



Virginia Association of Broadcasters Legal Review



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REMINDER: MAY 29, 2015, IS THE PRE-AUCTION LICENSING DEADLINE FOR FULL POWER AND CLASS A TELEVISION STATIONS

As we reported in February, the FCC released a [Public Notice](#) establishing May 29, 2015, as the Pre-Auction Licensing Deadline by which full power and Class A television facilities must be licensed (or have a license-to-cover application filed and pending at the FCC) in order to be eligible for protection in the Incentive Auction’s repacking process. The Pre-Auction Licensing Deadline will also determine which facilities are eligible for voluntary relinquishment of spectrum usage rights in the Incentive Auction. With the May 29 deadline just a few weeks away, it is time for stations to review the important points addressed in the Public Notice.

Protection of Digital Facilities for Class A Stations. The Public Notice emphasizes that each Class A television station must be licensed (or have a license application filed and pending) by the Pre-Auction Licensing Deadline in order to be afforded protection in the repacking process. While Class A stations may wait until the September 1, 2015, digital transition deadline to complete construction and license their digital facilities, those that do not have their digital facilities licensed (or do not have a license-to-cover application filed and pending at the FCC) by May 29, 2015, will be afforded protection based only on the coverage area and population served by their analog facilities.

Certain Television Facilities May File License Applications by May 29, 2015, and Still Be “Protected”. As we have previously reported, all full power and Class A television facilities that were licensed as of February 22, 2012, are entitled to mandatory protection in the repack. In addition, the FCC has limited discretion to “protect” (for purposes of the Incentive Auction and repack) certain categories of television facilities that were not licensed as of February 22, 2012, so long as such facilities are licensed (or have a license-to-cover application filed and pending at the FCC) by the Pre-Auction Licensing Deadline. More specifically, according to the Public Notice, there are still authorized television facilities in the following categories that currently remain unlicensed:

- * Full power facilities authorized in outstanding construction permits (“CPs”) issued to effectuate a channel substitution for a licensed station (including CPs for

- stations seeking to relocate from channel 51 to a lower channel);
- * Modified facilities of full power and Class A television stations that were authorized by CPs granted on or before April 5, 2013, or that have been authorized by CPs granted after April 5, 2013, and are in compliance with the “freeze” imposed by the FCC in April 2013; and
 - * Class A stations’ initial digital facilities that were not initially licensed until after February 22, 2012, including those that were not authorized until after the April 2013 “freeze.”

All facilities in these three categories (with limited exception for stations affected by the destruction of the World Trade Center) must be licensed or have an application for a license to cover the CP on file by **May 29, 2015**, in order for these facilities to be protected in the repacking process. While this portion of the Public Notice affects a relatively small number of stations, it is important that such stations take prompt action and develop a plan to ensure they will meet the May 29, 2015, Pre-Auction Licensing Deadline.

It Is Time for All Full Power and Class A Television Stations to Fix FCC Database Errors! (May 29, 2015, Filing Deadline). This part of the Public Notice has the potential to affect virtually all full power and Class A television stations. In the Public Notice, the FCC has given “notice of the last opportunity before the Pre-Auction Licensing Deadline for all full power and Class A licensees to modify their licenses to fix errors they have made in providing us their operating parameters and to have those modifications protected in the repacking process.” This means that each full power and Class A television station should promptly review the operating parameters identified on its license, in any outstanding CPs, in the FCC’s CDBS database, on the corresponding antenna structure registration (if any), and actually used by the station for actual operations. To the extent that there are inaccuracies and/or discrepancies in such data, stations will need to correct them, and it is critical for stations to understand that such corrections will be “protected” only if a modification application that complies with the April 2013 “freeze” is filed and granted, and a license to cover application is filed, by **May 29, 2015**.

Forthcoming Technical Certification Form. In a forthcoming public notice, the FCC will list the facilities licensed (including those with license-to-cover applications filed and pending at the FCC) by the Pre-Auction Deadline, as reflected in the Commission’s records. According to the FCC, licensees will then be required “to certify in a Pre-Auction Technical Certification Form (FCC Form 2100, Schedule 381) that they have reviewed their authorization and underlying database technical information for their eligible facility, and to confirm that all information is correct with respect to actual operations or identify any discrepancies.” (This will be similar to the certification process that full power stations went through in advance of the 2009 DTV Transition.) According to the draft version of the FCC Form 2100, Schedule 381 that the FCC filed with the Office of Management and Budget several months ago, if a station identifies discrepancies in the certification form, the station will be required to file to modify its authorized operating parameters and may also need to file for Special Temporary Authority during the pendency of its modification application—of course, at that point, the applied-for parameters will not be “protected” for purposes of the Incentive Auction and repack. Accordingly, if you have not already done so, each full power and Class A television station

should **immediately** review the operating parameters identified on the station's license, in any outstanding CPs, in the FCC's CDBS database, on the corresponding antenna structure registration (if any), and actually used by the station for actual operations.

The May 29, 2015, deadline is important, and stations that have not done so yet should now immediately develop a plan to take stock of how the Public Notice and Pre-Auction Licensing Deadline may affect them.

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**SEPTEMBER 1, 2015, DEADLINE FOR DIGITAL CONVERSION OF LPTV
AND TV TRANSLATOR STATIONS SUSPENDED; CLASS A STATIONS
MUST CEASE ANALOG OPERATIONS BY SEPTEMBER 1, 2015**

The FCC has released a [Public Notice](#) announcing the suspension of the September 1, 2015, deadline for low power television stations and television translator stations (collectively, "LPTV Stations") to terminate analog operations and convert to digital operations. **It is critically important for Class A television broadcasters to understand that the September 1, 2015, deadline remains in place for Class A stations.**

Under the FCC's current rules, digital construction permits for existing LPTV Stations transitioning to digital operations are scheduled to expire uniformly on September 1, 2015, which is the date on which analog operation of LPTV Stations were required cease. (Construction permits for *new* digital LPTV Stations, however, had each been subject to their own, individualized deadline based on their original grant date, and the FCC previously suspended those individualized construction deadlines.)

In taking this action, the FCC has recognized that the broadcast television spectrum incentive auction and repacking process will potentially displace a significant number of LPTV Stations. Postponement of the September 1, 2015, digital transition date may help broadcasters avoid incurring the costs of transitioning to digital before completion of the auction and repacking process. Of course, LPTV Stations that wish to convert from analog to digital may continue to do so, provided they have a valid construction permit.

It bears repeating that the FCC's recent Public Notice does not affect the September 1, 2015 digital transition date for Class A television stations. Thus, Class A television stations must terminate analog operations as of 11:59 pm on September 1, 2015. Class A television stations that have not completed their digital facilities by September 1 must go silent while they complete construction. (Any Class A television station that has not completed its conversion to digital operations by the deadline should bear in mind that operations may be discontinued only for a period of 30 days. If a station will remain silent beyond 30 days, it must file a request for Special Temporary Authority by the 30th day.)

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**REMINDER: JUNE 4 COMPLIANCE DEADLINE
FOR UPDATED CALM ACT STANDARDS**

In July 2014, we reported on the Commission’s next step in implementing CALM Act standards to control commercial loudness in television programming. At that time, the FCC adopted its proposal to require stations to conform—by **June 4, 2015**—to new technical standards adopted by ATSC in 2013. The new standards are known colloquially as the “Successor RP” and more formally as the “ATSC Recommended Practice: Techniques for Establishing and Maintaining Audio Loudness for Digital Television (A/85: 2013).”

When the Commission adopted the standards set forth in the Successor RP, it made clear that prior to June 4, 2015, stations must continue to comply with the 2011 A/85 RP at a minimum but may implement the Successor RP earlier than June 4 if they wish. Some stations may be able to implement the Successor RP by virtue of a free or low-cost software upgrade from their CALM Act equipment vendors, while other stations may have to undertake a more resource-intensive capital investment in new equipment. With only one month left before the deadline, stations that have not yet undertaken this upgrade should promptly take steps to do it now.

At the time the new standard was proposed, the FCC observed that the only substantive change in the Successor RP for the purposes of the rules will be an adjustment to the measurement algorithm for loudness in commercial advertisements. The FCC also observed that this change in the Successor RP intends to prevent advertisers from using silent passages to offset excessively loud passages when calculating the average loudness of program material. As noted above, some stations may require a software or device upgrade to implement the modified algorithm and comply with the proposed change.

To reiterate: all stations will be required to implement the Successor RP by June 4, 2015.

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**REMINDER: MAY 26, 2015, EFFECTIVE DATE FOR TV STATIONS TO
VIDEO DESCRIBE EMERGENCY INFORMATION ON SAP CHANNEL
(NAB PETITION TO EXTEND DEADLINE REMAINS PENDING)**

As we have previously advised, new rules are scheduled to go into effect on May 26, 2015, for television stations that air emergency information crawls and other graphics during non-news programming. In a nutshell, the new rules will require that the emergency information in such crawls and graphics be provided via video description on a secondary audio stream simultaneous with their display during non-news programming. (For further details about the new rules and certain of their nuances, please refer to our legal memorandum dated December 19, 2014.)

In March, the NAB filed a petition at the FCC seeking a 6-month delay of the new rules, and the FCC sought comment on NAB’s petition. The comment period closed April 20, and we

do not yet know whether or to what extent the petition may be granted. (NAB’s petition also asks (i) that the FCC waive the requirement that emergency information conveyed in non-textual graphics—such as a map supered on the screen during non-news programming—be included in the video description provided on the secondary audio stream, and (ii) that the FCC “reconsider the utility of including school closings” required to be included in the secondary audio stream and to temporarily waive this requirement while alternatives are considered.)

Because the effective date of the new rules is a mere three weeks away, stations should continue to work towards implementing a solution to comply with the new requirements by **May 26, 2015**. Of course, if the FCC extends the deadline, we will notify you.

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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

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