



# PUBLIC NOTICE

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## Media Bureau Announces Limitations on the Filing and Processing of Full Power and Class A Television Station Modification Applications, Effective Immediately, and Reminds Stations of Spectrum Act Preservation Mandate

On February 22, 2012, the President signed the Spectrum Act,<sup>1</sup> which, among other things, gave the Commission authority to conduct an incentive auction and reorganize or “repack” the broadcast television bands in order to make additional licensed and unlicensed spectrum available for mobile broadband uses. Section 6403(b)(2) of the Spectrum Act requires the Commission in repacking broadcast television spectrum to “make all reasonable efforts to preserve, as of [February 22, 2012], the coverage area and population served of each broadcast television licensee....”<sup>2</sup> On October 2, 2012, the Commission released a *Notice of Proposed Rulemaking* as a step in implementing the Spectrum Act’s mandate to conduct a broadcast television spectrum incentive auction.<sup>3</sup>

### I. Limitations on the Filing and Processing of Modification Applications

We find that the imposition of limits on the filing and processing of modification applications is now appropriate to facilitate analysis of repacking methodologies and to assure that the objectives of the broadcast television incentive auction are not frustrated. The repacking methodology the Commission ultimately adopts will be a critical tool in reorganizing the broadcast TV spectrum pursuant to the statutory mandate. Additional development and analysis of potential repacking methodologies is required in light of the technical, policy, and auction design issues raised in the rulemaking proceeding.<sup>4</sup> This work requires a stable database of full power and Class A broadcast facilities. In addition, to avoid frustrating the central goal of “repurpos[ing] the maximum amount of UHF band spectrum for flexible licensed and unlicensed

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<sup>1</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, Title VI, 125 Stat. 156 (2012) (“Spectrum Act”).

<sup>2</sup> *Id.* at § 6403(b)(2).

<sup>3</sup> See *Expanding the Economic and Innovative Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Notice of Proposed Rulemaking, 27 FCC Red 12357 (2012) (“*NPRM*”).

<sup>4</sup> The Commission stated its expectation in the *NPRM* that “interested parties will have an opportunity for meaningful comment on all specific methodologies that we are considering before we make a final decision.” *Id.* at 12376, ¶ 50.

use,”<sup>5</sup> we believe it is now necessary to limit the filing and processing of modification applications that would expand broadcast television stations’ use of spectrum.

Beginning immediately, and until further notice, the Media Bureau will not accept for filing modification applications (or amendments to pending modification applications) by full power and Class A television broadcast licensees and permittees for changes to existing television service areas that would increase a full power station’s noise-limited contour or a Class A station’s protected contour in one or more directions beyond the area resulting from the station’s present parameters as represented in its authorizations (license and/or construction permit).<sup>6</sup> Similarly, we will not accept Class A displacement applications that would increase the station’s protected contour. However, consistent with the Commission’s proposal in the *NPRM*,<sup>7</sup> Class A minor change applications to implement the digital transition (flash cut and digital companion channel) may continue to be filed and will be processed subject to the current limitations in Sections 73.3572(a)(2) and 74.787(a)(2) of the Commission’s rules.

The Bureau will consider, on a case-by-case basis, requests for waiver of the filing limitation imposed by this *Public Notice* when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, such a request will be granted only on a showing of good cause and when grant of the waiver will serve the public interest.

With respect to pending full power and Class A modification applications, we will process those applications that do not increase the full power station’s noise-limited contour or the Class A station’s protected contour in one or more directions beyond the area resulting from the station’s present parameters as represented in its authorizations (license and/or construction permit). Applicants at variance with this limitation may amend their applications within 60 days to comply with this limitation or request a waiver. Pending applications that are not amended consistent with this *Public Notice* will be processed after the Commission’s release of a Report & Order in the Incentive Auction rulemaking proceeding, subject to the rules and policies adopted therein.<sup>8</sup>

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<sup>5</sup> *Id.* at 12361, ¶10.

<sup>6</sup> See 47 C.F.R. § 73.622(e)(1) (defining “service area” of a full power TV broadcast station). As to Class A stations, *protected contour* is consistent with the proposed interpretation of the statutory term “coverage area” in the *NPRM*. See *NPRM*, 27 FCC Rcd at 12390, ¶ 99.

<sup>7</sup> *Id.* at 12397, ¶ 115 (“We do propose to protect in the repacking process certain digital Class A facilities that were not licensed as of February 22, 2012.”).

<sup>8</sup> The decision to impose these limitations on the filing and processing of modification applications is procedural in nature, and therefore is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. See 5 U.S.C. § 553(b)(A), (d); see also *Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission’s filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler v. FCC*, 326 F.2d 673, 680-82 (D.C. Cir. 1963). Moreover, we find that there is good cause for not delaying the effect of these procedures until 30 days after publication in the *Federal Register*. Such a delay would be

## II. Spectrum Act Preservation Mandate

The Commission in the *NPRM* interpreted Section 6403(b)(2) as requiring all reasonable efforts to preserve facilities that were licensed, or for which an application for license to cover authorized facilities already was on file with the Commission, as of February 22, 2012 (collectively referred to herein as “licensed facilities as of February 22, 2012”).<sup>9</sup> The Commission also stated that it did not interpret Section 6403(b)(2) as prohibiting it from granting protection to additional facilities where appropriate.<sup>10</sup> We take this opportunity to remind stations that, as provided in the Spectrum Act and the *NPRM*, the extent to which a facility that is not covered by Section 6403(b)(2) (a “non-covered facility”) will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.<sup>11</sup>

For stations with non-covered authorized facilities, we take this opportunity to remind them, before additional investments are made in these non-covered facilities, that the extent to which the non-covered facility will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.<sup>12</sup>

Accordingly, the Media Bureau will process applications from permittees modifying their non-covered facilities to revert to the service area resulting from the station’s licensed facilities as of February 22, 2012. If a permittee of a non-covered facility fails to file for this modification, the extent of preservation of the non-covered facility will be determined by the Commission in the Incentive Auction rulemaking proceeding.

This action is taken by the Chief, Media Bureau pursuant to authority delegated by 47 C.F.R. § 0.283 of the Commission’s rules.

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impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of these procedures. *See* 5 U.S.C. § 553(b)(B), (d)(3).

<sup>9</sup> *See NPRM*, 27 FCC Rcd at 12390, 12397, ¶¶ 98, 113.

<sup>10</sup> *See id.* at ¶ 113 (citing Spectrum Act at § 6403(i)(1)).

<sup>11</sup> *See* Spectrum Act at §§ 6403(b)(2), 6403(i)(1); *NPRM*, 27 FCC Rcd at 12390, 12397 ¶¶ 98, 113.

<sup>12</sup> *Id.*