



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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FCC Proposes to Streamline the FM Translator Interference Complaint Process

Last week, the FCC adopted a long-awaited [Notice of Proposed Rulemaking](#) (“Notice”) that proposes to “streamline” and “expedite” the FM translator complaint resolution process. The Notice follows separate requests for changes to the FM translator interference resolution process filed by NAB and others more than a year ago. In recent years, interference disputes between full-service station licensees and FM translator licensees have been protracted and sometimes contentious; in response, the Notice seeks to put in place new procedures to ensure prompt resolution while also providing more flexibility and investment certainty to translator licensees.

Under the Commission’s rules, FM translators are a secondary service and must not cause predicted or actual interference to any authorized broadcast station. Currently, even just one listener interference complaint can lead to the Media Bureau staff sending an interference remediation letter to the FM translator licensee, requiring that the licensee eliminate the interference, resolve any complaint, and provide a detailed report of resolution. The Notice explains that this process is often delayed over questions of the validity of the interference and impartiality of complaining listeners.

The Notice seeks comment on a number of proposals, including the following:

- (1) *Channel Changes.* The Notice proposes to allow FM translators to resolve interference issues by changing channels to *any* available channel within the same band (e.g., reserved FM band to reserved FM band) and to treat this change as a minor change. Under current rules, the FM translator applicant is limited to first, second, or third adjacent or IF channels. Any move between bands (e.g., non-reserved to reserved) would be treated as a major change. The Notice seeks comment on whether there should be any minimum technical requirements for such a minor change application, such as an engineering statement.
- (2) *Minimum Number of Complaining Listeners.* The Notice proposes to require a minimum of six (6) listener complaints to be submitted with a claim of FM translator interference and asks whether this number should vary based on the circumstances, including market size.
- (3) *Requiring More Listener Information, Sooner.* The Notice proposes to require bona fide listeners to sign their interference complaints and to include more information than is currently required. Specifically, the Commission proposes that for a complaint to be considered “bona fide,” the listener must provide (a) full name and contact information, (b) a clear, concise and accurate description of the location where the interference is alleged to have occurred, (c) a statement that the listener listens to the full-service station alleging interference at least twice a month, and (d) a statement that the listener has no legal, financial, or familial affiliation with the full-service station in question. The Commission is proposing to require this information at the complaint stage, which represents a significant departure from current policy, particularly with respect to the “twice a month” listener statements and the signature requirement.
- (4) *No More Listener Cooperation Requirement.* The Notice seeks comment on its proposal to eliminate the requirement that complaining listeners cooperate with remediation efforts. Rather, the Notice proposes instead to require the FM translator licensee to submit a technical showing that all interference has been eliminated once interference has been initially established through listener complaints. The Notice proposes a U/D (undesired-to-desired) ratio methodology, using standard contour prediction methodology as well as “on/off” tests if appropriate and required by FCC staff.
- (5) *Geographic Limits on Full-Service Stations.* The Notice proposes an outer full-service station contour limit beyond which interference complaints would not be considered actionable. In this way, the Notice seeks to address the issue of whether listener complaints should be “credited” if they derive from a location that is beyond a certain distance from the full-service station. The Notice proposes to use the full-service station’s 54 dBu contour as the outer limit and seeks comment on this proposal.

Significantly, the Notice also proposes to apply any rules that are adopted in this proceeding to applications that have not yet been acted upon and interference complaints that are currently pending and unresolved at the time any future rules go into effect.

Comments on the Notice will be due 30 days after it is published in the Federal Register, and reply comments will be due 30 days after that. As of this writing, publication has not yet occurred. We will keep you updated.

Warning: FCC Continues to Take Hard Look at Silent Station License Renewal Applications

With the license renewal cycle for radio stations set to get underway in about a year, the FCC continues to signal that it will take a hard, critical look at renewal applications filed by stations that have been silent for significant portions of their current license terms. Last week, the Commission issued yet another [Hearing Designation Order](#) (the “Hearing Designation Order”), this time for a Wyoming radio station, to determine whether the station’s license should be renewed in light of its failure to operate for most of its license term.

According to the Hearing Designation Order, the FM station was initially licensed on November 8, 2010, and it went silent after one day of operation and has remained primarily silent since then. According to the FCC, in the 2.8-year period that the licensee held the station’s license during its prior license term (which ended in 2013), the station operated for just 23 days. And, the station has operated for only 373 out of 1,306 days in the period since the end of that term.

As it has done in other recent hearing designation orders, the FCC emphasized that a broadcaster’s authorization to use scarce spectrum carries with it an obligation to serve its community with responsive programming, and it also reminded licensees that, by law, a station that is silent for a consecutive 12-month period will see its license automatically expire as a matter of law. The Commission discussed the practices that some stations have adopted of remaining silent only to resume operations for a short period of time, in some cases as little as a day or less, before that one-year statutory limit applies; or, of alternating between periods of silence and operations with minimal power levels. According to the Commission, such practices raise a question as to whether the licenses for such stations should be renewed, and a licensee engaged in such practices will face a very heavy burden at license renewal time in demonstrating that it has served the public interest when it has remained silent for most or all of the prior license term.

The Wyoming station at issue in the Hearing Designation Order now faces that burden, and the licensee will have to submit certain records to the Commission regarding its operations and programming, in an effort to demonstrate that it served the public interest during the license term notwithstanding its extended periods of silence.

The case serve as another warning to stations that have operated similarly in the past, especially with the license renewal cycle starting in 2019. As stations will recall, the license renewal application for both radio and television stations asks questions regarding current operational status, and the radio renewal application asks a more probing question relating to periods of silence exceeding 30 days during the license term. Any station with extended periods

of silence during the current license term will wish to consult with its communications counsel in advance of the station's license renewal filing.

FCC May Eliminate Broadcast License Posting Requirements

Stations might soon be able to put away some of their thumb tacks and scotch tape and recycle some old binders. That's because the FCC, on May 10, 2018, adopted a [Notice of Proposed Rulemaking](#) ("Notice") that seeks comment on whether it should streamline or eliminate the requirement that the station license (and any other instruments of authorization) must be posted in a conspicuous place at the principal control point of the transmitter, either by affixing them to the wall or putting them in a binder. The posting rules were originally adopted in 1930 (!), and over the years, the Commission expanded the rules to additional transmission services. Because the vast majority of the information contained on posted licenses is now available in stations' online public inspection files, the Notice asks whether the regulations are outdated and unnecessary. The Notice marks the tenth proceeding that the FCC has launched as part of its Modernization of Media Regulation Initiative. Comment and reply comment dates have not yet been set.

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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