



# PUBLIC NOTICE

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## FREEZE ON THE FILING OF APPLICATIONS FOR DIGITAL REPLACEMENT TRANSLATOR STATIONS AND DISPLACEMENT APPLICATIONS

Effective immediately, the Media Bureau announces a freeze on the filing of applications for digital replacement translator (DRT) stations<sup>1</sup> and displacement applications for low power television (LPTV), TV translator, and Class A television stations pursuant to sections 73.3572(a)(4) and 74.787(a)(4) of the Commission's rules.<sup>2</sup> Because the digital transition was largely completed five years ago, in June 2009, and the Bureau issued a *Freeze PN* on April 5, 2013, imposing limitations on the filing and processing of certain applications by full power and Class A television stations,<sup>3</sup> there should be little occasion for new DRT and displacement applications to be filed. In addition, Class A television stations were subject to displacement only as the result of "engineering solutions" by full power stations to resolve "technical problems" in replicating and maximizing the full power station's DTV service areas during the DTV transition.<sup>4</sup> Consequently, the impact of this freeze on the LPTV, TV translator, and Class A services should be minimal.

The Commission recently adopted rules to implement the broadcast television spectrum incentive auction authorized by the Spectrum Act.<sup>5</sup> In conjunction with the incentive auction, the Commission has announced that it will conduct a "reverse auction" and reorganization or "repacking" of the broadcast television bands in order to free up a portion of the ultra high frequency (UHF) band for new flexible uses.<sup>6</sup> The facilities of DRT, LPTV, and TV translator stations will not be protected during repacking.<sup>7</sup>

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<sup>1</sup> See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Replacement Digital Low Power Television Translator Stations*, MB Docket No. 08-253, Report and Order, 24 FCC Rcd 5931 (2009) ("DRT Report and Order"); see also 47 C.F.R. § 74.787(a)(5).

<sup>2</sup> 47 C.F.R. §§ 73.3572(a)(4), 74.787(a)(4).

<sup>3</sup> See *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*, Public Notice, 28 FCC Rcd 4364 (MB 2013)(*Freeze PN*).

<sup>4</sup> See *Establishment of a Class A Television Service*, MM Docket No. 00-10, Report and Order, 15 FCC Rcd 6355, 6380-6381, paras. 61-64 (2000) (subsequent history omitted).

<sup>5</sup> *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Docket No. 12-268, Report and Order, FCC 14-50, released June 2, 2014 (*Report and Order*); see also Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §§ 6402, 6403, 126 Stat. 156 (2012) (Spectrum Act).

<sup>6</sup> *Report and Order* at §§ III.B, IV and VI.B.

Existing DRT, LPTV, and TV translator stations displaced by repacking will be permitted to file displacement applications in a special window to be opened following the completion of the auction.<sup>8</sup>

To facilitate the special displacement window and to protect the opportunity for stations displaced by repacking of the television bands to obtain a new channel from the limited number of channels likely to be available for application after repacking, the Media Bureau deems it appropriate to freeze the acceptance of additional DRT and displacement applications at this time. The Media Bureau will continue to process pending DRT and displacement applications. Following the completion of the incentive auction, the Media Bureau will announce the dates and procedures for the special displacement window.

During the freeze, the Media Bureau will consider waiver requests by LPTV and TV translator stations that wish to submit a displacement application demonstrating that they are causing or receiving “new actual” interference to or from a full power television station.<sup>9</sup> Although the Commission is not accepting modification applications 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 authorized facilities as of the April 5, 2013 freeze, and the likelihood of “new” interference occurring to LPTV and TV translator stations is remote, we believe that it is important to allow the filing of a displacement application in such rare cases. We do not anticipate waiving the freeze to accept applications for new DRT stations. That service was created to enable full power stations to reach existing in-contour analog viewers that would not otherwise receive service from a station on termination of its analog service and completion of its DTV transition, which took place no later than June 12, 2009.<sup>10</sup> Full power stations have had adequate time since then to identify such loss areas and apply for a DRT. We similarly do not anticipate waiving the freeze to accept Class A displacement applications, since those stations were subject to additional interference only from full power stations that encountered “technical problems” in replicating or maximizing their digital service areas during the DTV transition.

Minor change applications and applications for digital flash cut and digital companion channels filed by existing LPTV and TV translator stations,<sup>11</sup> and by Class A stations,<sup>12</sup> will continue to be

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<sup>7</sup> *Id.* at § III.B.3.d. As discussed therein and as required by the Spectrum Act, the Commission will “make all reasonable efforts to preserve . . . the coverage area and population served” of full power and Class A television station facilities during the repacking process.

<sup>8</sup> *Id.* at § V.D.1.

<sup>9</sup> By “new” interference, we mean interference that is a result of the initiation of new or modified service by a full power station during the freeze. To qualify for the waiver, the displacement applicant must demonstrate either actual interference within the noise limited contour of the full power station or actual interference to the displacement applicant’s LPTV or TV translator station, either of which will result in the immediate loss of service to viewers, thus necessitating the grant of its application.

<sup>10</sup> *DRT Report and Order*, 24 FCC Rcd at 5932-33, para. 3.

<sup>11</sup> The filing of applications for new digital LPTV and TV translator stations and for major changes remains frozen. *See Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations*, Public Notice, 25 FCC Rcd 15120 (MB 2010); *see also Initiation of Nationwide First-Come, First-Served Digital Licensing for Low Power Television and TV Translators Postponed Until Further Notice*, Public Notice, 25 FCC Rcd 8179 (MB 2010).

<sup>12</sup> Class A minor modification applications must comply with the limitations in the *Freeze PN*, and minor change applications to implement the digital transition must comply with the current limitations in sections 73.3572(a)(2) and 74.787(a)(2), 47 C.F.R. §§ 73.3572(a)(2) and 74.787(a)(2). *See Freeze PN*, 28 FCC Rcd at 4365.

accepted for filing.

The decision to impose this freeze is procedural in nature, and therefore is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.<sup>13</sup> 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 impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of the freeze.<sup>14</sup>

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.

For additional information or questions, please contact Hossein Hashemzadeh (technical) or Shaun Maher (legal) of the Video Division, Media Bureau at (202) 418-1600.

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<sup>13</sup> 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).

<sup>14</sup> See 5 U.S.C. § 553(b)(B), (d)(3).