable and satellite per FCC rules, the Commission waived most of the evidentiary requirements in this case—meaning the Board won its case without submitting all the evidence generally required to be submitted. Furthermore, while the Commission considered all five statutory factors for each of the four Denver stations involved, the factor that essentially decided the case was the “in-state” factor. In other words, the fact that the “orphan county” in question was located in the same state as the Denver stations and no other Colorado stations were serving La Plata County trumped the other factors and facts. Notably, the Commission also gave “substantial weight” to the “hundreds” of statements of support filed by Colorado politicians and residents of La Plata County.

As a result of the decision, La Plata County has not been removed from the Albuquerque-Santa Fe DMA. Rather, the Denver stations’ local satellite markets have changed so that DISH and DIRECTV may offer both the Albuquerque-Santa Fe stations and the Denver stations.

This recent decision demonstrates that broadcasters, satellite carriers, and local governments considering satellite market modifications may have an easier time achieving success than the list of five factors and the cumbersome standardized evidence approach would otherwise suggest, so long as an “orphan county” situation exists and the change is technically feasible for the satellite carriers. Only time will tell if a new wave of market modifications materializes.

FCC Relaxes FM Translator Siting Rule for AM Stations

On Thursday, March 16, the FCC released a [Public Notice](#) to announce that the Office of Management and Budget (OMB) had taken the final steps necessary to finalize and set an effective date—April 10, 2017—for the modified FM translator siting rule for AM stations. As we forecast previously, the FCC in late February released a *Second Report and Order* (the “Order”) in the AM

Revitalization proceeding that relaxed the rule governing the limits on where AM stations may locate FM translators.

Previously (and until April 10), the rule has required that an FM translator rebroadcasting an AM station be located such that the 60 dB μ contour of the FM translator station be contained within the *lesser* of (a) the 2 mV/m daytime contour of the AM station, and (b) a 25-mile radius centered at the AM transmitter site. In the AM Revitalization proceeding, many commenters suggested this standard was too restrictive, generally for two reasons. Some argued that the standard effectively punished AM stations using directional signals with deep signal nulls, resulting in the 2 mV/m contour extending only a short distance from the transmitter site. Others said the limitations made it hard for AM stations with transmitters located at some distance from their communities of license—often as a result of land availability and costs—to locate FM translators closer to those communities to facilitate service to their audiences.

The Commission initially proposed changing the standard to the *greater* of the 2 mV/m daytime contour and the 25-mile radius, but with the additional limitation that the FM translator’s 1 mV/m coverage contour could not extend beyond a 40-mile radius centered at the AM transmitter site. While commenters in the proceeding overwhelmingly supported a relaxation of the FM translator siting rule, they split on the wisdom of the 40-mile limit initially proposed by the FCC. Most opponents of the 40-mile limit pointed to instances where substantial covered populations lay within an AM station’s 2 mV/m daytime contour but more than 40 miles from the station’s transmitter site.

The opponents of the 40-mile limit were persuasive, and the Commission struck it from the final rule. In the Order, the FCC found that eliminating the 40-mile limit would be consistent with the FCC’s objective of providing flexibility to an AM station using an FM translator to serve its core market while not extending its signal beyond the station’s core service area. It also noted that the Commission had already held that the 2 mV/m contour in all cases constitutes an AM station’s primary service area. Because that contour is already one of the limits to translator coverage, the 40-mile limit was deemed unnecessary.

As a result, then, as of April 10, 2017, an AM station will be able to locate a rebroadcasting FM translator anywhere within the AM station’s daytime 2 mV/m service contour or anywhere within a 25-mile radius of the transmitter.

Reminder for TV Stations: Keep Closed Captioning Contact Information Current in All Locations

For seven years now, television stations have been required to make closed captioning contact information available to consumers and file it with the FCC. In short, stations must make available to consumers and file with the FCC contact information for the station to receive and handle both “immediate” and “non-immediate” closed captioning concerns. Over time, of course, station personnel has changed, station websites have been redesigned and relaunched, and stations have been bought and sold—any of these events (and others) could have caused a station’s closed

captioning contact information to become outdated. Now is as good a time as any to double-check the currency of your station's closed captioning contact information and review the FCC's requirements below.

“Immediate” Closed Captioning Concerns. Television broadcasters are required to make available contact information for viewers to use to notify stations of “immediate,” on-the-spot closed captioning concerns while they are watching a program—for example, if closed captioning is garbled or missing due to a technical problem. Stations must designate a telephone number, fax number, and e-mail address for purposes of receiving and responding “immediately” to such closed captioning issues and are required to ensure that any staff reachable through the designated contact information has the capability to immediately respond to and address viewer concerns. Stations must include this contact information on their websites (if they have a website), and stations must keep this information current and update it within 10 business days of any changes.

“Non-Immediate” Closed Captioning Issues. Stations must also make contact information available for viewers to submit written closed captioning complaints that are not “immediate” or on-the-spot—for example, if a viewer has concerns about closed captioning in a program that aired yesterday. The contact information required for “non-immediate” issues must include (1) the name of a person with primary responsibility at the station for captioning issues and who can ensure compliance with the captioning rules, and (2) that person's title or position, fax number, postal mailing address, and e-mail address. A station must include this contact information on its website (if it has a website). Additionally, stations must keep this information current and update it within 10 business days of any changes.

FCC Filing Requirement. The FCC's rules require television broadcasters to file the contact information for both “immediate” and “non-immediate” closed captioning concerns in the FCC's VPD (video programming distributor) database. The filing must be done by using a webform available on the FCC's website at <https://esupport.fcc.gov/vpd-data/login!input.action>. Stations and members of the public can search the VPD database by using the following link: <http://esupport.fcc.gov/vpd-search/search.action#scrollThere>. The closed captioning contact information in the VPD database is also imported by the FCC into each station's online public file. As noted above, closed captioning contact information must be updated within 10 days of any changes.

Telephone Directory Publication and Waiver. The closed captioning contact rules also require stations to publish contact information for both “immediate” and “non-immediate” closed captioning concerns in paper telephone directories. However, when the FCC adopted this rule, it simultaneously “waived” part of it. Pursuant to the “waiver,” unless a broadcaster already advertises or places paid, commercial listings in a telephone directory, a broadcaster is not required to place advertising or commercial listings in a telephone directory as long as the broadcaster makes the required contact information available on the station's website. In other words, stations with websites will be required to publish their closed captioning contact information only in directories in which those stations already place advertising or maintain a paid, commercial listing.

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

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