

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

In the Matter of )  
 )  
Proposed Changes in the Commission’s ) ET Docket 03-137  
Rules Regarding Human Exposure to )  
Radiofrequency Electromagnetic Fields )

To: The Commission

**COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (“NAB”)<sup>1</sup> submits these comments in response to the Commission’s Notice of Proposed Rulemaking in the above-captioned proceeding. In the Matter of Proposed Changes in the Commission’s Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields, ET Docket No. 03-137, *Notice of Proposed Rulemaking*, rel. June 26, 2003 (“*Notice*”). While NAB supports the Commission’s continued efforts to protect the employees and the public from potentially adverse effects from exposure to radiofrequency (“RF”) energy, the Commission must ensure that its proposed regulation revisions provide clear guidance to licensees. As discussed below, it is important the Commission fully explain how licensees should

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<sup>1</sup> NAB is a nonprofit, incorporated association that serves and represents America’s radio and television broadcast stations.

implement the revised definitions and compliance procedures relating to RF exposure of workers and employees.<sup>2</sup>

The Commission proposes to add more specific definitions and compliance procedures for workers in occupational/controlled environments. *Notice* at ¶ 38. Specifically, the Commission proposes to explain in a note to Section 1.1310 of the Rules that the term “fully aware,” as it is used in the definition of an occupational/controlled environment, means that an exposed individual has received written and verbal information concerning the potential for RF exposure and has received training regarding appropriate work practices relating to controlling or mitigating his or her exposure. *Id.*

While NAB does not object in principle to this “clarification,” on a practical level this approach raises a number of questions regarding how to implement this new definition because it is not clear what constitutes verbal information. For example, should all written information also be conveyed on a verbal basis? How often does an individual need to be informed? Should verbal notification occur at initial hiring or does the employee need to be verbally informed on a periodic basis? If so, what constitutes periodic? Additionally, how can a licensee demonstrate compliance with this provision? Will licensees be required to keep records regarding who has verbally been made “fully aware?” The Commission must provide unambiguous guidance that addresses these questions pertaining to written and verbal requirements so that licensees can provide appropriate information to their employees.

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<sup>2</sup> NAB notes what appears to be an oversight on the part of the Commission. Paragraph 11 of the *Notice* states that the proposed rule changes apply to subpart L & G of Part 101. However, Table 1 in the proposed revised Rules for Section 1.1307, contained in Appendix A of the *Notice* indicates that the new rule applies to all of Part 101. The

Moreover, while it is clear that this new provision would apply to employees that work at the transmitter, on a tower or in proximity of other RF devices, as a practical matter this regulation may extend to many other licensee employees. The occupational/controlled exposure limits are intended to apply only to persons who are (1) “exposed as a consequence of their employment;” (2) persons who are exposed have been made “fully aware” of the potential for exposure; and (3) that those persons “can exercise control over their exposure.”<sup>3</sup> Studios and transmitters, however, may be co-located in the same facility; non-technical employees such as payroll or sales personnel may not currently be apprised with both written *and* verbal information about occupational exposure, primarily because the licensee posted warning signs only at the transmitter area of the facility, an area which is generally off-limits to those employees. These, employees may, in the course of their ordinary business, occasionally wander through areas that exceed the uncontrolled RF exposure limits. Were the Commission to mandate that both written and verbal information be conveyed to any employee that may be exposed on an occasional or transient basis, it must specify *what* written and verbal information must be conveyed to these types of employees so that they may too be made “fully aware.”

Specificity is also critical with respect to FCC Form 303-S – Application for Renewal of Broadcast Station License. In 2003 the Media Bureau revised its instructions for license renewals, adding two new conditions. A licensee may now only certify

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Commission should explain that this is not the case and amend Table 1 to reflect that the requirements apply only to subparts L & G.

<sup>3</sup> 47 C.F.R. §1.310, note 1 to Table 1. *See also* Evaluating Compliance with FCC Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields, OET Bulletin 65 (Aug. 1997) at 9.

environmental compliance if the station has (1) maintained the RF emission limits listed in OET Bulletin No. 65 and (2) has applied occupational/controlled exposure limits to *both* persons who are “exposed in the course of their employment” and those whose exposure “is of a transient nature” through passages that exceed uncontrolled environmental limits.<sup>4</sup> In order for a licensee to certify compliance with RF regulations, it is essential that the Commission provide licensees with precise guidance in the dissemination of written and verbal information to employees.

Finally, although the Commission proposes a “six month transition period” from the time any new rules are adopted to the time they become effective, the Commission also states that revisions are necessary to “clarify” licensee responsibilities. *Notice* at ¶¶ 49 and 4, respectively. The term “clarify” could, however, lead to confusion as to what constitutes proper certification during the current radio broadcast license renewal cycle and the upcoming television broadcast license renewal cycle. The Commission must ensure that broadcast licensees can continue to certify compliance on FCC Form 303-S, including the Appendix A RF Worksheets, even if they did not undertake all of the efforts the Commission may now “clarify” it intends the licensee to perform. Thus, the Commission should specify that any rule changes, including any “clarifications,” are on a going-forward basis only and do not affect a licensee’s certification requirement for the period prior to the effective date of the new rules.<sup>5</sup>

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<sup>4</sup> See Instructions for FCC Form 303-S, Application for Renewal of Broadcast License, (rel. Apr. 30, 2003) at 9.

<sup>5</sup> As a general rule, in the absence of statutory authority, rules adopted pursuant to the Administrative Procedure Act’s notice and comment procedures may only be applied prospectively. *Georgetown University Hospital v. Bowen*, 821 F.2d 750, 757 (D.C. Cir. 1987), *aff’d on other grounds*, 488 U.S. 208 (1988).

**Conclusion.**

For the reasons stated above, NAB requests that the Commission fully detail the written and verbal requirements for occupational RF exposure and specify that any changes in certification will only be prospective.

Respectively submitted,

**NATIONAL ASSOCIATION OF  
BROADCASTERS**

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A handwritten signature in black ink that reads "Ann West Bobeck". The signature is stylized, with a large, looped initial "A" and a horizontal line extending from the middle of the "A" to the start of the name "Bobeck".

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Henry L. Baumann  
Jack N. Goodman  
Ann West Bobeck

December 8, 2003