



# Virginia Association of Broadcasters Legal Review



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## Legal Memorandum

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### Comment Dates Set on Children’s Television Programming Rules Notice of Proposed Rulemaking

The FCC’s [Notice of Proposed Rulemaking](#) (“Notice”) to examine the children’s television programming rules is scheduled to be published in the Federal Register tomorrow, which means [comment dates on the Notice are now set](#). Comments may be filed on or before September 24, 2018, and reply comments may be filed on or before October 23, 2018.

As we have reported previously, the Notice considers significant changes to the children’s television programming rules regarding, among other things, the definition of “Core Programming,” quarterly reporting requirements, and the channels on which E/I programming can be aired. We provided a detailed summary of the proposals on which the Notice seeks comment and the questions the Notice asks in a prior Legal Memorandum.

The FCC hopes that the Notice’s proposals, if adopted, will give broadcasters more flexibility in fulfilling their legal obligations and complying with the children’s television programming rules—while at the same time providing broadcasters particularized guidance, and, therefore, greater regulatory certainty.

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## One-Week Countdown: TV Station Copyright Royalty Claims Due July 31, 2018

Television stations have just one week left to file distant signal copyright royalty claims for the year 2017. As we have previously reported, claims for 2017 must be filed **no later than 11:59 p.m. EST on July 31, 2018**.

The United States Copyright Royalty Board encourages stations to file claims online, using its electronic filing system called [eCRB](#). The Copyright Royalty Board provides online filing instructions [here](#). (Claims can also be filed in hard-copy form, but stations that opt to file paper claims should note that there are special certified mail or hand delivery procedures that must be followed.)

A television station is considered the copyright owner of its locally produced programming, such as news and public affairs coverage. When a television station's copyrighted programming is retransmitted by cable or satellite as a "distant" signal, the station may be entitled to receive payment of copyright royalties. The Copyright Royalty Board collects copyright royalties from cable systems and satellite carriers and then distributes them to the copyright holders. NAB oversees the distribution of individual royalty shares to qualifying stations.

Copyright law generally defines "distant" carriage as follows:

**Cable Systems:** With respect to cable systems, a station's programming is considered "distant" if it is carried on a system that is (1) outside of the station's DMA, (2) at least 35 miles from the station's community of license, (3) outside the station's noise limited service contour, **and** (4) in a county where the station is not "significantly viewed."

**Satellite Carriers:** With respect to satellite carriers, a station is considered "distant" if it is provided by the satellite carrier to subscribers located outside of the station's DMA.

To claim copyright royalties, a station's locally produced programming must satisfy at least one of the above definitions. Television stations must file a claim with the Copyright Royalty Board by the deadline referenced above in order to receive 2017 copyright royalties for distant carriage. If a station can claim both cable and satellite royalties, the station must file a separate claim for each type of distant carriage.

Stations may wish to confer with their communications counsel for information about how to timely complete and file their claim(s).

## FCC Seeks Comment on State of Competition in “Audio Programming” Marketplace

The FCC announced in a [Public Notice](#) (“Notice”) released on July 23, 2018, that it is seeking comment on “the state of competition in the marketplace for the delivery of audio programming,” including the “competition to deliver audio service among broadcast stations, satellite radio, and entities that provide audio content via the internet and to mobile devices.” The Commission is gathering the information in order to use it in drafting its first “Communications Marketplace Report” for Congress.

Putting together that Report is a new congressional mandate for the FCC. A provision in legislation that became law in March amended the Communications Act to require the Commission to publish a “Communications Marketplace Report” in the last (i.e., fourth) quarter of every even numbered year (e.g., 2018, 2020, etc.).

The Notice requests comment and information on data, competitive dynamics, and trending factors in the audio programming industry. Among other things, it seeks the following information related to terrestrial radio broadcasters (i.e., AM and FM radio stations) and satellite radio providers, as well as providers of audio programming to mobile devices and online:

- identification and ownership of key participants in the audio marketplace, as well as the business models and competitive strategies they use;
- trends in service offerings, pricing, and consumer behavior;
- the extent of competition among players in the audio market, both within the same type of providers (i.e., among all radio stations), and among different types of providers (i.e., broadcast radio stations and satellite radio providers);
- ratings, subscribership, and revenue information, both for the marketplace as a whole and for individual participants in the marketplace;
- capital investment, innovation, and the deployment of advanced technology;
- requirements for entry into the marketplace; and
- recent entry into and exit from the marketplace.

The Notice requests such information for 2016 and 2017, as well as information on any notable trends and developments that have occurred during 2018 to date. The Commission also requests comment on whether laws, regulations, regulatory practices or demonstrated marketplace practices pose a barrier to competitive entry into the marketplace for the delivery of audio programming or to the competitive expansion of existing providers.

Comments on the Notice will be due 30 days after it is published in the Federal Register, and reply comments will be due 15 days after that.

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

*Tim Nelson, Editor*

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