



Virginia Association of Broadcasters Legal Review



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FCC PROPOSES RULES TO ALLOW DIGITAL OPERATION OF REMOTE PICKUP FACILITIES

The FCC has issued a *Notice of Proposed Rulemaking and Order* (the “Notice”) to address several operational issues relating to Part 74 Remote Pickup (“RPU”) stations. RPUs are a type of Broadcast Auxiliary Station (“BAS”) that are most commonly used by stations to transmit program material from remote locations such as sporting events and on-the-spot news coverage back to the station studios. The Notice was issued in response to petitions filed by the Society of Broadcasters and the Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (collectively, the “Petitioners”) seeking revisions to the current rules governing RPUs.

Among other things, the Notice seeks comment on several proposals intended to modernize the rules governing RPU stations, including—perhaps most significantly—authorization of digital RPU operations. Under current rules, other types of BAS (including mobile TV Pickup facilities and fixed links such as intercity relays and studio transmitter links) and other similar facilities authorized under Part 90 of the FCC’s rules can be licensed to operate using digital emissions, while RPUs cannot.

Here is an overview of the most significant issues in the Notice on which the Commission seeks comment:

* *Digital RPU Operations.* The FCC’s current RPU rules mandate that all RPU equipment be operated in accordance with analog emissions standards. In response to a request by the Petitioners to allow digital RPU operations, the Commission has proposed to allow broadcasters to use the same digital technologies for RPU operations as are already available for other facilities (including Part 90 licensees), which would further the Commission’s goal of harmonizing RPU technical standards with the Part 90 rules. The Commission seeks comment on the advantages and disadvantages of allowing broadcasters to use digital technology for RPU operations.

* *“Any Digital Emissions”.* The Petitioners proposed that RPU facilities be authorized to use “any digital emissions that meets the applicable emissions mask and bandwidth

limitations.” The Commission seeks comment on this proposal and on whether there are alternative means of amending the rule to reach the same result, and the advantages and disadvantages of any such changes.

* *RPU Station Identification.* The Commission seeks comment on whether authorization for digital RPU operations should result in changes to the station identification requirements for RPU facilities. (The current station identification rule for RPU facilities requires, among other things, that RPU facilities “be identified by the transmission of the assigned station or system call sign, or by the call sign of the associated broadcast station,” which must be transmitted at the beginning and end of each period of operation and, if the operation lasts for a duration of more than one hour, on an hourly basis.)

* *100 KHz RPU Authorizations.* The Commission has proposed to stop issuing licenses for 100 KHz RPU stations both because such requests are rare and because the resulting facility makes it difficult for other broadcasters to obtain spectrum for narrowband RPU operations. The Commission proposes to grandfather existing licensees with 100 KHz RPU channel authorizations, and the Notice observes that applicants will still be able to request a waiver to use 100 KHz channels.

* *No “Blanket” Temporary Waiver.* The Petitioners sought a temporary waiver of the Commission’s current analog-only rule to permit RPU broadcasters to use certified digital RPU equipment during the pendency of the proceeding. The Commission believes that, although it is in the public interest to empower the use of digital technologies, a general waiver would prematurely introduce risks into the RPU and BAS environment, and the better course is to proceed with the rulemaking process. Of course, broadcasters may seek an individualized waiver for digital RPU operations, such as those that resulted in grants in [May](#) and [December](#) of 2014.

* *Comment and Reply Comment Due Dates.* The Notice was published in the Federal Register on March 4, 2015, which means comments are due April 3, 2015, and reply comments are due April 20, 2015.

by Craig Schauer

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**NEW “FRN” PROPOSED FOR ATTRIBUTABLE PARTIES TO USE
FOR BROADCAST OWNERSHIP REPORTING PURPOSES WITHOUT
HAVING TO GIVE THE FCC A COMPLETE SOCIAL SECURITY NUMBER**

In February, the Commission released a [Notice of Proposed Rulemaking](#) (the “Notice”) that seeks comment on a proposal intended to facilitate the FCC’s efforts to reliably track ownership data for commercial broadcast stations through the creation of a new type of FCC Registration Number (“FRN”) to be used on the Biennial Ownership Report form, FCC Form 323. This proposal is the most recent development in the Commission’s efforts to accurately

collect data on the state of minority and female ownership of broadcast stations, which, according to the Notice, helps the Commission determine the success of programs designed to provide opportunities for women and minority business owners and, ultimately, to promote diversity within the broadcast industry.

Under the current ownership reporting system, all attributable interest holders listed on Form 323 (*i.e.*, all entities and persons with cognizable ownership interests in a broadcast station) must have a unique FRN. From the Commission's perspective the "gold standard" FRN is the Commission's Registration System ("CORES") FRN, which can only be obtained by supplying a full Social Security Number to the FCC. Individual station owners have complained that such a requirement implicates privacy, data security, and identify theft issues. In some instances, station owners have refused to obtain, or provide filers with the information needed to obtain, a CORES FRN.

In response to these concerns, in 2009, the FCC created "Special Use" FRNs, which are randomly generated within Form 323 by a filer without the need to provide a party's Social Security Number. The FCC's intent was that Special Use FRNs were to be used only by an ownership report filer who is truly unable, after a good faith attempt, to obtain a CORES FRN from an attributable party. In fact, the guidelines for using Special Use FRNs instruct that only one Special Use FRN should be obtained per attributable party and that the unique Special Use FRN generated for the attributable party should be consistently used across all broadcast ownership reports on which that individual's name must be listed. Some five years after the implementation of the Special Use FRN option, the Commission has determined that Special Use FRNs are being misused; indeed, according to the Notice, more than a quarter—and approaching one-third—of all FRNs used in the past three years on Form 323 are Special Use FRNs.

In some cases, filers have obtained multiple Special Use FRNs for the same attributable party. Commission Staff has also found that a single Special Use FRN has been used in connection with multiple individual attributable parties. As a result, the Notice observes that the FCC has concluded that it cannot accurately track and report on how many individuals are using Special Use FRNs, nor can the identity of individual attributable parties be accurately determined. According to the Notice, the Commission believes the lack of clarity and misuse of Special Use FRNs "undermines the usefulness and integrity of the Commission's broadcast ownership data."

To remedy this problem, the Commission is proposing to implement "Restricted Use" FRNs. As proposed in the Notice, a Restricted Use FRN unique to each individual attributable party would be obtained through a process similar to how an individual owner obtains a CORES FRN; however, the information required to obtain a Restricted Use FRN would not be as extensive. The Restricted Use FRN registration process would require individuals to provide their name, resident address, birth date and the last four digits of their Social Security Number. The Commission believes that limiting the information required to obtain a Restricted Use FRN—especially the use of only the last four digits of a Social Security Number, as opposed to the entire Social Security Number—will be less concerning to individuals from a privacy standpoint. To that end, the Notice seeks comment on whether Restricted Use FRNs would alleviate the privacy concerns that some attributable parties have with obtaining a CORES FRN

and whether commenters believe that Restricted Use FRNs would provide better ownership reporting data.

The Notice makes clear that the Commission has not yet determined whether it will totally eliminate Special Use FRNs. It seeks comment on whether the Special Use FRN should remain available to filers who are faced with “recalcitrant interest holders” who simply refuse to provide their identifying information. If so, the Commission asks whether there should be any additional requirements for filers to substantiate that they have made a good faith effort to obtain the identifying information from attributable parties needed to obtain a CORES FRN or Restricted Use FRN.

Finally, the Commission seeks comment on whether the use of Restricted Use FRNs should be extended to individual attributable parties who have cognizable interests in noncommercial broadcast stations (for ownership reports filed on FCC Form 323-E).

Comments are March 30, 2015, and reply comments are due April 13.

by Will Quick

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**MARCH IS HERE:
STATIONS NEED TO TUNE INTO THREE COMPLIANCE ISSUES!**

The calendar is nearly a week into March already, which means broadcasters need to consider at least three compliance issues. (Broadcasters need to consider myriad FCC operational compliance issues on a daily basis; the beginning of March simply gives us an excuse to highlight these three compliance issues in particular!)

A. EAS Tones Are Not a Good April Fool’s Joke!

With March rolling in like a lion, many broadcasters have already begun to plan their annual April Fool’s Day jokes. Stations need to remember that it is no joke to transmit EAS tones—or tones that simulate or mimic EAS tones—for any purpose other than an EAS test or an actual EAS alert.

Over the past couple of years, the FCC has dramatically increased its enforcement of the rule that prohibits the transmission of EAS tones (and tones that mimic or simulate EAS tones) for any purpose other than an EAS test or EAS alert. As recently as January 2015, the FCC imposed massive fines (more than a million dollars) on entities that transmitted program material containing such tones, and stations should treat this as no laughing matter, even on April Fool’s Day.

Moreover, even wireless alert tones (“WEA Attention Signal”)—which are part of the wireless emergency alert system—should not be casually aired by broadcasters, whether as part

of a joke or as part of news coverage. According to the FCC, the WEA Attention Signal uses identical frequencies as the EAS tones and “may be indistinguishable” to viewers and listeners from an EAS alert signal. Nonetheless, for another eight months (until November 21, 2015), pursuant to a specific waiver granted by the FCC, broadcast stations are permitted to air PSAs distributed by FEMA to educate the public about the wireless emergency alert system, including the broadcast of the WEA Attention Signal. (As we have previously reported, however, only FEMA PSAs that make “clear that the WEA Attention Signals are being used in the context of the PSA and for the purpose of educating the viewing or listening public about the functions of their WEA-capable mobile devices and the WEA program” are allowed.)

B. “Hoax” Broadcasts Are Not a Good April Fool’s Joke!

The FCC has a long-standing rule that prohibits the broadcasting of hoaxes and other false and deceptive programming regarding a crime or catastrophe. April Fool’s Day programming brings with it the risk of crossing the line and violating the Commission’s rule.

In a nutshell, the FCC’s hoax rule says that stations should not broadcast or participate in the broadcast of any false information regarding a crime or catastrophe if (1) the station knows the information is false, (2) it is foreseeable that broadcast of the information will cause substantial public harm, and (3) broadcast of the information does, in fact, cause substantial public harm. It is difficult to know precisely what constitutes “substantial public harm,” but it is instructive that the FCC has taken enforcement action in the past against stations who aired material that caused the public to believe a true emergency was underway (including a false report that a station had been taken hostage and a false report that a station employee had been shot) and law enforcement to be dispatched unnecessarily.

Stations are encouraged to consult with FCC counsel if they are planning April Fool’s Day programming that might run afoul of the FCC’s hoax prohibition.

C. March 8 Begins Daylight Savings Time in Many Locations—AM Stations Need to Check Sign-On and Sign-Off Times

March 8, 2015, is the commencement of Daylight Savings Time (DST) in communities that adhere to DST. (In such communities, DST will end on November 1, 2015.) Some AM radio stations operate with Presunrise Service Authorizations (PSRAs) and Postsunset Service Authorizations (PSSAs). Those stations with PSRAs and PSSAs that are located in communities adhering to Daylight Savings Time should make necessary power/time adjustments to reflect the beginning of daylight savings. (AM Stations that operate pursuant to PSRA and PSSA should have an authorization document from the FCC that shows the times for such operation, and such authorizations typically show multiple times during the months of March and November, which are intended to reflect adjustments for DST.)

by Stephen Hartzell

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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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