**Before the**

Federal Communications Commission

Washington, D.C. 20554

In the Matter of )

)

Petition for Declaratory Ruling )

Regarding 47 CFR §101.211, 47 CFR §101.217 )

and 47 CFR §90.215 of the Commission’s Rules )

)

**PETITION FOR DECLARATORY RULING**

The Utilities Technology Council (“UTC”) hereby submits this petition (“Petition”) seeking a declaratory ruling clarifying that Section 101.211, Section 101.217 and Section 90.215 of the Commission’s rules require that the licensee of a radio station is ultimately responsible for conducting transmitter measurements and certifying their compliance, and that the procedure for measuring and making any necessary adjustments of the transmitters shall be determined by the licensee, including whether the measurements are to be conducted by a qualified engineering measurement service. This clarification is necessary to resolve a controversy regarding the licensee’s responsibility to be able to conduct its own measurements and to make its own adjustments of transmitters to comply with the Commission’s rules.

UTC believes that the licensee should not be prevented from conducting its own measurements and making its own adjustments to transmitters to comply with the Commission’s rules. However, it has come to the attention of UTC that some equipment manufacturers are requiring that licensees send the transmitters to the manufacturer for measurements and adjustments instead of allowing the licensees to perform the measurements and make any necessary adjustments themselves. UTC believes that the Commission should clarify that the licensee has the sole discretion regarding the procedure to conduct measurements and make adjustments, because the licensee ultimately bears responsibility for compliance. Therefore, as described more fully below, the licensee should have the option of choosing to conduct its own measurements and to make its own adjustments to equipment as necessary to comply with the Commission’s rules.

Section 101.211(b) states that it is the station licensee’s responsibility to ensure the proper operation of the station at all times and is expected to provide for observations, servicing, and maintenance as often as may be necessary to ensure the proper operation of the station.[[1]](#footnote-1) Section 101.217 pertaining to station records requires that the responsible operator shall sign and date station records regarding, among other things, transmitter measurements; and the person signing the records must be qualified and have actual knowledge of the facts to be recorded.[[2]](#footnote-2) Likewise, Section 90.215 provides that the licensee shall employ a suitable procedure to determine that transmitters are operating within the limits for frequency tolerance, output power and modulation. Furthermore, Section 90.215(d) provides that the licensee may, at its opinion, use a qualified engineering service to make these determinations.[[3]](#footnote-3)

Implicit in each of these rules is the obligation to adjust transmitter equipment if the measurements indicate that station operations are not in compliance with the station license. UTC is concerned that transmitter measurements and adjustments that are not made at the location of the station (*i.e.* in the field) may not ensure compliance with the Commission’s rules. Measurements taken and adjustments made elsewhere, such as an offsite engineering laboratory, may not account for factors such as shipping and transport that may result in the transmitter being knocked out of adjustment and operating out of compliance with the station license. In this regard, it is relevant to note that the Commission’s rules explicitly require broadcasters to conduct transmitter measurements in the field in order to ensure that transmitters are in fact operating in compliance with the rules.[[4]](#footnote-4) Accordingly, the Commission should clarify that licensees of private land mobile and microwave stations must be allowed to conduct transmitter measurements and make any necessary adjustments in the field in order to comply with the technical requirements of their licenses under the Commission’s rules.

The public interest would be served by clarifying that licensees must be allowed to conduct transmitter measurements (and by extension, make adjustments to transmitters) in the field by the responsible operator or under the supervision of the responsible operator of the station. This has been the prevailing industry practice by licensees, and protects against interference to other operations. While the Commission’s rules provide flexibility for land mobile licensees to use “a qualified engineering measurement service” to conduct the transmitter measurements,[[5]](#footnote-5) ultimately, it is the licensee that is responsible and cannot pass on its responsibility to ensure that the measurements and adjustments are conducted accurately, such that the licensee complies with its license to operate. In addition, licensees that sign station records, including the transmitter measurement reports, must have actual knowledge of the facts that are recorded, which they cannot do if the measurements are not conducted at the location of the station by the responsible operator or under his/her supervision.[[6]](#footnote-6)

Clarifying this rule will also provide certainty to licensees who face potential liability if the Commission determines that they are not operating in compliance with the technical requirements of their licenses under the rules. There are numerous cases where the Commission has fined licensees for failure to comply with their license, even when the licensee relied on third parties. Most recently, the Enforcement Bureau imposed a forfeiture of $25,000 on the licensee of a private land mobile radio (PLMR) station for causing harmful interference to other licensed stations operating on a shared frequency, even though the licensee was denied access to the transmitter by a third party that was operating the station, thereby preventing the licensee from taking any corrective action.[[7]](#footnote-7) In that decision, the Bureau cited two previous cases that found that a licensee “cannot pass on its responsibility as a licensee to operate within licensed parameters” to third parties acting on the licensee’s behalf.[[8]](#footnote-8) This decision and the line of cases cited in support of it suggest that licensees are ultimately responsible for conducting transmitter measurements and ensuring compliance with the station license. By providing clarification as requested in this Petition, the Commission will help to protect licensees from liability by providing certainty that licensees are ultimately responsible for the accuracy of transmitter measurements and any necessary adjustments that are made to comply with the technical requirements of the station license under the Commission’s rules.

**CONCLUSION**

For the foregoing reasons, the Commission should issue a declaratory ruling clarifying that Section 101.211, Section 101.217 and Section 90.215 of the Commission’s rules require that the licensee of a radio station must be allowed to determine the procedure for conducting transmitter measurements and making any necessary adjustments, and the licensee is ultimately responsible for certifying its compliance in accordance with the Commission’s rules, so that transmitter measurements and any necessary adjustments to the equipment may – at the licensee’s opinion -- be conducted by the station operator or under his/her supervision, where they are installed (*i.e.* in the field).

Respectfully,

**Utilities Technology Council**

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Brett Kilbourne

Vice President Policy and General Counsel

Utilities Technology Council

1129 20th Street NW

Suite 350

Washington, DC 20036

202-872-0030

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1. 47 C.F.R. §101.211(b). [↑](#footnote-ref-1)
2. 47 C.F.R. §§101.217(b) and (d). [↑](#footnote-ref-2)
3. *See* 47 C.F.R. §90.215(d)(stating that “the determinations required by paragraphs (a), (b), and (c) of this section may, at the opinion of the licensee, be made by a qualified engineering measurement service, in which case the required record entries shall show the name and address of the engineering measurement service as well as the name of the person making the measurements.”) [↑](#footnote-ref-3)
4. *See* 47 C.F.R. §73.1350(a)-(c)(stating that “[e]ach licensee is responsible for maintaining and operating its broadcast station in a manner which complies with the technical rules,” and that the persons authorized to make technical adjustments to the transmitters to ensure compliance with the license may do so by “mak[ing] such adjustments directly at the transmitter site or by using control equipment at an off-site location.”) [↑](#footnote-ref-4)
5. 47 C.F.R. §90.215(d). [↑](#footnote-ref-5)
6. *See* 47 C.F.R. §90.433 (stating that “[e]ach licensee of a station in these services shall maintain records in accordance with the following: For all stations, the dates *and pertinent details* of any maintenance performed on station equipment, and the name and address of the service technician who did the work.”), *emphasis added. See also* 47 C.F.R. §90.445 (stating that “[e]ach entry in the records of each station shall be signed by a person qualified to do so, having actual knowledge of the facts to be recorded.”) [↑](#footnote-ref-6)
7. *See* Public Safety Technologies, Inc. Licensee of Station WQJM334, *Forfeiture Order*, DA 17-977 (rel. Oct. 11, 2017). [↑](#footnote-ref-7)
8. *Id.*, *citing* D.T.V., LLC, *Forfeiture Order*, 31 FCC Rcd 2650, 2657 (2016); Indus. Broad. Co*.*, *Memorandum Opinion and Order*, 34 FCC 2d 950, 954 (1971) and Willapa Broad. Co., Inc., *Memorandum Opinion and Order*, 17 FCC 2d 110, 111 (1969). [↑](#footnote-ref-8)