



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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FCC Looks at Creating a New Class of FM Stations and Amending “Short-Spacing” Rules

The FCC released a [Notice of Inquiry](#) (“Notice”) on June 5, 2018, in which it (1) explores the possibility of creating a new intermediate class of FM radio stations—to be designated as Class C4—and (2) queries whether it should amend its “short-spacing” rules (through which stations can seek to locate transmitters at distances shorter than the FCC’s standard separation requirements).

Class C4 Proposal and Implications for Class A Upgrade. Each FM radio station is classified into one of three “zones”: Zone I, Zone I-A, and Zone II. A station is grouped into a zone based upon its transmitter location and power, and its effective antenna height. There are currently eight classes of FM broadcast stations: A, B1, B, C3, C2, C1, C0, and C. Each class has minimum and maximum power parameters. Class A stations are assigned in all three zones; Class B and Class B1 stations are assigned only in Zones I and I-A; and Class C3, C2, C1, C0, and C stations are assigned only in Zone II. The proposed Class C4 stations would be grouped in Zone II, in between Class A and Class C3.

Creation of the Class C4, according to proponents of the new station class, would enable hundreds of Class A radio stations that meet certain spacing requirements to upgrade their service by raising their maximum power levels from 6 kilowatts to 12 kilowatts. The FCC estimates that

127 Class C3 stations would be impacted and potentially subject to voluntary reclassification as a Class C4 station.

Short-Spaced (Section 73.215) Facility Proposal. The Notice also seeks input on whether it should revise Section 73.215 of the Commission’s rules. That section provides a procedure by which an applicant can propose a “short-spaced” transmitter site; that is, operation of a radio station from a transmitter site that does not meet the FCC’s requirements as to the distance separating the station from co-channel and adjacent channel stations. Currently, when an applicant seeks to invoke Section 73.215, the Commission analyzes the application by seeking to provide interference protection to the other station’s maximum class facilities (power and height)—instead of its actual facilities. Some argue that the FCC’s rules, in this way, overprotect stations that operate facilities with less than their maximum permissible parameters.

The Notice seeks comment on a proposal to revise Section 73.215 to create a procedure whereby an FM station seeking short-spacing protects against interference to the other station’s actual facilities, instead of its maximum facilities, in cases where the other station has operated continuously with an ERP or height below its class maximum for at least ten years. Thus, a rule change along these lines could remove some protections for such stations operating below their maximum facilities.

The Commission seeks comment on how the two above-mentioned proposals would affect stations seeking to upgrade and their listeners, as well as FM translators and low-power FM stations. The Commission additionally seeks comment on implementation procedures.

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. We will keep you informed of significant developments.

Comment Dates Set for FCC’s Proposal to Streamline the FM Translator Interference Complaint Process

Deadlines for comments and reply comments are now set on the FCC’s long-awaited [Notice of Proposed Rulemaking](#) (“Notice”) that proposes to “streamline” and “expedite” the FM translator complaint resolution process. Comments on the Notice will be due **July 6, 2018**, and reply comments will be due **August 6, 2018**.

As we reported previously, 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 often been protracted and contentious; in response, the Notice seeks to put in place new procedures to facilitate 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 the Media Bureau staff to send 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 (instead of limiting the FM translator applicant to first, second, or third adjacent or IF channels, as is the case now).
- (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 that for listener 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 signed statement that the listener listens at least twice per month to the full-service station receiving interference, and (d) a signed 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.
- (5) *Geographic Limits on Full-Service Stations*. The Notice proposes to use a full-service station’s 54 dBu contour as an outer limit beyond which interference complaints would not be considered actionable.

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.

Additional FM Translator Items: Prometheus Objects to Hundreds of Translator Applications & Has a Recon Petition Denied

And in other news affecting FM translators, we have two items to report on involving the low-power FM station (“LPFM”) advocacy group called Prometheus Radio Project. The first item is Prometheus’ [Informal Objection](#) (“Informal Objection”) filed in late May against almost 1,000 pending FM translator applications. The second is the FCC’s [Order on Reconsideration](#) (“Order”) (also released last month) denying a different Prometheus filing—a Petition for Reconsideration that the group had filed in 2017 in response to an FCC order that altered rules regarding where FM translators can be located. Although the Order was released about a week after Prometheus filed the Informal Objection, and the content of both items is similar, the items are discrete—and the Order does not resolve the Informal Objection.

Prometheus’ Informal Objection. Prometheus has consistently taken the position that more FM translators means more interference to LPFMs. The Informal Objection (jointly filed along with Center for International Media Action and Common Frequency, Inc.) opposes nearly 1,000 FM translator applications that are currently pending from prior FCC filing windows. Prometheus argues that these FM translator applications should be dismissed because they do not comply with the Local Community Radio Act (“LCRA”), which requires that the Commission, when licensing new FM translator stations, FM booster stations, and low-power FM stations, ensure that: (1) licenses are available for such stations; (2) licensing decisions are made based on the needs of the local community; and (3) that FM translator stations, FM booster stations, and low-power FM stations remain equal in status and secondary to existing and modified full-service FM stations.

NAB is aware of the Informal Objection and has informally engaged with the FCC’s Audio Division staff, who have informally advised that FM translator applicants are not required to file a response. If you find your application is one of the hundreds that appears in the appendix to the Informal Objection, you may wish to consult your communications counsel regarding whether or how to proceed.

Prometheus’ Petition for Reconsideration and the FCC’s Order. As part of its efforts to revitalize the AM service, the FCC in February 2017 issued an order (“2017 Order”) that altered rules regarding the location of FM translators. Prior to the 2017 Order, an AM station had to place a rebroadcasting FM translator either within its daytime service contour or within a 25-mile radius of its transmitter, whichever distance was smaller. The 2017 Order changed the rule, allowing an FM translator to be located anywhere within the greater of the AM station’s daytime service contour or within a 25-mile radius of the transmitter.

Prometheus filed a Petition for Reconsideration of the 2017 Order and asked the FCC for a stay of the 2017 Order’s effect, arguing that the rule change would allow FM translators would “box-in” LPFM stations and limit LPFM stations’ ability to relocate their transmitter sites. In the Order denying the reconsideration petition, the FCC found that Prometheus had not demonstrated that the rule change would significantly impact LPFM site availability.

As we become aware of relevant developments, we will let you know.

If you have any questions concerning the information discussed in this memorandum, please let us know.

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