



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434)
977-3716

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Legal Memorandum

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FCC Adopts NPRM, Officially Launches Proceeding to Examine Children's E/I Television Programming Rules

At its July 12, 2018, meeting, the FCC adopted a [Notice of Proposed Rulemaking](#) ("Notice") to examine the children's television programming rules. The Notice contemplates significant changes to the children's television programming rules that would, if ultimately adopted, affect both the E/I programming and reporting obligations of television broadcasters.

The Notice is dense, and we will write more about the items on which it seeks comment in the future.

At a very high level, however, among other things, the Notice (1) proposes changes to the definition of "core programming" (by revising or eliminating several current criteria for it); (2) asks whether the FCC Form 398 quarterly filing requirement for commercial stations should be changed to an annual filing obligation; (3) proposes to allow multicasting stations the flexibility to choose the channels on which to air core programming (i.e., stations would no longer be required to air three hours per week of core programming on their primary channel and an additional three

hours per week of core programming for each multicast channel and would have more discretion regarding the streams on which to air core programming); and (4) seeks comment on giving stations more flexibility with preempted shows, including whether to eliminate the “second home” policy and, instead, to permit stations to reschedule preempted core programming whenever they choose.

Commissioner O’Rielly—who was tasked by Chairman Pai to spearhead the effort to launch a review of the FCC’s children’s programming rules—has publicly stated that he hopes to conclude this proceeding by the end of 2018. By FCC standards, such a timeline would make this a very speedy proceeding.

Comment and reply comment dates on the Notice have not been set. We will provide much more detail regarding the contents of the Notice next week.

FCC Adopts Notice Seeking Comment on Expanding Uses of Crucial C-Band Spectrum and Order Requiring Earth Station Information

Also at its July 12, 2018, meeting, the FCC by a 4-0 vote adopted a Notice of Proposed Rulemaking (“Notice”) and Order (“Order”) that puts broadcasters’ ongoing battle to guard against “spectrum grabs” front and center, as it seeks comment on various proposals for allowing expanded use of the C-band—the 3.7-4.2 GHz band—for 5G. Many broadcast stations use C-band downlink earth stations to receive network and syndicated programming, and the C-band is used heavily for content distribution to television and radio broadcasters, including transportable antennas to cover live news and sports events. Just about every U.S. household relies on C-band satellite operations.

The Notice proposes to add a mobile allocation to the C-band and seeks comment on transitioning all or a part of the band to wireless broadband services, with the stated goals of promoting 5G wireless connectivity, expanding high-speed broadband access across the U.S., and closing the “digital divide.” The proceeding is of great significance to broadcasters, and NAB has and will continue to advocate that existing earth stations be protected against harmful interference that could result from additional C-band uses.

In order to aid the Commission (and commenters) in better understanding how the band is used today, the Order will require fixed earth stations operating in the C-band to certify the accuracy of existing registration and license information and will also collect additional information from space station licensees on their operations in the C-band. Thus, it is critical that broadcasters register their existing earth stations if they have not already done so, as the FCC proposes to protect only those earth stations licensed or registered with the Commission (including those that register during the current registration window, about which we have previously written multiple times, which closes on **October 17, 2018**).

Note: the final text of the Notice and Order has not been released; a [draft](#) of it had been made available prior to the meeting. We will provide additional information once the final Notice and Order is released and as comment and reply comment dates on the Notice are set. Below are

some of the highlights regarding the Order’s information collection and the items on which the Notice seeks comment.

Background. In 2017, the Commission launched a Notice of Inquiry (“NOI”) and began evaluating whether spectrum between 3.7 GHz and 24 GHz can be made available for flexible use—particularly for wireless broadband services. The NOI asked commenters to identify options for more intensive fixed and mobile broadband use in the C-band, and whether the C-band is desirable or suitable for mobile use. In response to the NOI, many parties expressed support for opening the band for flexible use, especially for mobile broadband services. Many incumbent operators and their customers, including broadcasters (and NAB), cautioned that additional use of the C-band is only appropriate if existing services (like those used for television and radio content distribution) are adequately protected.

The Commission learned, however, that it lacked sufficient information regarding current uses of the C-band—including use by earth station licensees and registrants—and that additional, correct usage data is needed before making any decisions regarding modification of the band. That led to the FCC’s freeze (effective April 19, 2018) on the filing of new or modified applications for earth station licenses, receive-only earth station registrations, and fixed microwave licenses in the band and its opening of a window, until **October 17, 2018**, for then-existing earth stations to be registered.

Order to Collect More Information on C-Band Use. The Order adopted on July 12, 2018, builds upon the effort to gather more data and adopts several information collection requirements in order to evaluate the potential flexible use of allocation in the C-band and to determine how much spectrum could be made available. As such, the Order directs the operators of earth stations in the C-band that are licensed or registered in the FCC’s International Bureau Filing System (“IBFS”) (including operators that file new or modified registrations between April 19 and October 17, 2018) to provide certain location and technical data and information about their facilities. The FCC at a future date will issue a Public Notice detailing instructions for earth station licensees about providing additional information about their facilities and establishing a window for initial filings of that information. Operators with existing fixed satellite service space station licenses will also be subject to an information collection requirement.

We will provide more information regarding the entities subject to the information collection and the data that must be provided in a future Legal Memorandum.

Future Uses of C-Band Spectrum. The Notice seeks comment on how to make more efficient and intensive use of the C-band spectrum to facilitate and incentivize investment in next generation wireless networks, including 5G—without causing harmful interference to incumbent operations. The Commission asks how much of the band should be made available for flexible use, for more intensive fixed use, or maintained just for incumbent users, and it seeks comment regarding the relative present and future economic value of each of those services to individuals and businesses in the United States (and the tradeoffs and costs of accommodating one type of use versus the others).

The Notice proposes to add a non-federal mobile (except aeronautical mobile) service allocation to the C-band—and seeks comment on how to go about clearing all or part of the band for flexible use. The Commission contemplates a variety of approaches for expanding the flexible

use of such spectrum. Specifically, it asks whether the C-band spectrum could be repurposed most effectively and efficiently through (1) a market-based approach, (2) auction-based approaches, or (3) a hybrid approach that combines elements both of market- and auction-based options, as well as any other mechanisms for transitioning all or part of the band.

Under a market-based approach, the FCC would authorize incumbent fixed satellite service to voluntarily clear part or all of the C-band. Satellite operators in the band could choose to make some or all of their spectrum available to terrestrial operators on the secondary market, in exchange for compensation. Under this approach, the satellite operators would be responsible for clearing the portion of the band that would be made available for flexible use, including notifying earth stations of the need to modify their operations and also compensating them for any costs associated with that transition.

The Notice also seeks comment on various auction approaches to expanding uses of the C-band. Specifically, the FCC is interested in opinions on different kinds of auctions that might be used to create opportunities for flexible C-band uses: “overlay,” “capacity,” and “incentive” auctions are discussed in detail. And, the Commission seeks comments on transitioning all or a portion of the C-band using approaches that combine various elements of market- and auction-based approaches.

Protecting Incumbent Earth Stations. Notably, the FCC proposes to protect incumbent earth stations from harmful interference as it seeks to increase the intensity of wireless use of the C-band. As such, the Notice seeks comment on how to define which earth stations are entitled to protection; it proposes that “incumbent” (and therefore protected) stations be defined as earth stations that were operational as of April 19, 2018, were licensed or registered (or had a pending application for license or registration) in the IBFS database as of October 17, 2018), and have timely filed information in response to the Commission’s information collection requirement discussed above. The proposed definition further underscores how important it is for broadcasters who have unregistered earth stations to register them during the FCC’s current window.

Comments on the Notice will be due 60 days after publication in the Federal Register, and reply comments will be due 30 days after that. Clearly, the Notice and Order cover significant, complex issues. We will be monitoring the proceeding closely and will provide additional, relevant information in future memoranda.

Nationwide EAS Test “Form One” Due August 27; Rumor Circulating About September 20 Nationwide Test

In a recent [Public Notice](#), the FCC established the deadline (August 27, 2018) for all broadcasters (and other EAS Participants) to file their annual EAS “Form One” via the ETRS ([EAS Test Reporting System](#)) filing platform.

You will recall that all EAS Participants are required to update their Form One filing information on an annual basis, and the FCC opens the ETRS filing platform only during a limited window of time for this purpose. This year the window opened in early July, and stations must

complete their Form One filings by August 27. For a period of 30 days after August 27—i.e., until September 26, 2018—stations will be able to submit updates and corrections to their 2018 Form One filings.

To access ETRS, you must use the same ETRS login credentials that you established last year. If you do not have login credentials or if you have forgotten your password, instructions to register for ETRS and to reset your password are included in the FCC’s Public Notice and on the [ETRS landing page](#). The FCC has also updated its [ETRS FAQs](#), and the latest version is attached to this memorandum.

Generally, all broadcasters—including commercial and non-commercial full power TV, Class A TV, LPTV, full power AM, full power FM, LPFM, Class D non-commercial FM, and stations currently silent pursuant to STA (Special Temporary Authority)—must file Form One by August 27. Here are the only exceptions to the Form One filing requirement:

- * Analog and digital LPTV stations that function as TV translator stations are not required to register and file in ETRS.
- * FM booster stations and FM translator stations which entirely rebroadcast the programming of other local FM broadcast stations are not required to register and file in ETRS.
- * Analog and digital broadcast stations that operate as “satellites” or repeaters of a hub station (or common studio or control point if there is no hub station) and rebroadcast 100 percent of the programming of the hub station (or common studio or control point) are not required to register and file in ETRS. In such a configuration, however, the hub station (or common studio or control point) is required to register and file in ETRS.

Stations are not required to re-enter all of the Form One data this year. Instead, you can update your previously filed Form One in your ETRS account by clicking on the “My Filings” menu option and then clicking on the record for that form. Once your Form One auto-populates, you should review the information carefully to ensure that it all remains accurate.

So, when will the nationwide test actually occur? FEMA has proposed September 20 to the FCC, and we are aware of broadcast listservs that are treating September 20 as a “done deal.” When we contacted the FCC’s EAS Staff on July 13 about the September 20 date, they would neither confirm nor deny that September 20 had been decided as the nationwide test date, but we expect the FCC (together with FEMA) to announce the 2018 nationwide test date soon. (An interesting bit of background on the timing of the last nationwide test comes from last year’s nationwide test. There, the final day of the post-filing window to make updates and corrections to Form One was the date of the test itself. If September 20, 2018, were to be the date of the nationwide test this year, it would mean that stations would file Form Two on the date of the test and then would still be able to update their Form One filings for another week after having filed Form Two—it’s unclear whether that could create any hiccups in the FCC’s gathering of data from the nationwide test.)

Finally, in [another Public Notice](#), the FCC has announced that it (with FEMA) is conducting an emergency alerting webinar on July 25. The free webinar will focus on issues relevant to broadcasters and other emergency alert and warning stakeholders. Topics will include:

- A description of alerting systems and how they work;
- Who is eligible to initiate alerts, and how they are authorized;
- How authorized alert initiators are trained and available training resources;
- Lessons learned from recent alerting events, including the Hawaii false ballistic missile alert;
- Recent FCC regulatory actions and changes under consideration; and
- Recent FEMA updates to the Integrated Public Alert and Warning System (IPAWS).

The webinar will be held from 2:00 – 3:30 p.m. ET on July 25. To register, visit <https://fceevents.webex.com/fceevents/onstage/g.php?MTID=eb6caaa28e6188ce55badc6289142ac96>.

As you complete Form One, please consult with your EAS equipment manufacturer and the station’s legal counsel for assistance with any questions.

FCC Proposes to Move EEO Oversight to the Enforcement Bureau

The FCC recently [announced](#) a proposal to move the agency staff responsible for enforcing the Commission’s equal employment opportunity (“EEO”) rules from the Media Bureau to the Enforcement Bureau. Chairman Pai has stated that he hopes deploying staff tasked with enforcing the Commission’s EEO rules in the Enforcement Bureau will improve the FCC’s enforcement of those rules and strengthen our commitment to fighting discrimination.

Currently, a team comprised of attorneys and other professionals responsible for EEO audits and enforcement is part of the FCC’s Media Bureau. The EEO audit and enforcement team oversees the EEO compliance of broadcast licensees, and their work is primarily focused on periodic random audits, along with any enforcement actions arising from those audits. The EEO team also investigates complaints and takes enforcement action based on those investigations.

Initially, moving EEO oversight to the Enforcement Bureau would not affect current EEO rules, or the general procedure that the team follows. The Enforcement Bureau specializes in enforcement and has expertise in those procedures, however, and it is possible that the move will eventually lead to substantive changes and/or more vigorous enforcement. We will keep you updated.

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

Timothy G. Nelson, Editor

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.

Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles F. Marshall
Stephen Hartzell
Julia C. Ambrose
Elizabeth E. Spainhour
J. Benjamin Davis
Timothy G. Nelson
Amanda M. Whorton

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