

## **MATTOON WAIVERS AND SHRINKING AVAILABILITY BOOST FM TRANSLATOR VALUES**

In the universe of availability, FM translator licenses are becoming more difficult to obtain given the protections now dictated for low power FM services. At the same time, the potential uses for FM translators have broadened, with AM stations and digital FM side band channel uses leading the way. That shrinking availability, combined with an increasing demand, has translated (no pun intended) into a spike in sales prices for existing FM translator stations or new permits.

One reason demand is on the rise is that the FCC has begun waiving some of its technical rules to enable more efficient use of translators. In late-2011, the FCC granted a waiver of its minor modification rules to permit a “single-step” relocation of an FM translator for use as a fill-in translator by an AM station. The FM translator community of license was Mattoon, Illinois, and the waiver is now known as the “*Mattoon* waiver.” Here’s how *Mattoon* waivers work:

Under Section 74.1233(a) of the FCC’s rules, the 60 dBu contour of the existing and proposed FM translator facilities must overlap to be considered a minor change. If they do not, then the modification sought is “major” and can only be sought during a filing window. Often, facility relocations of an FM translator to allow use by an AM station require greater distance moves than the minor modification rules permit. To avoid making several incremental moves at substantial cost or waiting for a filing window to open, applicants would seek a waiver of the rule to allow the facility relocation in one step or application. Waiver requests face a high hurdle and require specific showings to warrant a grant. For *Mattoon* waivers, the FCC has defined the criteria it will consider in acting on the waiver request.

A *Mattoon* Waiver applicant must show that: (1) it does not have a history of filing “serial” minor modification applications; (2) the proposed facility is mutually exclusive to its licensed facility; (3) the proposed move does not implicate LPFM spectrum scarcity concerns; and (4) while not alone dispositive, the translator will rebroadcast an AM station.

In 2012, the FCC made an important distinction when considering the first factor related to serial minor modification histories. Previously, the FCC looked

only to the current licensee’s application history, and ignored the history of a prior licensee of the station, in considering this factor. Now, only applicants that acquired translator authorizations between September 2, 2011 and June 1, 2012 can exclude modifications of prior owners in showing compliance with this *Mattoon* waiver factor. Otherwise, if the history of the prior owner reflects a history of translator “hops”, that history is imputed to the new owner. Prospective purchasers of FM translators should therefore do appropriate diligence if they plan to seek a *Mattoon* Waiver.

Not all distances qualify for the waiver, and the second factor counsels that the proposed facility must still be mutually exclusive with the existing facility (using the full power FM definitions for mutual exclusivity). We recommend that a qualified consulting engineer confirm and demonstrate this. And, with regard to the third factor on LPFM scarcity, the FCC’s recent LPFM orders provide specific guidance, with moves within Spectrum Available markets being expressly permitted, but showings required for Spectrum Limited markets.

The fourth *Mattoon* factor obviously leans in favor of the translator ultimately being used by an AM station as part of the FCC’s ongoing effort to revitalize the AM service. However, the FCC – while not issuing a letter decision to announce this practice – has begun granting similar waivers to enable single-step FM translator transmitter site relocations to support the retransmission of FM side band channels over analog. Digital side band retransmission over analog FM translators is an increasingly popular way to create “new” stations at low cost. Though not providing specific reasoning when granting such waivers, the FCC is presumably doing so on grounds that a new programming service is being introduced to the public.

*Mattoon* waivers add flexibility to FM translator uses and in a shrinking universe of available translators, station values are on the rise. If you need assistance with seeking a *Mattoon* waiver, or have questions about whether a translator you are targeting meets the waiver criteria, the attorneys at Hardy, Carey, Chautin & Balkin are available to assist you.