



Virginia Association of Broadcasters Legal Review



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Legal Memorandum

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Non-Repacked Full Power and Class A Television Stations Can File “Maximization” Applications Between November 28 and December 7

Later this month, the FCC will temporarily lift a freeze imposed in 2013 on the filing and processing of minor modification applications to expand the contours of non-repacked full power and Class A television stations. In a [Public Notice](#) released this week, the FCC announced that **the freeze will be lifted temporarily to allow minor modification filings between November 28 and 11:59 pm ET on December 7.** Minor modification applications submitted during that window will be processed on a first-come, first-served basis, meaning that the filing of an acceptable application will “cut off” the filing rights of later-filed, conflicting applications. In addition, the FCC will process minor modification applications that have been pending since the freeze began (April 5, 2013).

Why Lift the Freeze? The FCC hopes that briefly lifting the application filing freeze will help prevent non-repacked full power and Class A stations from “re-displacing” low power and TV translator stations (collectively, “LPTV stations”) that are forced to move during the repacking process. You’ll recall that LPTV stations were not allowed to participate in the auction and are not protected during the repack, and some LPTV stations will be displaced.

At some point in the future, the FCC will open a Special Displacement Window for certain displaced LPTV stations to file displacement applications. However, the FCC is first opening the temporary November 28 – December 7 window for non-repacked stations in order to benefit LPTV stations in the long run. The FCC’s thinking is that if full power and Class A stations are not able to file contour-expanding applications until after the LPTV Special Displacement Window (i.e., when the 2013 freeze is permanently lifted), LPTV stations that receive a construction permit during the Special Displacement Window could be re-displaced. The FCC hopes it will be able to include more complete and informative data to LPTV stations in advance of the upcoming Special Displacement Window, making that window more useful.

Five Day Countdown to November 13 Deadline for Filing EAS Form Three Report with Nationwide Test Results

All stations must file their Form Three report for the September 27 nationwide EAS test by **November 13, 2017**. As you know, FEMA and the FCC conducted a nationwide test of the Emergency Alert System (“EAS”) on September 27, 2017. All stations should have filed their EAS Form Two reports via the FCC’s EAS Test Reporting System (“ETRS”) before midnight ET on September 27. The final report—called Form Three—is **due by November 13, 2017**.

To access, complete, and submit Form Three, follow the same steps you used to access, complete, and submit Form Two. Not surprisingly, Form Three has more questions and requires more responses than Form Two did.

Remember, the nationwide test was exactly that—a *test*. If your station didn’t receive the test or had problems with the audio, or if some other aspect of your receipt or retransmission of the test was less than perfect, the FCC and FEMA want to hear about those issues, and they should be included in your Form Three report. In other words, reporting these types of issues in your Form Three report does not mean that the FCC will necessarily think you have violated a rule. On the other hand, if the reason your station didn’t receive and/or retransmit the test was because your station does not have compliant EAS equipment, you may wish to consult with legal counsel prior to filing your Form Three report.

Many stations have already filed their Form Three reports; if your station has not yet filed its Form Three report, you now have less than one week until the November 13 deadline.

AM Stations with MX’ed FM Translator Applications Must Resolve Conflicts By November 29 or Go to Auction

AM stations that filed for new FM translator facilities during the Auction 99 window (July 26 – August 2, 2017) and whose proposals were identified by the FCC as **being MX’ed** (mutually exclusive) with one or more other proposals must either resolve the MX situation **by November 29** or face the prospect of going to auction for the facility.

The FCC's recent [Public Notice](#) directs MX'ed applicants to determine whether they wish to resolve their MX situation by filing a technical amendment or by entering into a settlement agreement with one or more of the MX'ed applicants. In either case, applicants must submit filings by November 29, or they will be subject to bidding for the allotment in Auction 99.

Nuanced legal details apply to settlement agreements, and technical rules apply to engineering solutions; thus, any MX'ed applicant that is considering a solution to avoid going to auction should consult with legal counsel and/or a 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

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