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The FCC Issues Public Notice Announcing New Filing “Windows” for New Digital-Only LPTV and TV Translator Stations in Rural Areas (Beginning August 25, 2009) and Nationwide (Beginning January 25, 2010).

by Richard R. Zaragoza and Paul A. Cicelski

This week, the FCC issued a Public Notice announcing that it is finally lifting the freeze on the filing of new low power television (“LPTV”) and television translator stations. First, on **August 25, 2009**, the FCC will begin accepting applications for stations in “rural areas” for: (1) new digital-only LPTV and TV translator stations; (2) major changes to existing analog and digital LPTV and TV translator facilities; (3) and, in the case of current analog stations, for digital companion channels. “Rural areas” are defined as areas with antenna site coordinates that are located more than 75 miles from the reference coordinates of the largest 100 cities as defined by Nielsen Media Research and are listed in Appendix A of the Public Notice. Second, the Public Notice also announces that on **January 25, 2010**, the FCC will begin accepting the above-referenced three types of LPTV and television translator applications nationwide, without any geographic restrictions.

In all cases, applications will be considered on a first-come, first-served basis with a daily “cut off” policy, and if the FCC receives mutually exclusive (*i.e.*, incompatible) applications, it will award the license by auction. Additionally, the Public Notice emphasizes that applications for new *analog* facilities will absolutely not be accepted and that applications for new digital LPTV and television translator stations and for replacement digital translators may only be filed specifying in-core channels 2-51. Applicants for digital companion stations may apply for channels 52-59, but only after certifying that a suitable in-core channel is unavailable.

The Commission’s Public Notice also reminds applicants that the following rules and policies also apply:

- Only existing low power station permittees and licensees are permitted to file for a digital companion channel.

- Applicants for digital companion channels will be required to identify their associated analog station and must propose to serve the community of license of their associated analog facility.
- Incumbent stations may continue to file applications to flash-cut their existing analog stations to digital.
- Stations with a construction permit, license or pending application for a digital companion channel may not file for a second digital companion channel.
- Stations seeking digital operation must choose between an on-channel digital conversion of their analog station or operating a digital companion channel station.
- Any station that has a license, construction permit, or pending application for on-channel digital conversion will not be eligible to submit an application for a companion digital channel for the same station, and any such companion digital channel application will be dismissed.
- Stations that receive a digital companion channel will be required at a future date to return either their analog channel or companion channel to the Commission.
- Class A stations are on notice that all digital companion channels will be licensed as LPTV channels on a secondary, non-interference basis.

It should be noted that the Public Notice will likely expedite the FCC's processing of previously filed and currently pending applications that were filed by LPTV and television translator stations for displacement channels, minor modifications, or digital flash-cuts by the FCC's June 30, 2009 deadline, but were blocked by the operation of pre-DTV transition full-service television stations. According to a Commission Public Notice released June 10, 2009, all such applications were given equal priority in time against one another and superiority in time over any mutually exclusive applications filed after June 30. The FCC will likely seek to expeditiously process these filings and work to resolve any mutual exclusivity issues prior to the filing of the anticipated August 25 rural area LPTV and television translator filings.

Should you have any questions concerning the FCC's LPTV and television translator Public Notice, rules, or policies, please contact any of the attorneys in the Communications Group.

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