



July 2006

FAA Proposals Could Give New Meaning To “Hazards”

Ann Bavender
703-812-0438
bavender@fhhlaw.com

The Federal Aviation Administration (FAA) has proposed major changes to the factors it considers in determining whether proposed construction of new towers or modifications to existing towers are a hazard to aircraft navigation. The proposed changes could have a significant ripple effect on broadcasters: before they can get FCC approval, all applicants for new or modified FCC authorizations must demonstrate that any tower from which the service proposes to transmit its signal will comply with all FAA tower regulations.

Broadcasters currently must notify the FAA of any proposed new tower construction or modification which is 200 feet or higher or which lies within certain specified airport approach paths. Initially the FAA evaluates the notification to determine whether the tower is a potential physical obstruction to aircraft and, in the case of FM radio and VHF TV facilities, whether the facility will potentially cause electromagnetic interference (EMI) to aircraft navigation equipment. If the FAA determines that a proposed tower or modification will not be a hazard, the FAA issues a determination of no hazard to aircraft navigation.

If the FAA determines that a proposed tower or modification *may* be a hazard to aircraft navigation, the FAA studies the proposal in depth to determine whether the tower construction or modification will in fact result in adverse effects on aeronautical operations. And if that further study discloses that such adverse effects will occur to aeronautical operations, the FAA issues a determination of hazard to aircraft navigation. Issuance of a determination of hazard means that the FCC will deny any required FCC construction permit for the tower. It will often result in local authorities denying required permits for construction of the tower or modification, although without an FCC permit the question of local approval may be a moot one.

Electromagnetic interference (EMI) is of concern to the FAA since the FM band (88-108 MHz) is immediately adjacent to the FAA's navigation/communications band (108-136.5 MHz) and FM stations transmit with a much greater power than the FAA's communications systems. In addition, the VHF TV bands (54-72 MHz, 76-88 MHz, and 174-216 MHz) are adjacent to the FAA communications navigation bands for marker

beacons (75 MHz), government land mobile facilities (162-174 MHz), and bands used for communication with military air traffic (225-328.6 MHz).

The FAA is proposing to expand the factors it considers in determining whether a proposed tower or tower modification is a hazard to aircraft navigation. If the proposals are adopted, the number of notifications which proponents of tower construction or modifications must file with the FAA will increase. Worse, adoption of the proposals would likely make it harder for those proposing tower construction or modification to obtain FAA approval. At a minimum the new rules would likely interject very significant delays into the construction timetable of otherwise routine towers. Companies who construct towers regularly (or who rent space on their towers) will be adversely affected if these rules are adopted and may wish to consider submitting comments on the proposals to the FAA.

Among other changes, the FAA proposes:

- to require notice of *all* proposed new construction of any man-made structure (tower, building, etc.) which will support a radiating element used for radio frequency transmission on the following frequencies: (i) 54-108 MHz, (ii) 150-216 MHz, (iii) 406-420 MHz, (iv) 932-935/941 MHz, (v) 952-960 MHz, (vi) 1390-1400 MHz, (vii) 2500-2700 MHz, (viii) 3700-4200 MHz, (ix) 5000-5650 MHz, (x) 5925-6525 MHz, (xi) 7450-8550 MHz, (xii) 14.2-14.4 GHz, and (xiii) 21.2-23.6 GHz.
- to require prior notice of any change to a communications facility operating on any of the above frequencies, if the communications system was specified in a previous FAA determination, including (i) a change in frequency, (ii) addition of a frequency, (iii) an increase in effective radiated power (ERP) equal to or greater than 3 decibels (dB), and (iv) modification of a radiating element which increases the height of the antenna mounting location 100 feet or more, changes the antenna specifications (including gain, beam-width, polarization, or pattern), or changes the antenna azimuth/bearing (point-to-point microwave).
- to require prior notice of any change in the type of antenna used by a communications facility operating on any of the above frequencies, if the antenna type was specified in a previous FAA determination.
- to require an in-depth study of all notifications of a radiating element which will transmit on any of the above frequencies.

- to require prior notice of any proposed new tower construction or modification on or near a private use airport or heliport which has at least one FAA-approved instrument approach procedure (IAP). Notice of proposed new tower construction or modification on or near a private use airport or heliport is not currently required.
- to modify some of the five “airport runway imaginary surfaces” (horizontal surfaces, conical surfaces, primary surfaces, approach surfaces, and transitional surfaces) the FAA uses to initially determine whether a proposed tower construction or modification may potentially be a hazard to aircraft navigation. This proposal will make the surfaces applicable to an increased number of proposed new tower constructions or modifications. Since an in-depth study is required for all proposed new tower constructions or modifications to which “airport runway imaginary surfaces” are applicable, this will result in the FAA conducting an in-depth study of more tower proposals.
- to consider the effect on planned or proposed airports for which the FAA has received actual notice anytime prior to issuance of an FAA determination regarding the notification, regardless of whether the “comment period” has closed. In evaluating a notification, the FAA currently considers the effect of the proposed tower construction or modification on planned or proposed airports for which the FAA has received actual notice prior to the closure of the “comment period” for the notification.
- to require notices of proposed tower construction or modification to be filed 60 days before construction begins. Currently, notices must be filed 30 days before construction begins.
- to make all determinations of no hazard to aircraft navigation effective 40 days after issued by the FAA, if no petition for review is received by the FAA within 30 days of issuance. Currently, the effective date is contained in the determination and is generally the same date the determination is issued.
- to modify its rules regarding extension of a determination of no hazard to aircraft navigation.

The FAA has solicited comments from the public regarding its proposed changes. Comments are due September 11, 2006.