

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-226

In the Matter of

Revision of 47 C.F.R. § 73.208,
Reference Points and Distance
Computations

NOTICE OF PROPOSED RULE MAKING

Adopted: July 27, 1993;

Released: August 27, 1993

Comment Date: October 18, 1993

Reply Comment Date: November 2, 1993

By the Commission:

1. The Commission hereby seeks comment on a proposal to modify Section 73.208(c)(8) of the Commission's Rules to specify the manner in which applicants for FM facilities may round off distances when computing the extent to which they are short-spaced.

2. Section 73.208(c)(8) of the Commission's Rules provides that the computed distance between two reference points shall be rounded off to the nearest kilometer. In *Naguabo Broadcasting Company*, 7 FCC Rcd 1696 (1992), the Commission analyzed the use of the rounding-off provision in the context of determining whether to grant a waiver of the Commission's minimum distance separation requirements set forth in Section 73.207 of the Rules. The Commission concluded that the proper use of the rounding-off provision was unclear in this context.¹ Prior to *Naguabo Broadcasting Company*, it was Mass Media Bureau practice, when processing FM applications, not to employ the rounding provision of Section 73.208 in determining the extent to which an applicant is short-spaced.

3. An applicant is entitled to demonstrate compliance with minimum distance separation requirements (e.g., Section 73.207, Section 73.213(c), Section 73.215(e)) by rounding off to the nearest kilometer (km) the distance between its proposed transmitter site and a particular reference point (e.g., the transmitter site of an existing co-channel or adjacent channel station). We propose no change to our rules in this regard. However, the Commission believes that its rules should be amended to specify that if the applicant

is unable to demonstrate such compliance by virtue of the rounding-off provision in Section 73.208, the extent to which it is short-spaced should be specified with greater precision.

4. Our fundamental policy objective of controlling spectrum crowding would be enhanced, we believe, if distances were specified with greater precision than 1 km in evaluating short spacing waiver requests pursuant to Section 73.207(a) of the Commission's Rules.² For example, a station short-spaced by 1.51 km could further decrease the spacing by an additional 0.98 km, because 1.51 km and the resulting 2.49 km both round to the same 2 km distance. Such a degradation in spacing, particularly in the case of short-spaced stations, could result in substantial interference. Furthermore, the degree to which further short spacing could occur utilizing the rounding rule varies inconsistently from station to station, depending on the initial extent of short spacing. Thus, in the above example, a further short spacing of almost 1 km would be permissible. However, a station short spaced by 1.49 km, which rounds to 1 km, would be prohibited from making even a 0.02 km relocation in the direction of the short spaced station because the resulting short spacing would round to 2 km. Such inconsistencies would frustrate our efforts to control objectionable interference within the FM broadcast spectrum by means of spacing criteria and would introduce an unacceptable level of arbitrariness into our licensing process.

5. We propose to amend Section 73.208(c)(8) to restrict rounding of distance separation calculations to the nearest one hundredth of a kilometer (two decimal places) in instances where an applicant is not in compliance with any of our minimum distance separation requirements (e.g., Sections 73.207, 73.213(c), 73.215(e)). This would significantly reduce the potential for interference and the inconsistencies from station to station illustrated in the examples set forth above. This degree of rounding yields a precision of 10 meters, which more closely conforms to the degree of precision associated with our requirement that transmitter site coordinates be specified to the nearest second.

PROCEDURAL MATTERS

Ex Parte Considerations

6. This is a nonrestricted notice and comment rule making proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission Rules. See generally, 47 C.F.R. Sections 1.1202, 1.1203 and 1.1206(a).

¹ In *Amendment of Part 73 of the Commission's Rules to Permit Short-Spaced FM Station Assignments by Using Directional Antennas*, 6 FCC Rcd 5356, 5360 (1991), the Commission denied a request to reinstate consideration of Section 73.207 waivers. Consequently, it is unlikely that a situation similar to that in *Naguabo Broadcasting Company* will reoccur. Nevertheless, for the reasons that follow, there remains justification for limiting the circumstances under which distances may be rounded.

² Section 73.207(a) states, in part:

applications to modify the facilities of stations with short-spaced antenna locations authorized pursuant to prior waiver of the distance separation requirements may be accepted, provided that such applications propose to maintain or improve that particular spacing deficiency.

Comment Information

7. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before **October 18, 1993**, and reply comments on or before **November 2, 1993**. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W. Washington, D.C. 20554.

Initial Regulatory Flexibility Analysis

8. *Reason for the Action:* This action is taken to clarify that applicants for FM facilities may not round off distances to the nearest km under Section 73.208 of the Commission's Rules when computing the extent to which they are short-spaced.

9. *Objective of this Action:* By this action, the Commission seeks to clarify and rationalize the use of Section 73.208 of the Commission's Rules.

10. *Legal Basis:* Authority for this action is found in Sections 4, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4, 303, 403.

11. *Number and Type of Small Entities Affected by the Proposed Action:* All applicants for FM facilities that propose transmitter sites which are not in compliance with the Commission's minimum distance separation rules.

12. *Reporting, Recordkeeping, and Other Compliance Requirements Inherent in the Proposed Action:* None.

13. *Federal Rules which Overlap, Duplicate or Conflict with the Proposed Action:* None.

14. *Any Significant Alternative Minimizing Impact on Small Entities and Consistent with the Stated Objective of the Action:* We are seeking comment to determine whether any significant alternatives exist.

15. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposal suggested in this document. Written public comments are requested on the IRFA, which is set forth as Appendix A. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the *Notice*, but they must have a separate and distinct heading designating them as responses to the Regulatory Flexibility Analysis. The Secretary shall send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with ¶ 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 *et seq.* (1981).

Paperwork Reduction Act Statement

16. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirement on the public.

Ordering Clause

17. Accordingly, IT IS ORDERED that pursuant to Sections 4, 303, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 4, 303, 403, this *Notice of Proposed Rule Making* IS ADOPTED.

Additional Information

18. For further information on this proceeding, contact Gary P. Schonman, Mass Media Bureau, (202) 632-6402.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX

PROPOSED AMENDMENT

Title 47 of the Code of Federal Regulations, Part 73, is proposed to be amended as follows:

Part 73 - Radio broadcast services

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. § 73.208(c)(8) is revised to read as follows:

§ 73.208 Reference points and distance computations

* * * * *

(c) ***

(8) Round the distance to the nearest kilometer. However, if, after rounding the distance to the nearest kilometer, an applicant is not in compliance with any Commission minimum distance separation requirement (e.g., §§ 73.207, 73.213(c), 73.215(e)), the extent to which it is short-spaced shall be specified to the nearest one hundredth of a kilometer (two decimal places).

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