Broadcast LAW BLOG

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New Policy on FM Translator Moves - Bigger Moves Permitted in One Hop, but Multiple Hops are an Abuse of FCC Processes

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The FCC today made it **easier to move an FM translator from one location to another**, but at the same time adopted **new policies that seemingly restrict how far a translator can be moved**. Today's decision uses a waiver process to relax the rules so as to permit a move of a translator a greater distance in a single application, but the decision also labels **multi-hop moves as an abuse of the Commission's processes**. As translators have become more important to broadcasters as a way to bring AM and HD-2 signals to a wider audience, this decision will have an immediate and significant impact on many broadcasters, once it becomes clear exactly what are the parameters set by the Commission.

Under Section 74.1233(a) of the FCC rules, a **minor change for an FM translator** requires that the facilities proposed in an application have a 60 dbu contour that overlaps with the translator's current licensed 60 dbu. In effect, this is saying that part of the protected service area of the proposed new facility must overlap with the current protected service area served by the station from its licensed facility. As major change applications can only be filed during designated translator windows (and there has been no FM translator major change window since 2003), to make any move in a translator, it must be a minor change. The decision today allows, through a waiver of the rules, a minor change application to be used if the licensed facilities preclude construction of the new facilities, i.e. if the interfering contour of the licensed facilities of the translator overlap with the protected contour specified by the application for new facilities. A the interfering contour goes much further than the protected contour, this allows the FCC to approve in a single application a move of a greater distance than would be allowed under a strict reading of the rule. However, there were significant conditions imposed on the application of this new waiver policy that may preclude longer moves that have been common in the last few years.

In the decision, the Commission said that the waiver was justified based on four grounds:

1. The applicant had no history of "**filing serial minor modification applications**";

2. The proposed site for the translator was mutually exclusive with the licensed facility (see the description above)

3. The move-in does not preclude LPFM opportunities (see the freeze on certain translator moves in larger markets that we wrote about in our discussion of the pending rulemaking on the relationship between translators and LPFM stations)

4. While not "dispositive", the application was for the rebroadcasting of an AM station (the local service helped to justify the waiver, but that kind of service may not be necessary to take advantage of this new policy).

The big news is the fact that the waiver was conditioned on fact that the applicant had not previously filed "serial minor modification applications." Because there have been no FM translator windows in so long, broadcasters wanting to **rebroadcast an AM station or an HD-2 signal** on a translator have had to find **existing translators** to use for such rebroadcasts. In some markets, there have been no available translators to use, so deals have been struck to move translators great distances to the desired market. Such moves have been done through a series of minor change applications (often referred to as "hops") - with the station being built and licensed at several intermediate locations before the station ended up at the desired location. We have written before about the Commission's penalties for applicants who have not really constructed and operated their translators at some of these intermediate locations (see our articles here and here). But today's decision goes much further, stating “We ***believe the filing of serial modification applications represents an abuse of process***." The decision admits that the serial applications do not violate any FCC rule. But, the decision concludes that, as their purpose is to achieve through a series of applications an outcome that cannot be done on a single application, the applications are intended to subvert the purposes of the major change rules, and do not serve the public interest.

This decision raises many questions. Just what constitutes "serial modification applications?" Is two hops to move a station a "serial modification?" It would seem that this could not be the case, as the very application that was granted in this decision would, under a strict application of the rule, need two hops to complete. So are they saying that someone who did it in a way that is permitted under the rules (using two hops) is bad, but someone who asked for an exception (as did the applicant here) to the rules is serving the public interest so much that they merit a waiver of the rules? Or does it have to be more than 2 hops to be bad? Is it bad only when the newly proposed facility is precluded by the current facility? How was an applicant supposed to know that this was bad? How can the Commission deny the use of this new waiver policy to applicants who may have been serial modifiers in the past, when these applicants did not know that serial modification was bad? There are probably hundreds of cases where

the Commission has approved serial modifications - never once indicating that these were inherently bad (except in those cases where applicants did not really do what they said that they had done - e.g. they didn't really construct the intermediate hops, or they did not leave the station running for more than a limited period of time at one of the intermediate locations). The FCC even got complaints that they were processing these hops too fast for those who had concerns to protest - so the processing was slowed. But even when the processing was slowed, there never was any expression that multiple hops were an abuse of process. How can the Commission now retroactively say that what was approved by the FCC in the past disqualifies an applicant from taking advantage of a new policy?

All these questions will no doubt be answered as others try to take advantage of this policy. Watch and see what happens as the new policy is applied in cases coming before the FCC in the coming months.