

FCC Proposes to Relax Restrictions on Digital FM Power Levels

August 4, 2023

The Federal Communications Commission (FCC or Commission) recently released an Order and Notice of Proposed Rulemaking (NPRM) that reaches several tentative conclusions designed to give digital FM stations more flexibility to increase digital power levels. The NPRM was unanimously approved and released on August 1, 2023.

We have provided a brief overview of the NPRM below.

Background

The NPRM stems from two Petitions for Rulemaking filed with the Commission. In the first Petition, filed December 9, 2019, petitioners National Association of Broadcasters (NAB), Xperi Inc. (Xperi), and National Public Radio (NPR) requested a blanket authorization to allow digital FM stations to operate with asymmetric power levels – that is, to operate with different power levels on the upper and lower digital sidebands. Asymmetric sideband power operations allow a digital FM station to protect, for example, an analog FM station on a lower adjacent channel, while enabling an increase in digital power on the upper sideband where there is no adjacent analog FM station or a more distant adjacent station. Currently, stations may request asymmetric sideband power operations only pursuant to experimental authorizations, which must be renewed periodically. Petitioners requested that FM stations be allowed to operate with asymmetric power levels without the need for experimental authority.

In the second Petition, filed October 26, 2022, NAB and Xperi further requested that the Commission update the methodology stations use to determine maximum FM digital power levels. For context, in 2002,

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when the Commission selected in-band, on channel (IBOC) technology to enable radio broadcast stations to commence digital broadcasting, the agency adopted a maximum power level of -20 dBc. In 2010, the Commission's Media Bureau released an Order increasing the allowable power level of FM stations' digital sidebands to -14 dBc, upon notification to the Commission, and further allowed certain FM stations to increase digital power up to -10 dBc upon a showing that such power increase would comply with the formula established in the Order. Noting that the Commission intentionally overprotected adjacent-channel FM analog stations when the agency implemented the power limits set forth in the 2010 Order, and that there have been few—if any—complaints of interference from hybrid digital FM transmissions since then, the Petition urged the Commission to change the methodology a digital FM station must use to determine whether it is eligible to increase power up to -10 dBc.

Proposals and Issues for Comment

In granting both Petitions and issuing the NPRM, the Commission tentatively concluded that the proposals set forth therein would advance the FCC's ongoing commitment to nurturing the development of digital audio broadcasting; accordingly, the agency now seeks comment on the following proposals to amend its rules:

- Change the methodology used by digital FM stations to determine whether they are eligible to increase digital FM power up to -10 dBc, or 10% of analog power; allow such increases without the need for additional individual special authorization, but upon basic notification to the Commission; and allow stations to notify the Commission of a power increase up to -10 dBc through the Licensing Management System (LMS), using the same notification procedures as currently used to notify the Commission of digital operation up to -14 dBc.
- Grant blanket authorization to digital FM stations to originate digital transmissions at different power levels on the upper and lower digital sidebands without having to request experimental authorization, but instead by filing a notification in LMS.

Beyond the above, the Commission also requests comment on: (1) whether these proposed rule changes would cause or increase interference to analog FM stations adjacent to digital FM stations; (2) whether the proposed rule changes would have other adverse effects on incumbent FM stations; (3) whether and to whom notice of increased digital FM power should be provided; and (4) whether additional interference remediation procedures should be introduced.

Looking Ahead

Comments and Reply Comments on the NPRM will be due 30 and 45 days after publication in the Federal Register, respectively.

If you have any questions about the NPRM or are interested in filing comments, please contact one of the attorneys listed on this alert or your usual Wiley contact.