



**November 2009**

## **Local Community Radio Act Advances In Congress**

***Time to say your good-byes to 3rd adjacent protection from LPFMs?***

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In November the Senate Commerce Committee approved S. 592 (“the Local Community Radio Act of 2009”), a bill that would repeal the LPFM third adjacent channel protection requirement contained in Section 73.807 of the Commission’s rules. The bill is now teed up for consideration by the full Senate. Meanwhile, over on the House side, a corresponding bill (H.R. 1147, going by the same catchy moniker) already made it out of Committee in mid-October. Back in the March, 2009 *Memo to Clients* we wrote about both the House and the Senate bills when they first floated to the surface. As a result of the Committees’ recent actions, Congressional approval of the proposed legislation is just a couple of votes from reality. And, with no sign of objection from the White House, the smart money figures that this will become the law of the land sooner rather than later.

While the bills (which, as originally drafted, were virtually identical) focus on the LPFM service, full-power FM stations should be sure to take a close look at the full impact of this likely-soon-to-be law.

As we reported back in the June, 2009, *Memo to Clients*, the Commission modified its rules in 2007 to relax considerably the extent to which LPFM stations have to protect second adjacent full service stations. That rule change was upheld in 2008 by the U.S. Court of Appeals for the D.C. Circuit. So second adjacent protection has already been seriously weakened. The Local Community Radio Act would toss third adjacent protection from LPFMs out the window – leaving full service stations fully guarded against only co- and first-adjacent LPFM interference, with only partial protection from second adjacent. (And it would not be too much of a stretch to imagine that, with Congressional elimination of third adjacent protection and the Court’s blessing of the reduction in second adjacent protection, the Commission might try to eliminate *all* protection from second adjacent LPFMs.)

While the Local Community Radio Act seems geared primarily toward the paring back of protection, it ironically would create a new species of protection which could give the Commission enforcement headaches galore. The Act mandates that third adjacent

protection from LPFM interference is to be retained with respect to full-service noncommercial educational FM's "that broadcast radio reading services via a subcarrier frequency". That's swell, except that SCA operation is largely unregulated and unmonitored by the Commission. In other words, the FCC currently has no way of knowing, from one day to the next, which stations happen to be using one or both SCAs for radio reading services. Since providing such a service will, under the new Act, afford a full service NCE station some greater measure of interference protection, it would not be surprising to see an upsurge in such services in the foreseeable future. It will be most interesting to see whether – and if so, how – the Commission will react to this particular piece of legislative handiwork.

The Local Community Radio Act promises to have continuing effect on the FM industry for some time to come. We will keep you updated on further developments as they arise.