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To: James Moody, J. Moody & Associates
From: Lawrence M. Miller
Subject: Use of a Part 101 station in 18 GHz band for final broadcast RF link
Date: April 10, 2008

This confirms our opinion that it is permissible to apply to the Federal Communications Commission for authorization of a Part 101 station in the 17,700–18,580 MHz band and to use such a station as the final RF link for a broadcast station transmitter without the need for a rule waiver. In reaching this opinion we have reviewed the pertinent provisions of Section 101.603 of the Commission's rules.

Section 101.603(a)(2) states that "Except as provided in paragraph (b) of this section, stations in this radio service may transmit communications as follows: ... (2) In the frequency bands 6425–6525 MHz, 17,700–18,580 MHz, and on frequencies above 21,200 MHz, licensees may deliver any of their own products and services to any receiving location...".

Section 101.603(a)(7) states that "Licensees may transmit program material from one location to another, provided that the frequencies do not serve as the final RF link in the chain of distribution of the program material to broadcast stations."

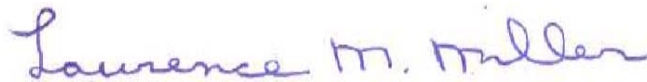
Section 101.603(b)(2) states that "Stations licensed in this radio service shall not: ... Transmit program material for use in connection with broadcasting, except as provided in paragraphs (a)(2), and (a)(7)) of this section.

Section 101.101 reserves the 6425-6525 MHz band for mobile uses. You have advised that frequencies above 21,200 MHz are not suitable for many longer broadcast link paths. You have informed us that some broadcast licensees are interested in use of the 17,7000 - 18,580 MHz band for fixed broadcast stations to serve as a final RF link to the broadcast transmitter. The allotments of the frequencies in that band, as set forth in Section 101.101, permit use without restriction, although the band is shared with other services.

The juxtaposition of these provisions presents a question of regulatory construction. As shown above, paragraph (b)(2) forbids use of stations in the service to transmit broadcast material except as provided in (a)(2) and (a)(7). Paragraph (a)(2) states that licensees of stations in three specified bands may deliver any of their own products and services to any receiving location except as provided In paragraph (b), creating a loop between the two sections. Paragraph (a)(7) states that Part 101 frequencies may not be used as the final RF link for broadcast program distribution. The issue presented is how to reconcile the seeming inconsistency between paragraphs (a)(2) and (b) and between paragraphs (a)(2) and (a)(7). We have researched reported FCC cases concerning these provisions and have found no cases on point. However, as a general rule of statutory construction the more specific governs the more general. Thus the provision with respect to specific frequencies should govern here.

You and I have spoken together recently with a senior engineer in the Broadband Division of the Wireless Telecommunications Bureau concerning reconciliation of these provisions. He acknowledged that the section is not clearly written but advised that the staff would process an application for licensing of a station in the 17,700-18,580 MHz band to be used as the final RF link for a broadcast station under paragraph (a)(2) without the need for a waiver. While those seeking advice are not guaranteed that informal staff advice is correct, in this case the staff member providing the advice is the person who would currently decide whether an application as described is appropriate and his advice comports with our construction of the rule. Moreover, we received a letter last month from the Broadband Division addressed to a broadcast licensee client of our firm that confirms this interpretation of the rules. The letter, sent in the context of a discussion of frequency selection for a new Part 101 broadcast link, states “[o]ne alternative that was not discussed is the use of 18 GHz, specifically frequencies between 17700 and 18580, which pursuant to 101.603(a)(2) are not precluded from being used as the final RF link.”

In sum, in our opinion, based on interpretation of the pertinent rule and receipt of both oral and written confirming advice from the FCC staff, is that broadcast licensees may apply for and use frequencies in the 17,700-18,580 MHz band as the final RF broadcast link without the need for a waiver.



Lawrence M. Miller