

National Spectrum Management Association

**When Civility in Frequency
Coordination Breaks Down:
Escalating to the FCC**

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May 17, 2016

Overview

- ✦ Framework
- ✦ Difficulties in avoiding escalation
- ✦ Breakdown in civility
- ✦ Practical considerations

Framework - 1

✦ “Escalating” to the FCC

- Challenges to an FCC application
- Situations where private resolutions need FCC “approval”

Framework - 2

- ✦ **Common Carrier vs. Private Wireless Services**
 - **Common Carrier**
 - Subject to acceptance for filing Public Notice
 - FCC waits minimum 30 days after PN to grant
 - Pre-grant challenge option: petition to deny
 - **Private Wireless Services**
 - No Public Notice requirement
 - No 30-day waiting period
 - Pre-grant challenge option: informal objection
- ✦ **Distinction created “in order to provide expedited licensing”**

Framework - 3

✦ Informal Objection vs. Petition to Deny

➤ Petition to Deny

- File within 30 days after accepted for filing PN
- Opposition due 10 days later
- Reply to opposition due 5 days later
- FCC arguably must consider and issue decision

➤ Informal Objection

- No rules governing timing of initial filing, opposition or reply
- FCC has discretion whether to even consider objections

Difficulties in Avoiding Escalation - 1

- ✦ **Basic avoidance consideration:**
 - “Coordination must be completed prior to filing an application...”

- ✦ **Problem:**
 - When is frequency coordination considered complete?

Difficulties in Avoiding Escalation - 2

- ✦ Coordination = Notification and Response (and...?)
- ✦ Resolution of problems identified in responses:
 - “Every reasonable effort should be made by all applicants, permittees and licensees to eliminate all problems and conflicts.”
- ✦ Must ALL technical problems be resolved?
 - “unless a statement is included with the application... that the applicant is unable or unwilling... and briefly the reason therefor”

Breakdown in Civility (paths to escalation)

- ✦ Uncertainty regarding expedited PCN requests
- ✦ Uncertainty regarding “growth channels” and limits on renewal PCNs
- ✦ Uncertainty regarding “bucking” situations
- ✦ Unresolved interference cases (excluding bucking & growth channels)

Practical Considerations - 1

- ✦ **Informal objections**
 - Informal procedures, timing can be a concern
 - Response from applicant not required
 - but FCC may return the application
 - Withdrawal requires FCC approval
- ✦ **Petition for reconsideration**
 - Within 30 days of granting Public Notice
 - Must show good reason why petitioner could not participate earlier
 - E.g., if license granted shortly after accepted for filing PN
 - May be considered procedurally defective otherwise?
 - FCC should act on recon petitions within 90 days

Practical Considerations - 2

- ✦ Private resolutions may still require FCC involvement
 - Can apply to resolutions before or after coordination
 - Special operating arrangements may be included in application
- ✦ Withdrawal of objections or agreements to “refrain from filing”
 - FCC must approve
 - Both parties must file certification
 - Details (written or oral agreements) may need to be provided
- ✦ Potentially affects:
 - Negotiated resolutions of interference cases
 - Testing agreements in bucking situations

Conclusion

- ✦ Lack of precedent on how FCC will resolve certain disputes
- ✦ Conflicts still best handled during coordination
- ✦ Updated or expanded industry guidelines (in the works) may be helpful

Thank you!

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