



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

FCC Expands Options for Channel 38-51 LPTV and TV Translator Stations That Are Displaced “Early” By Wireless Companies

Today, June 14, the FCC released another [Public Notice](#) (“LPTV Public Notice”) relating to the post-Auction repack transition. Today’s Public Notice announces a new option for channel 38-51 low power television stations and TV translator stations (collectively, “LPTV Stations”) to try to continue operations if they are displaced from their current channel by a wireless licensee prior to the FCC’s opening of the Special Displacement Window early next year. If you operate an LPTV Station on any channel between 38 and 51, the information below (and in the [LPTV Public Notice](#)) should be of great interest to you.

In addition to the LPTV Public Notice, the FCC also announced today that it has granted more than 2,300 wireless licenses that were part of the Forward Auction component of the FCC’s Incentive Auction. Now that these licenses have been granted, wireless companies can begin constructing their corresponding facilities, and they can also begin notifying channel 38-51 LPTV Stations of their anticipated operational/testing dates. (As we have reported previously, wireless licensees must provide LPTV Stations with written notification—sent via certified U.S. Mail, return receipt requested—at least 120 days prior to the commencement/testing date that interference is likely to occur.)

We are aware that at least one wireless company—T-Mobile—has already been actively communicating with broadcasters about the likelihood that it will be ready to commence operations prior to the opening of the LPTV Station Special Displacement Window (which the FCC will likely open in the first quarter of 2018). If a wireless licensee (T-Mobile or otherwise) does, in fact, construct and prepare to begin testing/operating its facilities before the Special Displacement Window opens, it will displace some channel 38-51 LPTV Stations earlier than originally anticipated.

Today's LPTV Public Notice advises that any such "early" displaced LPTV Stations will have a new option available in order to avoid having to go dark before the Special Displacement Window opens. The FCC has decided that "early" displaced channel 38-51 LPTV Stations will be allowed to file a displacement application for operation on a temporary channel and a request for STA (Special Temporary Authority) to operate on the temporary channel in an effort to continue broadcasting despite being displaced "early" by a wireless licensee.

The only LPTV Stations that will be eligible to avail themselves of this new option are LPTV Stations (i) that are currently operating on a channel between 38 and 51, (ii) that have received a 120-day letter from a wireless licensee indicating a likelihood of interference, and (iii) whose operations will be displaced by the wireless licensee prior to the opening of the Special Displacement Window. LPTV Stations that meet these eligibility requirements will need to (i) find an available channel between 2 and 36 and meet all required technical and interference rules on such channel, (ii) file a displacement application for a construction permit to move to the new channel, (iii) request waiver of the current freeze on displacement applications, and (iv) submit a request for STA to operate temporarily on the new channel. Significantly, operators who take this approach must understand that their operations may truly be temporary; there is no guarantee that use of the temporary channel will ultimately ripen into a new license for that channel. Indeed, the FCC will treat the displacement application as if it is filed on the last day of the Special Displacement Window, even though it is being filed in advance of the Window.

In short, there are—potentially—significant expense ramifications for LPTV Stations that avail themselves of this new option. That said, the mere fact that the FCC has seen fit to offer the option is a positive development; as recently as a couple of weeks ago, the FCC Staff advised in no uncertain terms that temporary channel operations were not an option at all.

Today's LPTV Public Notice also reminds LPTV Stations that they have the option to channel share (for example, a displaced channel 38-51 LPTV Station could arrange to channel share with an LPTV Station that has not received a 120-day notification from a wireless licensee), and the FCC clarified that two or more displaced channel 38-51 LPTV Stations could apply to share on an available channel between 2 and 36 provided all technical and interference rules are met.

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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