

Changes to Low Power FM Rules and Policies

The FCC has revised a number of its rules and policies governing the Low Power FM Service. The Commission states that it is basing these changes upon its practical experience in the seven years since creation of the LPFM service, its study of revisions it had proposed in March, 2005, and its underlying policies to increase the number of LPFM stations and the service they render while avoiding interference to existing broadcasters.

The Commission now has released the details of its *Report and Order*. The primary changes can be separated into two categories – those that impact full-service broadcasters as well as LPFM broadcasters, and those that primarily impact LPFM broadcasters.

The changes that impact full-service broadcasters are as follows:

- **Limits Upon Commonly-Owned Translator Applications** – The Commission notes that the two most active filers in the last (2003) FM translator window were responsible for nearly one-third of all the pending applications and that one of them has already sought to assign more than half of the permits it had obtained. In order to promote localism and mitigate the preclusive impact of FM translators, the Commission will limit further processing of pending FM translator applications to 10 per applicant, with the remainder (to be chosen by each affected applicant) to be dismissed.
- **Interference Protection from Full Service FM Stations** – The Commission's rules currently permit an LPFM station to be forced off the air if it causes interference within the 3.16 mV/m contour of a subsequently-authorized FM station. Moreover, LPFM stations receive no interference protection from full service facilities. The Commission urges broadcasters to provide assistance, consent to short-spacing, and otherwise avoid LPFM station displacement. Even so, to avoid future problems of this type, the Commission will apply its full-service protection rule only to co-channel, first-adjacent channel and IF channel interference.
- **Second-Adjacent Channel Waiver Standards** – To avoid further displacement of LPFM stations that will be short-spaced to full-service stations operating on second-adjacent channels, the Commission has clarified its waiver standards. As an initial matter, the Commission encourages LPFM modifications to minimize the area of predicted interference through increasing antenna height and selecting transmitter sites of low population density. Where an alternate, fully-spaced and rule-compliant channel is unavailable for a second-adjacent channel short-spaced LPFM, the Commission will require a full-service station to show cause why the short-spacing would not be in the public interest. The Commission advises that it will presume that LPFM stations providing at least eight hours per day of locally originated programming should not be displaced if no alternate channels are available. However, any relief will be in the nature of special temporary authority, and subject to modification consistent with the outcome of the rulemaking noted below.

In addition to its rule and policy changes, the Commission is recommending that Congress remove the requirement that LPFM stations protect full-power stations operating on third-adjacent channels (which Congress required as a rider to a 2001 appropriations act). It also notes its intention to open a new window for LPFM applications, but only after resolving further issues, which it plans to achieve within six months.

The Commission has launched a *Second Notice of Proposed Rulemaking* to solicit public comment on policies and criteria that are to govern protection and licensing standards among LPFM, FM translator and full power FM stations. Of primary concern is the question of translator interference. Currently, LPFM and FM translator stations have co-equal priority,

December 2007

such that an applicant in either service is entitled to protection from all subsequent filers. The Commission recognizes that thousands of translator applications remain pending from the 2003 window and have a significant preclusive effect upon future LPFM filings. Rather than resolve that issue at this point, the Commission is soliciting further comment through its rulemaking.

Among the other matters to be explored, the Commission has suggested some tentative conclusions. These include modifying the waiver and processing policies as noted above, requiring that new full power stations assume certain technical, financial and notice obligations toward an impacted LPFM station, licensing LPFM stations on the basis of a contour-based methodology, and requiring that LPFM stations so licensed would have to resolve all actual interference complaints. Until resolution of the rulemaking, the Commission will continue to apply its existing waiver standards.

The changes announced in the *Report and Order* that principally impact LPFM broadcasters are:

- **License Assignments** – Until now, LPFM licenses could not be assigned voluntarily. While the Commission recognizes the need for more flexibility to preserve service, it still feels that a for-profit sale would be fundamentally inconsistent with its goal of promoting local, community-based ownership and programming. Henceforth, LPFM licenses cannot be sold for consideration exceeding the depreciated fair market value of the station's physical equipment and facilities. Moreover, the assignee must satisfy all of the Commission's ownership and eligibility criteria at the time of sale (currently, limited to local non-profit educational entities, governments and providers of non-commercial public safety radio services). The Commission will not allow assignment of an unbuilt permit, nor any station operated by the seller for less than three years.
- **Transfers of Control** – Currently, no substantial (greater than 50%) transfer of control of an LPFM station is permitted. The Commission recognizes that many licensees are governed by boards with evolving membership. Henceforth, any change in board membership – even if sudden and greater than 50% – will be permitted, subject to prior Commission consent through a *pro forma* application (currently FCC Form 316).
- **Ownership Limitations** – Initially, the LPFM rules prohibited ownership of more than a single facility and required that a licensee be "local" to its community, but both provisions expired. As a result, the rules currently limit ownership to 10 stations and impose no localism restriction. The Commission has now reinstated both requirements so as to advance its goals of creating opportunities for new voices and to encourage local groups to provide programming responsive to local community needs and interests. However, the Commission has modified its definition of "local," which qualifies an applicant if it is physically headquartered, has a campus, or if 75% of its board members reside within 10 miles of the proposed LPFM transmitter site. This standard will continue to apply within the top 50 urban markets, but otherwise will be relaxed to a 20 mile requirement.
- **Local Program Origination** – In order to qualify for a comparative preference, an LPFM applicant must pledge to originate locally at least eight hours of programming per day, so as to encourage licensees to maintain local production facilities and a meaningful staff presence within the community to be served. The Commission has now clarified this criterion to exclude automated programming or any program broadcast more than twice.
- **Construction Period** – Currently, LPFM stations must be constructed within 18 months, but a liberal waiver policy permits an 18 month extension upon a showing that the construction can be completed within that time. The Commission has now formalized that procedure by providing that the initial 18 months can be doubled upon a showing of good cause.

December 2007

- **Site Changes** – Currently, outside of rare “major change” windows, transmitters may be relocated only 3.2 kilometers for 10 watt LPFM stations and 5.6 kilometers for 100 watt stations. The Commission will now remove this restriction with respect to parties proposing voluntary time-sharing agreements, so as to encourage efficient use of central transmitter locations.

Two of the Commissioners partially dissented. Curiously, they were Commissioners Tate and McDowell, who usually are aligned with the Chairman on policy matters, but who expressed concern that the policy changes warrant greater study than will be possible with the further rulemaking notice, that a limit of 10 commonly-owned translator applications is too restrictive, and that the protection afforded to full-power stations should not be eroded.

The rule and policy changes are to take effect in approximately two months. (The actual date, as well as the deadlines for comments and replies for the rulemaking notice, are dependent upon *Federal Register* publication.)

If you would like to discuss the impact of these changes upon your operations and plans, or if we can provide any further information, please be sure to let us know.

IRS CIRCULAR 230 NOTICE: *To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).*