



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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One-Month Countdown to Special Displacement Window for Certain Low Power Television Stations and TV Translators

This is a reminder that the Special Displacement Window for certain low power television and TV translator stations (collectively, “LPTV stations”) will open on **Tuesday, April 10, 2018**, and close on **Tuesday, May 15, 2018**, at 11:59 pm Eastern Time. In February, the FCC released a [Public Notice](#) announcing the opening of the Special Displacement Window during which low power television, TV translator stations, and analog-to-digital replacement translators that (1) were displaced due to the Incentive Auction or subsequent repacking and (2) were “operating” as of April 13, 2017, will be able to file for a new channel in the post-Auction, repacked TV spectrum. (Note: in order for a station to be deemed “operating,” the station’s construction permit facilities had to be licensed or the station must have had a license-to-cover application on file with the FCC by April 13, 2017.)

In addition to announcing the Special Displacement Window dates, the FCC released data that identifies locations and channels where LPTV stations likely cannot propose displacement facilities because of the presence of full power and Class A television stations, land mobile operations, and other (non-displaced) LPTV stations. The data is intended to help displaced LPTV

stations identify potential channels to specify in their Special Displacement Window applications. The channel data is available on the FCC's website at <http://data.fcc.gov/download/incentive-auctions/LPTV-Data/>. The FCC has also conducted an informational webcast relating to the Special Displacement Window, and both the archived video and copies of the slide presentation are available [on the FCC's website](#).

Media Bureau Announces March 14 – 28 Long-Form Filing Window for More “Singleton” FM Translator Applications

In late February, the Media Bureau released a [Public Notice](#) announcing the opening of a filing window—from **March 14 to March 28, 2018**—for long-form FM translator construction permit applications filed by those AM stations who timely filed “Tech Box proposals” during last summer’s [Auction 99](#) filing window and whose mutually exclusivity has been resolved. A [list of those](#) stations qualified to participate in this upcoming filing window was released with the Public Notice. Parties may start work on completing these so-called “singleton” applications immediately, although the filing window will not open until March 14.

Applicants must submit a complete Form 349 long-form application for each qualifying Tech Box proposal by no later than March 28. Long-form applications are considered “cut-off” as of the date they are filed, so there may be a benefit to filing earlier in the window instead of later in the window. Those filers who are not fee-exempt must also pay the required FCC filing fee and submit a payment-related Form 159 for each application.

Applicants are permitted to make minor modifications to the engineering data submitted last year in their Tech Box proposals. Such minor changes include changes to power, height, directional pattern, and channel. However, applications that include any major change as defined by the FCC’s rules, or any change that creates a new conflict to any pending Auction 99 Tech Box proposal or to any prior-filed Form 349 application, will be dismissed.

Any applications filed during the window that do not comply with the procedures contained in the Public Notice will be dismissed. The Public Notice states that the application deadline of March 28, 2018, will be strictly enforced. Thus, such applicants should immediately begin working on their long-form application and not leave it to the last minute.

At some point after the March 28 filing deadline, the Media Bureau will release Public Notices in its CDBS (Consolidated Database System) platform entitled “Broadcast Applications,” which will list applications determined to be “acceptable for filing”—i.e., grantable and not subject to dismissal. Any petition to deny a long-form application must then be filed within 15 days following the release of the relevant public notice. Interested parties will obviously need to monitor these Broadcast Applications Public Notices.

AM stations that filed FM translator proposals in the Auction 99 filing window should review the list of eligible participants and the Public Notice for additional detail on procedures as soon as possible, and plan to complete and file their long-form applications during the March 14 – 28 filing window.

Repack Reimbursement Updates: FCC Announces Additional Repack Reimbursement Allocation; House Passes Bill That Would Authorize Additional Repack Funding, Including for LPTV and FM Stations

We have important repack reimbursement news for all broadcasters affected by the post-Spectrum Auction environment.

Second Allocation Public Notice. On March 8, 2018, the FCC released a [Public Notice](#) that indicates it anticipates making a second repack reimbursement allocation within the next four to six weeks. (Broadcasters will recall that the FCC [announced in October 2017](#) its initial allocation of \$1 billion to television stations eligible for repack reimbursement.) The Public Notice notes that although the vast majority of eligible television stations “are not yet approaching the point of exhausting their initial allocation, reimbursement requests for a number of entities are now at a level where they likely will soon reach, or in some cases, exceed the entity’s initial allocation amount.”

Repacked Stations Should Update Their Form 399 ASAP. The Public Notice also states that the total amount of verified and unverified expenses submitted thus far by eligible stations is approximately \$1.95 billion. According to the Commission, the second allocation “is intended to provide entities with ongoing access to reimbursement funding sufficient to continue the transition process, while preserving flexibility to respond to unforeseen changes that may arise while undertaking transition activities.” Significantly, the FCC also “anticipate[s] making an additional allocation in approximately four to six weeks in an amount that *will take into account the verified estimates on file at that time*”; thus, for stations that have new, updated information to submit to the FCC about their expected repack expenses, now is the time to update their Form 399 so that the updated information might be taken into account with the second allocation

Legislation for Additional Repack Funding Moving Along. Meanwhile, the U.S. House of Representatives passed a bill this week—called the “[Repack Airwaves Yielding Better Access for Users of Modern Services Act of 2018](#)” (aka “RAY BAUM’s Act of 2018”) (HR-4986)—that includes language that would establish a “Broadcast Repack Fund” from which reimbursement payments would be made to repacked television stations in the event the \$1.75 billion TV Broadcaster Relocation Fund is exhausted.

The bill would also help LPTV stations and FM radio stations. It would create a “Translator and Low Power Station Relocation Fund,” through which the FCC could reimburse TV translator and LPTV stations for costs reasonably incurred in connection with relocating or modifying facilities as a result of the repack (so long as a low power television station seeking reimbursement is eligible to and actually files an application in the FCC’s upcoming Special Displacement Window). Additionally, HR-4986 creates a similar fund (the “FM Broadcast Station Relocation Fund”) to reimburse FM broadcast stations for costs incurred in attempting to minimize service disruption resulting from the repack.

The bill’s language borrows from the [Viewer Protection Act](#), introduced in the House last summer, but it does not provide a specified amount of additional reimbursement monies. It is possible that the repack funding item will be attached to an omnibus FY 2018 spending bill.

We will keep you posted on updates regarding this important legislation.

FCC Continues to Take Hard Look at Silent Station License Renewal Applications

The license renewal cycle for radio stations gets underway in little more than a year, and the FCC is making clear that it will take a hard—and, perhaps, unfavorable—look at renewal applications filed by stations that have been silent for significant portions of their current license terms. Earlier this year, the FCC issued a [Hearing Designation Order](#) (the “Hearing Designation Order”) for two commonly owned, co-located radio stations to determine whether the stations’ licenses should be renewed in light of their failure to operate for most of their license terms. According to the Hearing Designation Order, one of the stations operated for 54 days over the 3.4-year period that the licensee held the station’s license during the term that ended in 2011, and it operated for just 66 days in the six-year period since the end of that term. Similarly, the other station operated for 48 days over the 3.4-year period that the licensee held the station’s license during the term that ended in 2011, and it operated—at a power level of six watts—for 309 days in the 5.3-year period since the end of that term.

In the Hearing Designation Order, the FCC emphasized that a broadcaster’s authorization to use scarce spectrum carries with it an obligation to serve its community with responsive programming, and it also reminded licensees that, by statute, a station that is silent for a consecutive 12-month period will see its license automatically expire as a matter of law. The Commission discussed the practices that some stations have adopted of remaining silent only to resume operations for a short period of time, in some cases as little as a day or less, before that one-year statutory limit applies; or, of alternating between periods of silence and operations with minimal power levels. According to the Commission, such practices raise a question as to whether the licenses for such stations should be renewed, and licensees seeking a renewal will face a very heavy burden in demonstrating that they have served the public interest where they have remained silent for most or all of the prior license term.

The two stations at issue in the Hearing Designation Order now face that burden. The FCC designated these cases for what it calls “paper” hearings (instead of more involved, trial-type hearings) because it found there are no substantial issues of material fact or any credibility issues regarding the subject license renewal applications. The Hearing Designation Order requires the licensee to submit certain records to the Commission regarding its operations and programming.

The cases serve as a warning to stations that have operated similarly in the past, especially with license renewal season starting in 2019. As stations will recall, the license renewal applications for both radio and television stations ask questions regarding current operational status, and the radio renewal application asks a more probing question relating to periods of silence exceeding 30 days during the license term. Any station with extended periods of silence during the current license term will wish to consult with its communications counsel in advance of the station’s license renewal filing.

If you have any questions concerning the information discussed in this memorandum, please contact your communications counsel or any of the undersigned.

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