Federal Communications Commission
Washington, D.C. 20554

October 25, 2010

DA 10-2042

Engineers for the Integrity of
Broadcast Auxiliary Services Spectrum
c/o Dane E. Ericksen, P.E.
Hammett & Edison, Inc.
Consulting Engineers
18755 Park Tree Lane
Sonoma, CA 95476

Dear Mr. Ericksen:

On November 5, 2009, Engineers for the Integrity of Broadcast Auxiliary Services Spectrum (EIBASS) filed a request for two declaratory rulings, pursuant to Section 1.2 of the Commission's Rules, concerning minor changes to certain stations in the Broadcast Auxiliary Services.[1] By this letter, we clarify both matters.

Background. Section 1.947 of the FCC Rules provides that "licensees may make minor modifications to station authorizations . . . , as a matter of right without prior Commission approval."[2] For some radio services, the licensee has to notify the Commission of a minor change within 30 days by filing Form 601. "Major" and "minor" changes are classified in Section 1.929 of the FCC Rules, which provides that any change not specifically listed as major is considered minor.[3] Paragraph (d) of this rule provides major classifications specific to the microwave, aural broadcast auxiliary and television broadcast auxiliary services[4] and paragraph (d)(1) classifies major changes for such stations licensed to provide fixed point-to-point, point-to-multipoint, or multipoint-to-point, communications on a site-specific basis, or fixed or mobile communications on an area-specific basis under Part 101 (Fixed Microwave Services).[5] When filing Form 601 minor-change notices for these services, licensees are not required to provide evidence that they completed prior coordination prior to filing.

Petition for Declaratory Ruling. EIBASS seeks two declaratory rulings. First, EIBASS requests that the Commission confirm that the prior coordination process described in Section 101.103(d) of the Commission's Rules[6] is required for all minor-change modifications to all fixed link Part 74 BAS stations, except those at 2 GHz.[7] EIBASS states that because a minor-change Form 601 filing does not

[1] 47 C.F.R. § 1.2. EIBASS is an organization that represents users of Broadcast Auxiliary Service spectrum before the Commission on matters that impact the BAS spectrum.

[2] 47 C.F.R. § 1.947(b).

[3] 47 C.F.R. § 1.929(k).

[4] 47 C.F.R. § 1.929(d).

[5] *Id*, § 1.929(d)(1).

[6] EIBASS Petition for Declaratory Ruling (filed November 5, 2009) (EIBASS Petition).

[7] EIBASS Petition at 1. We note that, in this context, 2 GHz refers to the 2025-2110 MHz band.

require an attached PCN as an exhibit, some parties have apparently taken this to mean that prior coordination is not required prior to filing for a minor change.[8]

Second, EIBASS states that Section 1.947(b)[9] is unclear on whether licensees in the microwave, aural broadcast auxiliary and television broadcast auxiliary services must file notifications on Form 601 within 30 days of making minor changes, *i.e.*, modifications that are not defined as major in Section 1.929(d)(1)(i through x). According to EIBASS, an ambiguity arises because Section 1.947(b) lists examples of minor changes not requiring FCC notification that apply only to services licensed on a geographic area basis, *i.e.*, none of the examples appear to apply to fixed, point-to-point links.[10] EIBASS notes that the rule goes on to state that "[f]or all other types of minor modifications (*e.g.*, name, address, point contact changes), licensees must notify the Commission by filing FCC Form 601 within thirty days of implementing any such changes."[11] EIBASS contends that because the rule does not mention more significant minor-change modifications such as a transmit or receive site move of up to ±5 seconds in latitude and/or longitude, it is unclear whether changes not defined as major in Section 1.929(d)(1)(i through x) must be reported. EIBASS requests confirmation that minor changes always require a Form 601 notification filing within thirty days, to document the changes. EIBASS notes that this approach ensures that commercial microwave frequency coordinators (CMFCs) undertaking a Part 101 PCN study only consider, and only protect, fixed-link paths as they actually exist.

Discussion. Section 1.2 of the Commission's Rules provides that "the Commission may, in accordance with section 5(d) of the Administrative Procedure Act, on motion or on its own motion issue a declaratory ruling terminating a controversy or removing uncertainty."[12] Although we believe the Commission rules discussed in the Petition are clear, EIBASS reports that there is some confusion as to implementation. Accordingly, we take this opportunity to set forth previous Commission statements on the application of these rules.

Prior coordination. Section 101.103(d) of the Commission's Rules states that proposed frequency usage must be prior coordinated with existing licensees, permittees and applicants in the area, and other applicants with previously filed applications, *whose facilities could affect or be affected by the new proposal (emphasis added)* in terms of frequency interference on active channels, applied-for channels, or channels coordinated for future growth.[13] Furthermore, the rule states that coordination must be completed *prior to filing (emphasis added)* an application for regular authorization, or a major amendment to a pending application, or *any major modification to a license (emphasis added)*.[14]

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[8] *Id. at* 2 ("This Request for Declaratory Ruling is needed because of recent controversy on broadcast industry e-mail lists, and one broadcast-industry trade article, expressing the opinion that minor change Form 601 filings for fixed-link BAS stations do not require a PCN.")

[9] 47 C.F.R. § 1.947(b).

[10] The examples in Section 1.947 of minor changes that are allowed, under certain rule parts, without FCC notification are: "adding, modifying, or deleting internal sites." 47 C.F.R. § 1.947(b).

[11] 47 C.F.R. § 1.947(b)

[12] 47 C.F.R. § 1.2.

[13] 47 C.F.R. § 101.103(d). *See also* 47 C.F.R. § 1.913(e).

[14] *Id.*

In the *ULS Order on Reconsideration*,[15] the Commission clarified that minor modifications are subject to the requirements of Section 101.103(d) and that certain minor modifications, such as location changes less than 5 seconds, are *not* exempt from the prior coordination requirement.[16] The Commission also clarified that prior coordination need not be completed prior to the filing of an application for a minor modification; consequently an application for a minor modification need not provide evidence that prior coordination has been completed when the application is filed.[17] In the *BAS Service Rules Update Report and Order*,[18] the Commission reiterated that the same provisions apply to stations under Part 74. However, there are certain limited exceptions to the prior coordination requirements in Section 101.103(d) as follows:

- First, modifications to TV BAS 2 GHz fixed links are not subject to the requirements of Section 101.103(d). Such modifications are subject to the coordination procedures in Section 74.638(c) of the Commission's Rules.[19]

- Second, the filing of modification applications without completing prior coordination is permitted where the purpose of the application is to provide receive site data that is missing due to legacy forms and databases.[20] A modification application filed for the purpose of adding missing receive site data may be filed without completing the PCN process as long as the missing data is consistent with any data already existing in the ULS database and when the proper supporting documentation is attached.

- Finally, we note that Section 101.103(d) requires prior coordination in those instances where facilities "*could affect or be affected by*" the new proposal in terms of frequency interference.[21] Some minor modifications, such as minor modification to delete a path or frequency, or to reduce the occupied bandwidth would not affect or be affected by existing stations and therefore would not need to be coordinated under the requirements of Section 101.103(d).[22]

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[15] *Biennial Regulatory Review - Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95, 97, and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, Memorandum Opinion and Order on Reconsideration*, WT Docket No. 98-20, 14 FCC Rcd 11476 (1999) (*ULS Reconsideration Order*).

[16] *Id.* at 11483 ¶ 16.

[17] *Id.*

[18] Revisions to Broadcasting Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission's Rules, ET Docket 01-75, *Report and Order*, 17 FCC Rcd 22979 (2002) (*BAS Service Rules Update R&O*).

[19] *BAS Service Rules Update R&O*, 17 FCC Rcd at 23004-23005 ¶ 63.

[20] *See* Revisions to Broadcast Auxiliary Service Rules in Part 74 and Conforming Technical Rules for Broadcast Auxiliary Service, Cable Television Relay Service and Fixed Services in Parts 74, 78, and 101 of the Commission's Rules, ET Docket 01-75, *Order*, 18 FCC Rcd 21134, 21139 ¶ 13 (OET 2003) (*Stay Order*).

[21] 47 C.F.R. § 101.103(d) (*emphasis added*).

[22] We note that there may also be other minor modifications that may not require prior coordination, however, we do not attempt to provide a comprehensive list because in many cases the determination as to whether or not the minor modification would affect or be affected by other facilities must be made on a case-by-case basis.

Section 1.947. Section 1.947(b) states that Licensees may make minor modifications to station authorizations, as defined in § 1.929 of this part (other than pro forma transfers and assignments), as a matter of right without prior Commission approval.[23] *Where other rule parts permit (emphasis added)* licensees to make permissive changes to technical parameters without notifying the Commission (*e.g.*, adding, modifying, or deleting internal sites), no notification is required. For all other types of minor modifications (*e.g.*, name, address, point of contact changes), licensees must notify the Commission by filing FCC Form 601 within thirty (30) days of implementing any such changes. Section 74.24 allows broadcast auxiliary stations to operate on a short term basis under the authority conveyed by a Part 73 license without prior authorization from the FCC subject to certain conditions. Beyond that provision, Part 74 does not permit licensees to make permanent permissive changes. Consequently, any permanent minor modification to a Part 74 license would require the filing of a Form 601 to notify the Commission within 30 days of making the change.

Conclusion. Although evidence of frequency coordination is not required to be submitted with an application for a minor modification, prior coordination must be completed prior to implementing most minor modifications to fixed microwave link Part 74 BAS stations, with certain limited exceptions as described above. Section 1.947 requires that licensees making permanent minor modifications to their license to notify the Commission by filing Form 601 within thirty (30) days of implementing any such changes.

Accordingly, IT IS ORDERED that the request for declaratory rulings of the Engineers for the Integrity of Broadcast Auxiliary Services Spectrum, filed November 5, 2009, IS GRANTED to the extent indicated herein.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331. 1.2

FEDERAL COMMUNICATIONS COMMISSION

Stephen Buenzow
Deputy Chief, Broadband Division
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[23] *See* 47 C.F.R. § 1.947(b).