



*To: All Radio Clients*

*June 15, 2007*

## **THE FCC RELEASES RULES FOR DIGITAL AUDIO BROADCASTING; SEEKS COMMENT ON LINGERING DIGITAL BROADCASTING ISSUES**

The FCC recently released a Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rulemaking ("Order") setting forth service rules and other requirements for hybrid terrestrial digital audio broadcasting ("DAB") for AM and FM radio stations, and seeking comment on how to preserve free over-the-air radio broadcasting while permitting licensees to offer new services on a subscription basis. The FCC did not consider policies and rules for an all-digital mode of operation, deferring consideration of all-digital rules until DAB receiver penetration has reached a critical mass and most, if not all, radio stations are broadcasting in a hybrid digital format. The new rules will become effective 30 days after the publication of the Order in the Federal Register. We will monitor this proceeding, and update you when the Order has been published.

The key points of the Order are as follows:

No Conversion Deadline. The FCC did not impose a deadline for stations to convert to digital broadcasting because there is no statutory mandate to convert to digital, IBOC technology does not require the allocation of additional spectrum, and there is no evidence that marketplace forces cannot propel the DAB conversion forward. To ensure that the DAB conversion proceeds in a timely manner, the FCC will conduct periodic reviews of digital service and receiver penetration.

Extended Hybrid. FM stations will be allowed to operate in the "extended hybrid"

mode, which adds up to 50 kbps of data-carrying capacity to an FM IBOC signal, and which will allow broadcasters to support a range of datacasting services without affecting the quality of the 96 kbps main channel digital audio signal.

Audio Quality. Digital broadcasters will be required to provide one free digital audio programming service that is comparable to or better in audio quality than that of their current analog service, and stations will be required to simulcast their analog programming service on their digital signal; however, stations will be permitted to determine individually the amount of bandwidth devoted to their main audio channel, and the amount of the remaining bandwidth dedicated to supplementary services, including non-audio and/or subscription-based services.

Multicasting. Stations will be authorized to provide multiple audio streams of digital programming without prior FCC approval. The FCC stressed that consumers' interest in digital audio services will be stimulated best if radio stations have the flexibility to offer the types of programs that are most attractive to their communities, and that multicasting might prompt greater diversity of programming services, including local civic and public affairs programming, and programming that serves minorities, underserved populations, and non-English speaking communities.

Time Brokering. Stations will be allowed to enter into time brokerage agreements for their digital bandwidth. In the multicast

context, a station owner who programs more than 15% of the total weekly hours broadcast on a digital audio stream of another station in the market will be considered to have an attributable interest in the brokered station. The interest attributable to a station owner under such circumstances will be equal to the percentage of total broadcast time that the stream which is attributable to the station owner constitutes.

Datacasting. Stations will be permitted to provide any type of digital datacasting service, consistent with existing broadcast policies and rules applicable to analog subsidiary communications authorization (SCA) services, as long as it does not derogate the mandated stream of free audio programming. However, the FCC will only allow subscription datacasting pursuant to an experimental authorization from the FCC upon a showing that the subscription datacast service would serve the public interest.

Public Interest Obligations. All free over-the-air digital audio programming streams will be subject to the same statutory and regulatory public interest requirements currently imposed on analog radio, including (i) political broadcasting; (ii) payment disclosure; (iii) prohibited contest practices; (iv) sponsorship identification; (v) cigarette advertising; and (vi) broadcast of taped or recorded material. In addition, a radio station operating in a digital format will be required to comply with all regulatory requirements applicable to that station's analog service (AM or FM), including station log and public file requirements.

Station Identification. Stations with DAB operations will be required to make station identification announcements at the beginning and end of each time of operation, as well as hourly, for each programming stream. The identification must consist of the station's call letters followed by the particular program stream being broadcast and the community specified in the station's

license. Stations may insert, between the call letters and the station's community of license, the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion. Finally, a station in DAB hybrid mode must identify its digital signal, including any free multicast audio programming streams, in a manner that alerts the audience to the fact that it is listening to a digital audio broadcast. This requirement can be satisfied through voiceovers, datacast text appearing on the receiver's readout, or any other reasonable means of communication.

Emergency Alert System ("EAS"). The FCC's EAS rules will apply to all audio streams broadcast by a radio station. Since a digital station is required to transmit the main analog radio signal of the station, it will in essence be transmitting EAS information carried by the analog station. In addition, the EAS rules will be applicable to all multicast digital audio programming streams.

Radio Reading Services. The FCC did not impose a requirement that digital broadcasters provide radio reading services for the blind, or that digital receivers must include radio reading services capabilities.

Operating Hours. Stations will be permitted to set their own schedule for DAB hybrid mode broadcasts and multicast streams.

Territorial Exclusivity. The territorial exclusivity rules will apply to all free digital audio programming streams.

AM Nighttime Operation. AM stations will be permitted to broadcast digitally during all hours during which a given AM station is currently authorized for analog operation, provided that notification is provided to the FCC. If an AM station previously notified the FCC that it commenced daytime IBOC operation, no further notification is required, and authority for nighttime IBOC operation is automatically conferred. AM stations that file IBOC notifications with the FCC after the

effective date of the rules will be presumed to have commenced IBOC operation for all hours of currently authorized analog operation, unless the notification states otherwise.

Dual Antennas. FM stations will be authorized to implement IBOC without prior authority using separate antennas. FM stations desiring to use dual antennas must provide in their IBOC notification to the FCC (i) geographic coordinates, elevation data, and license file number for the auxiliary antenna to be used for digital broadcasting; and (ii) for systems employing interleaved antenna bays, a certification that adequate filtering and/or isolation equipment has been installed to prevent spurious emissions in excess of allowed limits.

FM Translator and Booster Stations. The use of digital translator and booster stations during interim DAB operations will be permitted, but the FCC will not require the simultaneous conversion of the primary station and its FM translators and boosters.

Second Further Notice of Proposed Rulemaking

In addition to its release of the new DAB rules, the FCC is seeking comment on a variety of other issues, including how to ensure that the amount of subscription-based radio services is limited. In particular, the FCC seeks comment on the following:

- Should there be a requirement that no more than 20 to 25 percent of a station's digital capacity can be devoted to subscription services?
- Should there be different rules regarding subscription services for noncommercial educational and commercial stations?

- Should spectrum fees be imposed for that portion of the digital bandwidth used by broadcasters to provide subscription services?
- Should public interest obligations apply to subscription services?
- Should the FCC adopt any new public interest requirements for DAB?

The FCC also seeks comment on the following issues relating to the radio broadcast service in general:

- Should radio station licensees use a standardized form to provide information on a quarterly basis about how the station serves the public interest, and should the FCC require that public inspection file information be posted on a station's website?
- Should the FCC review its rules that facilitated the development of automated broadcast operations, and revisit its determination that stations may reliably and confidently use unattended and remotely controlled technical operations without jeopardizing the technical integrity of the radio service?

Comments are due 60 days after the publication of the Order in the Federal Register, and Reply Comments are due 90 days after such publication.

If you have any questions concerning the new DAB rules, or if you would like to file comments in the Second Further Notice of Proposed Rulemaking, please contact any attorney in our office.

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This memorandum is intended only as a general discussion of these issues and should not be regarded as legal advice. We would be pleased to provide additional details or advice about specific situations if desired. To discuss any of the issues presented here, please contact any attorney in our office.