

ALERT

# LPTV Digital Transition – Third Notice of Proposed Rulemaking

October 24, 2014

The Federal Communications Commission (FCC or Commission) issued a Third Notice of Proposed Rulemaking (NPRM) seeking comment on a wide-variety of issues affecting Low Power Television (LPTV) and Television Translator (TV Translator) stations.

Simultaneously with the release of the NPRM, the Commission issued a public notice suspending construction deadlines for all outstanding construction permits for new digital LPTV and TV Translator stations pending final action on the NPRM.

Comments and Reply Comments will be due 30 days and 45 days respectively after publication of the NPRM in the Federal Register.

The Commission in the NPRM *tentatively concludes* that it should: (1) extend the September 1, 2015 digital transition deadline for LPTV and TV translator stations; (2) adopt rules allowing channel sharing between LPTV and TV translator stations; and (3) create a digital-to-digital replacement translator service for full power stations that experience a loss in service area after the auction. Comments are sought on these conclusions.

## Digital Transition Deadline

The Commission tentatively concludes that it should extend the September 1, 2015 digital transition deadline for LPTV and TV Translator stations. The Commission asks for comments on:

- Whether and how the postponement of the transition date will impact the Commission's goal of a full transition to digital broadcasting;

## Authors

Kathleen A. Kirby  
Partner  
202.719.3360  
kkirby@wiley.law

Joan Stewart  
Of Counsel  
202.719.7438  
jstewart@wiley.law

## Practice Areas

Media  
Telecom, Media & Technology

- The status of current LPTV and TV Translator stations’ digital build out and the costs they may incur if the transition date is not postponed (stations displaced after the Incentive Auction would have to build another facility);
- The service offerings of stations that have completed their digital conversion; and
- Whether it should set a new transition deadline now or wait until after the Incentive Auction.

If Commenters recommend waiting until after the Incentive Auction to set a new transition deadline, the Commission asks if it would be appropriate to set the new transition date as 12 months after the end of the Incentive Auction.

If it decides to extend the digital transition date, the Commission notes that it would also modify transition-related construction permits for modified *and* new stations to reflect the new deadline. The Commission also proposes to allow “last-minute” 6-month extensions of the new deadline, provided requests are filed four-months in advance. The Commission seeks comments on these proposals.

### **Channel Sharing**

The NPRM tentatively concludes that allowing LPTV and TV Translator stations to channel share would serve the public interest. The Commission seeks comments on this proposal.

If adopted, the Commission proposes to apply substantially the same rules as for channel sharing by full power television stations with a few differences to accommodate the specifics of LPTV/TV Translator stations. The Commission seeks comments on the proposed rules as summarized below:

#### **A. Voluntary and Flexible**

- Channel sharing arrangements would be voluntary. Each station must retain spectrum usage rights sufficient to transmit a standard definition (SD) program stream. The split of spectrum rights would be flexible, with each station having different rights at different times, if desired.
- Each station would be licensed separately. Each licensee would remain independently responsible for compliance with the Commission’s rules.
- Stations would be allowed to choose their channel sharing partners, but would be required to have a channel sharing agreement (CSA) in place that outlines each station’s rights. CSAs would be transferable.

#### **B. Licensing Procedures**

The Commission proposes a two-step licensing plan for LPTV and TV Translators that choose to channel share:

- **Step 1: File an application for a digital construction permit (Form 346).** If no technical changes are necessary to allow the channel sharing, then only the station that will surrender its channel would file a Form 346 specifying the technical parameters of the shared station. This application must include a copy of the CSA and identify the sharing station. If technical changes are required for the stations to

share, then both stations would need to file a Form 346 and include a copy of the CSA.

- **Step 2: File for a new license (Form 347).** Once the shared facility is built and shared operations commenced, then: (i) the station that surrendered its channel must notify the FCC it has terminated operations on its old channel, and (ii) both stations must file Forms 347 seeking a new license.

The Commission seeks comment on:

- The proposed two-step licensing procedures;
- How long stations should have to implement their arrangements (the Commission asks if they should be allowed a three-year period); and
- Whether existing restrictions on LPTV and TV Translator relocation (i.e., not allowing a move of more than 30 miles from an existing transmitter site, requiring contour overlap) should be relaxed or waived in all or certain circumstances to facilitate a sharing arrangement.

### C. Channel Sharing Operating Rules

The Commission proposes to adopt the channel sharing operating rules outlined below. It seeks comments on these proposals:

- **CSAs:** The Stations must have a CSA that outlines each licensee's rights and responsibilities in the following areas: (i) access to facilities – including whether both licensees have unrestrained access to the shared transmission facilities, (ii) allocation of bandwidth within the shared channel; (iii) operation, maintenance, repair, and modification of facilities, including a list of relevant equipment; (iv) termination or transfer/assignment of rights to the shared license, including the ability of a new licensee to assume the CSA. The Commission proposes to retain the right to review CSA provisions and require modification of any that are not in compliance with their requirements.
- **Termination and Assignment/Transfer of Channel Sharing Licenses:** Comments are sought on what procedures should be in place to allow for the voluntary relinquishment, revocation, failure to renew or any other circumstance where a sharing arrangement would end. If only one station remains on a shared channel, the Commission proposes to allow it to request that the shared channel be re-classified as a non-shared channel or for the remaining licensee to seek a new sharing partner. The Commission proposes to allow CSAs to be assigned or transferred subject to its rules.

**D. Channel Sharing between LPTV/TV Translators and Other Television Services:** The Commission asks for comment on whether it should amend its rules to allow an LPTV or TV Translator station to share a channel with a full power or Class A television station. Specifically, it seeks comments on:

- The feasibility of allowing sharing between primary (TV and Class A) and secondary (LPTV and TV Translator) services;
- Whether LPTV and TV Translator stations should be permitted to operate under the Part 73 rules for full power stations (including interference protection and power levels) if these stations entered into an

sharing arrangement; and

- What other regulatory difficulties would result from allowing channel sharing between these services.

### **Digital-to-Digital Replacement Translators**

The Commission proposes to establish a new digital-to-digital replacement translator service for full power stations that lose digital service area during the reverse auction and repacking process.

**A. Eligibility and Service Area.** The Commission asks for comment on the following tentative conclusions:

- **Eligibility** will be limited to those full power stations who must change channels following the Incentive Auction and can demonstrate: (i) a portion of their pre-auction service area will not be served by the facilities specified for the new channel, and (ii) the digital-to-digital replacement translator will be used solely to fill those loss areas.
- **Service Area** will be limited to digital loss areas resulting from the reverse auction and repacking process. Loss must be demonstrated through an engineering study that shows the station's pre-and post-incentive auction digital service areas.
  - The Commission proposes to define the pre-auction digital service area as the geographic area within the full power station's noise-limited contour, as of the pre-auction licensing deadline.
  - The proposal would allow applications to propose de minimis expansions of pre-auction digital service areas if they can make a showing that the expansion is necessary to replace lost service area resulting from the new channel assignment and it is not possible to locate the replacement translator at a site that would not cause the expansion.
- **Timing:** The Commission proposes to establish a limited time to apply for a replacement translator beginning with the opening of the post-auction LPTV and TV Translator displacement window and concluding one year after the completion of the 39 month post-incentive auction transition period.

**B. Processing Priority:** The Commission proposes to give priority to new digital replacement translator applications and displacement applications from existing digital replacement translator stations over other applications filed by LPTV and TV Translator stations during the post-auction window, including new, minor change and displacement applications.

**C. Licensing and Operating Rules:** The Commission proposes to adopt rules that are substantially the same to those currently in place for digital replacement translator stations:

- Digital replacement translators will be permanently associated with the main station;
- They will have secondary frequency use status;
- All other TV Translator rules apply;
- They will have the same call sign as the main station; and

- A three year construction period will apply.

Consistent with the freeze issued by the Media Bureau earlier this year, the NPRM proposes that the Commission stop accepting applications for new analog-to-digital replacement translator stations.

### **Assistance to LPTV and TV Translator Stations Post-Auction**

The Commission seeks comment on whether it should use the incentive auction repacking software to assist displaced LPTV and TV Translator stations in identifying new channels post-auction. The Commission emphasizes that it would not assign new channels to displaced stations, but rather provide these stations access to information about which channels are available for their relocation.

### **Operation of Analog Radio Service by Digital LPTV Stations**

The NPRM asks whether LPTV stations that operate on digital channel 6 should be allowed to operate a dual digital and analog transmission system on an ancillary or supplementary basis. This operation would allow the station to provide an analog FM radio-type service as well as its digital video and audio stream. The Commission seeks comment on the following issues related to this proposed service:

- The potential for interference to: (i) the LPTV station's co-channel digital TV service, and (ii) second and third adjacent NCE FM stations;
- How the Commission should resolve actual interference to the transmission of an authorized FM broadcast station, i.e., should the LPTV station be required to eliminate the interference or suspend operations?;
- If allowed to provide this service, the Commission asks whether the LPTV station should be subject to (all or only some) Part 73 rules that apply to FM Radio stations;
- If this service is allowed on an ancillary or supplementary basis, the Commission seeks comment on whether or under what circumstances the service should be subject to the five percent fee assessed on full-power digital TV stations.

### **Elimination of the Analog Tuner Requirement**

Noting that the NPRM proposes delaying the digital transition date for LPTV and TV Translator stations, the Commission asks whether it should revise its rules to eliminate the obligation on manufacturers to include an analog tuner in TV receivers. The Commission seeks comments on the public interest benefit of requiring the analog tuner through the end of the LPTV/TV Translator digital transition deadline and the cost to manufacturers of continuing to include the analog tuner in their devices.