



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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Second FM Translator Windows for AM Stations Closes October 31

As we have previously reported, the FCC has offered two filing windows in 2016 to AM broadcasters who wish to apply to move an FM translator up to 250 miles to supplement and enhance their AM band operations. The first of these windows closed in July, and the second of these windows—which is available to any AM station that did not file in the first window—**will close next week on Monday, October 31, 2016, at 5:59 p.m. Eastern Time (“ET”).** Any AM broadcaster that is still interested in filing in the window should review both of the FCC’s public notices on the subject (the first [Public Notice](#) was released in October 2015, and the [second Public Notice](#) was released in December 2015) and should focus on the filing requirements immediately.

AM Stations May Move an FM Translator up to 250 Miles. During the window, the FCC is allowing AM stations to acquire and move existing FM translators (licensed *or* unbuilt construction permits) **up to 250 miles** and to specify **any rule-compliant non-reserved band FM channel**. The 250-mile distance is measured from the existing translator transmitter site to the proposed transmitter site (i.e., the distance is *not* measured from the translator transmitter site to the AM station’s transmitter site). This new policy is a limited waiver of the rule that generally limits relocations to areas where the new FM translator contour would overlap with its old contour, and to first, second, or third adjacent channels. Under the new limited waiver, the move must still satisfy the AM/FM translator “fill-in” service restrictions. That is, the FM translator’s proposed 60 dBu contour must be contained within the AM station’s 2 mV/m daytime contour and may not

extend more than 25 miles from the AM station's transmitter site. FM translators relocated pursuant to this limited waiver will be required to rebroadcast the AM primary station for a period of **at least four years**.

250-Mile Filing Windows in 2016. The Second Window will close at **5:59 p.m. ET on October 31, 2016**. (The First Window closed on July 28, 2016.)

The Second Window is available to any AM station that did not file during the First Window. In the Second Window, each eligible AM station will be limited to relocating **one** (and only one) non-reserved band FM translator station. The window is first-come/first-served, which means that early applications may impact later application opportunities, and it also means that if two applications are filed for the same channel on the same day, they will be considered mutually exclusive by the FCC. In a case of mutual exclusivity, the applicants will have an opportunity to resolve the situation through settlement or technical amendment, including an amendment to move to a different non-reserved band channel.

Broadcasters filing during the window must be very careful and diligent in making their filings; the December 2015 Public Notice discusses whether a station may re-file its application if the first application is dismissed or rejected (or if an application to acquire the translator fails to obtain a grant) and concludes, in no uncertain terms: **“Only one application may be filed by/on behalf of each AM station in either of the windows; applicants will not be given an opportunity to re-file under any circumstance.”** Thus, while certain amendments will be allowed, dismissal and re-filing of an application will not be permitted.

How Can AM Stations Find an FM Translator to Move? There is very little time left to take advantage of the Second Window opportunity. You must identify an existing FM translator (license or construction permit) within 250 miles that can be moved to a location that satisfies the “fill-in” service restrictions for your AM station, and then you must arrange for either the purchase or lease of the translator.

The FCC has developed tools to assist AM stations to locate eligible translator stations and identify rule-compliant FM translator channels. The translator search tool allows an AM licensee to input preferred relocation sites at or near its AM transmitter site. The tool then identifies all translator stations authorized at locations up to 250 miles away. The translator channel finder identifies channels that are tentatively available for use by FM translators at any location. Detailed information about the tools is available at www.fcc.gov/media/radio/am-revitalization. These translator tools are intended to assist applicants in tentatively identifying translators and channels. Broadcasters interested in filing during the Second Window should consider using a consulting engineer or an otherwise qualified party to determine the technical acceptability of its application.

FM Translator Auction Windows Opening in 2017. In 2017, the FCC will open two additional filing windows, for those AM licensees and permittees that do not file an application during the 2016 windows. The 2017 windows will be FM translator application “auction” windows, with the first being made available only to Class C and Class D AM stations that did not participate in the 2016 windows. The second 2017 auction window will be open to all AM station licensees and permittees that have not participated in any of the prior three windows.

The windows opening in 2017 will be for AM permittees and licensees to propose a brand-new FM translator, which must comply with the FCC's "fill-in" service restrictions for AM stations, and any FM translator acquired during the 2017 auction windows will be permanently linked to the associated AM station. Applicants that propose mutually exclusive facilities during the 2017 auction windows will have an opportunity to resolve the mutual exclusivity through settlements or technical resolutions before progressing to an auction for remaining mutually exclusive proposals.

Time Is Running Out for AM Stations Interested in FM Translators. Given that the Second Window closes in less than one week, and given that the FCC will process applications on a first-come/first-served basis, any AM station interested in obtaining and/or moving an FM translator in the Second Window should get to work right away.

FCC Announces Clearing Target for Stage 3 of Incentive Auction; Reverse Auction Clock Rounds to Begin November 1, 2016

By [Public Notice](#) released on the morning of October 25, the FCC has set the clearing target for Stage 3 of the Incentive Auction at 108 MHz. There had been speculation that the FCC would leapfrog the 108 MHz clearing target and head straight for an 84 MHz clearing target, which is where many observers believe the "sweet spot" for the auction will ultimately be found. The Public Notice also announced that reverse auction bidding in the clock rounds of Stage 3 will begin on Tuesday, November 1, 2016, at 10 a.m. ET.

Stations involved in the reverse auction should consult immediately with their advisors and cannot and should not rely on this general information memorandum.

The schedule for Stage 3 reverse auction clock rounds is as follows:

November 1 (one clock round):
Bidding Round 10:00 a.m. – 2:00 p.m. ET

November 2 – 4 (two clock rounds per day):
Bidding Round 10:00 a.m. – 12:00 p.m. ET
Bidding Round 3:00 p.m. – 5:00 p.m. ET

Starting November 7, and continuing until further notice (three clock rounds per day):
Bidding Round 10:00 a.m. – 11:00 a.m. ET
Bidding Round 1:00 p.m. – 2:00 p.m. ET
Bidding Round 4:00 p.m. – 5:00 p.m. ET

According to the Public Notice, there will be no bidding on Friday, November 11, 2016, because it is Veterans Day, which is a federal holiday. Subsequently, bidding will resume on Monday, November 14, 2016, using the above three-rounds-per-day schedule until further notice.

Any bidder that had one or more stations with the status “Frozen – Provisionally Winning” at the end of Stage 2 will be able to log in to the Reverse Auction Bidding System for Stage 3 starting at 10:00 a.m. ET on October 26, 2016. Logging in will permit such bidders to view the station’s bidding status, and, where applicable, the initial bid option, available bid options, vacancy ranges, and clock price offers for Round 1 of Stage 3.

The FCC also took the opportunity in the Public Notice to remind broadcasters that the “quiet period” for the FCC’s anti-collusion rules is still in effect and will remain in effect until the FCC releases a public notice announcing the results of the Incentive Auction. In a nutshell—and the anti-collusion rules are far more complicated than this shorthand description—the FCC’s rules prohibit parties from discussing bidding or bidding strategies with certain other parties. **Any questions about the FCC’s anti-collusion rules and the quiet period should be directed immediately to your communications counsel.** The Public Notice reminds broadcasters that “even though communicating whether or not a party filed an application to participate in the reverse auction does not violate the rules prohibiting certain communications, communicating that a party ‘is not bidding’ in or has ‘exited’ the reverse auction could constitute an apparent violation that needs to be reported.”

Finally, as was the case for previous stages of the Incentive Auction, certain bidding and timing information for Stage 3 of the Incentive Auction will be accessible through the FCC’s Incentive Auction Public Reporting System, which can be accessed on the FCC’s website at <https://auctiondata.fcc.gov/public/projects/1000>.

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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