



Virginia Association of Broadcasters Legal Review



Brooks, Pierce, McLendon, Humphrey &
Leonard, LLP
Counsel to VAB • (919) 839-0300

250 West Main Street, Suite 100
Charlottesville, VA 22902 • (434)
977-3716

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Legal Memorandum

FCC Provides Insight Into Post-Auction LPTV/TX Procedures

On Friday, May 12, 2017, the FCC released a [Public Notice](#) (the “LPTV PN”) providing important information relating to low power television and TV translator (collectively, “LPTV Stations”) operations and procedures for the post-Incentive Auction environment. While the LPTV covers a great deal of territory of interest to virtually all television broadcasters, it creates no new “known” deadlines by which existing LPTV licensees or future hopeful licensees must take action.

Below is a summary of the LPTV PN’s discussion of six topics:

- (1) The special filing window for LPTV Stations displaced by the Incentive Auction and repacking process;
- (2) The displacement process for LPTV Stations;
- (3) Channel sharing by LPTV Stations;
- (4) Procedures for full power television stations to apply for new digital-to-digital replacement translator (DTDRT) stations;
- (5) The final digital transition date for LPTV Stations; and
- (6) LPTV Station “freezes,” including a forthcoming freeze on minor modifications and the future lifting of the current freeze on the filing of displacement applications and applications for digital companion channels.

A. Special Displacement Filing Window

Generally and Anticipated Dates. The FCC previously announced that it would open a Special Displacement Window in which LPTV Stations that are displaced by the Incentive Auction or subsequent repack and are “operating” as of April 13, 2017, will be able to file for a new channel in the post-Auction, repacked TV spectrum. According to the LPTV PN, the exact dates for the Special Displacement Window will be announced by public notice, and the LPTV PN suggests that the public notice may be issued in November or December of 2017. The Special Displacement Window will open no sooner than 60 days after the Displacement Public Notice is issued, and it will remain open for 30 days.

Minor Change Freeze. As discussed below in Section F, a freeze will be imposed on minor change applications approximately 30 days prior to the issuance of the Displacement Public Notice.

Channel Study. The FCC will release data with the Displacement Public Notice to identify locations and channels where LPTV Stations 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. This data will be intended to help displaced stations identify potential channels to specify in their Special Displacement Window applications.

Modification Limits and Contingent Applications. Generally, all the regular FCC rules apply to the Special Displacement Window process. Eligible digital LPTV Stations can propose a change in transmitter site of up to 48 km and analog LPTV Stations can propose to move up to 16.1 km. Most significantly, LPTV Stations filing in the Special Displacement Window will be permitted to file applications that are contingent on a repacked station vacating a channel as a result of the Incentive Auction and/or repack. Normally, contingent applications would be unacceptable.

Processing Priorities and Mutual Exclusivity. Applications filed by displaced LPTV Stations during the Special Displacement Window will all be treated, for mutual exclusivity purposes, as if they were filed on the final day of the window. However, fill-in translators for full power television stations filed during the window will be treated with co-equal priority over all other types of LPTV Stations. There are two types of fill-in translators for full power stations: DRTs (digital replacement translators), which are digital fill-in translators to correct for loss of service areas when full power stations transitioned from analog to digital in 2009, and DTDRTs (digital-to-digital replacement translators), which are digital fill-in translators to correct for loss of service areas by stations who are currently being repacked. In situations where mutual exclusivity exists (after taking into account the processing priorities), the mutually exclusive parties will have an opportunity to resolve it by settlement or technical adjustments to their applications, and any remaining mutual exclusivity will be resolved by auction.

Construction Period. Displaced digital LPTV Stations that are granted construction permits will have three years to construct the new facility. Displaced *analog* LPTV Stations that are granted construction permits will have only until the July 13, 2021, digital conversion deadline to construct. Displaced station construction permits will be subject to a limited opportunity to extend the time for construction, and a single request may be filed seeking up to 180 extra days. Such requests must be filed by March 13, 2021. Any LPTV Station with a displacement construction permit that seeks an extension of time after March 13, 2021, will be subject to the higher standard of the FCC’s “tolling” rule.

B. Displacement Process

Stations on Channels 38-51, Generally. LPTV Stations on channels 38-51 must terminate operations upon commencement of operations or first field application (“FFA”) testing by a wireless licensee in an area where the station operates. As discussed immediately below, wireless licensees must provide advance notice to LPTV Stations so that stations know when the date will be.

Wireless Licensees Must Provide Advance Notice. Each wireless licensee must provide notice to affected LPTV Stations of its intent to commence operations and the likelihood of receiving harmful interference from the stations in the form of a letter. The notification must specify the date the wireless licensee intends to commence operations or conduct FFA testing, and must be delivered (by certified mail, return receipt requested) to LPTV Stations at least 120 days in advance of that date.

Channel 45 and Portions of Channels 38, 44, and 46. LPTV Stations operating on channel 45 and portions of channels 38, 44, and 46 are required to terminate operations by the earlier of (i) the date on which a wireless licensee notifies such stations of the commencement of operations or FFA testing and (ii) July 13, 2020.

LPTV Stations Currently on Channels 2-36. These stations must either (i) eliminate the actual (or predicted) harmful interference (e.g., by applying for modified technical facilities on the same channel) or (ii) discontinue operations upon initiation of service (including operations during the testing period) by the displacing full power or Class A television station on its new channel.

C. Channel Sharing

Implications of Special Displacement Window for Sharing LPTV Stations. While the LPTV PN does not announce any new rules with respect to channel sharing opportunities by LPTV Stations, it does clarify whether and how the sharing LPTV Stations need to navigate the Special Displacement Window. If only the sharer station or both the sharer and sharee stations are displaced as a result of the Incentive Auction and/or post-Auction repack, then applications must be filed by the stations in the Special Displacement Window. On the other hand, if only a sharee is displaced, the sharee may file a construction permit application to specify the sharer’s facility at any time after April 13, 2017 (i.e., in such a case, the displaced sharee station is not required to wait for the Special Displacement Window to file).

D. New DTDRT Stations

Eligibility for DTDRTs. In 2015, the FCC adopted rules creating DTDRT stations as a new type of TV translator station. DTDRT stations are intended for use by certain full power stations to recover lost digital service area that could result from the repacking process. (DTDRTs are similar to DRTs, which were created for full power stations to recover lost analog service area in the wake of the 2009 full power digital transition.) Eligibility for DTDRTs is limited to repacked full power television stations that demonstrate: (1) a loss of a portion of their pre-Auction NLSC (noise limited service contour); and (2) that the proposed DTDRT will be used solely to fill in such loss areas (subject to an allowance for a *de minimis* expansion—which will be evaluated on a case-by-case basis—of the station’s pre-auction NLSC).

Filing Start Date and Relative Priorities. According to the LPTV PN, stations may begin filing applications for DTDRTs on the day that the Special Displacement Window opens, and any DTDRT application filed during the window will have co-equal processing priority with displaced DRT applications filed during the window. (As noted above in Section A, both DTDRTs and DRTs will have priority over other displacement applications filed during the Special Priority Window.) Following the close of the Special Displacement Window, the FCC will continue to accept applications for new DTDRTs on a first-come, first served basis and will maintain the same processing priorities with respect to other LPTV Stations that existed during the Special Displacement Window.

Deadline to File for DTDRTs. The FCC established a hard deadline for full power stations to file for new DTDRTs. Applications must be filed by **July 13, 2021** (i.e., one year after the end of the repack).

E. Final Digital Transition Date

July 13, 2021. The LPTV PN does not cover any new territory with respect to the final digital transition date for LPTV Stations. When the FCC released its [CCR Public Notice](#) (Incentive Auction Closing and Channel Reassignment Public Notice) on April 13, 2017, the deadline for LPTV Stations to cease analog broadcasting was established definitively as **July 13, 2021**.

CP Extensions. The LPTV PN points out that the FCC has extended all new (i.e., companion channel and flash-cut) digital LPTV Station construction permits to specify a July 13, 2021, expiration date, and all LPTV Stations must terminate all analog operations by 11:59 p.m. local time on July 13, 2021, irrespective of whether their corresponding digital facilities are operational. Stations whose digital facilities will not be complete and operational by the July 13, 2021, deadline must seek one final extension of time to construct by making an FCC filing by March 13, 2021.

Viewer Notifications. The LPTV PN also reminds LPTV Stations that are converting to digital that they are required to provide notification to the public, pursuant to the FCC's long-existing rules. In advance of the date that LPTV Stations are ready to convert to digital-only operations, they should consult with their FCC counsel to ensure compliance with the viewer notification requirements.

F. LPTV Freezes

Upcoming Minor Change Filing Freeze. The LPTV PN indicates that the FCC will impose a freeze on LPTV Station minor change applications in the future in order to create a stable database for stations that will be filing in the Special Displacement Window discussed above in Section A. The minor change freeze will be announced by public notice, and it will occur approximately 30 days prior to the FCC's release of the Displacement Public Notice referenced above in Section A. Please note: when the FCC issues a filing freeze like the LPTV minor change freeze, there is typically no advance warning to give stations one last chance to file applications before the freeze hits. Thus, any LPTV Station that wishes to make a major change in the near future should solidify its plans promptly so that it can get a minor change application on file soon, before the freeze is imposed.

Upcoming Lifting of Freeze on Certain LPTV Station Applications. The LPTV PN also announces that the freezes on digital companion channels (imposed in January 2017) and on displacement applications (imposed in June 2014) will be lifted sometime after the closing of the Special Displacement Window. The precise date will be announced in a future public notice. The LPTV PN also makes clear that LPTV Stations who are not eligible to participate in the Special Displacement Window and who are eligible but elect not to participate must wait until the lifting of the displacement application freeze in order to file a displacement application.

G. Conclusion

The end of the Incentive Auction and the commencement of the repack have resulted in many moving parts for LPTV Station licensees. Indeed, the various procedures and opportunities outlined above apply not only to existing LPTV Station licensees but also, in some cases, to full power stations seeking to use fill-in translators. We recommend that affected broadcasters consult with their FCC counsel and consulting engineer.

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

Stephen Hartzell, Editor

**BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.**

Wade H. Hargrove
Mark J. Prak
Marcus W. Trathen
David Kushner
Coe W. Ramsey
Charles E. Coble
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J. Benjamin Davis
Julia C. Ambrose
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Timothy G. Nelson

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