



PUBLIC NOTICE

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COMMISSION LIFTS THE FREEZE ON THE FILING OF MAXIMIZATION APPLICATIONS AND PETITIONS FOR DIGITAL CHANNEL SUBSTITUTIONS, EFFECTIVE IMMEDIATELY

On August 3, 2004, the Media Bureau imposed a freeze on requests from full power and Class A television stations to maximize facilities or change DTV channels.¹ The freeze provided a stable database during the channel election process and the initial processing of applications for post-transition digital facilities.² In the *Third DTV Periodic Report and Order*, the Commission anticipated being able to lift the freeze in mid-August, 2008, allowing time to process initial construction permit applications.³ The Commission has received approximately 620 post-transition construction permit applications, and the Video Division has been processing them in an expedited fashion, on average 4 days from date of receipt. As a result of the Commission's successful expedited processing efforts, we have completed our review of, and have granted all applications, except for those requiring

¹ See Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes, 19 FCC Rcd 14810 (MB 2004). The freeze precluded parties from filing: (i) petitions for rulemaking to change DTV channels within the current DTV Table; (ii) petitions for rulemaking to establish a new DTV channel allotment; (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (viii) certain Class A television station applications.

² See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18308 (2004). The *Report and Order in the Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television* allowed limited exceptions to the freeze for stations needing to request authority to construct their authorized post-transition facilities, or to modify their existing facilities to comply with the post-transition DTV Table Appendix B facilities.

³ See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 23 FCC Rcd 2994, 3059 at 3063 and n. 457 (2007) ("*Third DTV Periodic Report and Order*").

international coordination or additional information from the applicant.⁴ As a result, we can lift the freeze on the filing of maximization applications twelve weeks earlier than originally anticipated.

Accordingly, we will lift the freeze on the filing of maximization applications immediately, and we encourage stations to file promptly. We believe that the public interest is also served by lifting the freeze on the filing of petitions for rulemaking to allow requests for channel substitutions to the DTV Table at the same time.⁵ We will not, at this time, accept petitions for allotment of DTV channels for new stations, or for changes in community of license.

In addition, we remind stations that have filed for further reconsideration in the DTV Table of Allotments Proceeding, that they may now file applications, pursuant to this Public Notice, for authorization for maximization, if needed to obtain authorization for the facilities they sought in Docket 87-268.⁶ Stations should take this opportunity to file maximization applications, rather than rely on the pendency of their petitions for reconsideration to preserve their ability to maximize in the future.

With the exception of applications filed pursuant to the *Third Periodic PN*, which are cut-off as of the date received by the Commission,⁷ all applications filed from the date of release of this Public Notice through June 20, 2008, will be treated for cut-off purposes as being filed on June 20, 2008. In addition, maximization applications that were filed prior to release of this Public Notice, and that requested a waiver of the filing freeze (including those that requested more than the 5-mile extension allowed in certain circumstances by the *Third DTV Periodic Report and Order*), will be treated for cut-off purposes as being filed on June 20, 2008. For purposes of determining mutual-exclusivity, petitions for rulemaking for digital channel substitutions filed from the date of this Public Notice until June 20, 2008 will also be considered as having been filed on June 20, 2008. Maximization

⁴ Public Notice, *Third DTV Periodic Report and Order Published in Federal Register Today*, 23 FCC Rcd 906 at 907-08 (2008) (“*Third Periodic PN*”) (describing procedures and timing for filing FCC Forms 301 and 340 to construct post-transition digital facilities). Licensees that have not yet filed applications permitted by the *Third Periodic PN* are reminded that they are required to submit these applications no later than June 19, 2008. We will continue to process those applications that remain pending, and those that continue to be filed over the next few weeks. We anticipate that for any of these applications filed by June 6, 2008, we can complete our review by June 19, 2008 unless the application requires international coordination.

⁵ We will issue a public notice in the near future lifting the freeze on the filing of certain applications for Class A television stations, after the close of this filing window.

⁶ *Memorandum Opinion and Order on Reconsideration of the Seventh Report and Order and Eighth Report and Order*, MB Docket No. 87-268, *Memorandum Opinion and Order and Report and Order*, FCC 08-72 (rel. March 6, 2008). In acting on certain petitions for reconsideration, the Commission recognized that while it could not make all of the changes requested by the petitioners in the rulemaking proceeding, many of the petitioners would be able to seek relief in the initial application process or after the freeze on the filing of maximization applications was lifted.

⁷ See 47 C.F.R. § 73.623(h). Applications that are “cut-off” are entitled to interference protection from subsequently filed proposals.

applications and petitions for digital channel substitution filed after June 20, 2008 will be considered to have been filed on the date on which they are received by the Commission.

Under our current DTV processing rules, mutually-exclusive applicants are provided a 90-day period of time, from the date of a public notice identifying mutually-exclusive groups, to resolve their mutual-exclusivity via engineering amendment or settlement.⁸ However, Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals. Stations are not required to complete construction of facilities maximized pursuant to applications filed in response to this Public Notice before the transition deadline. However, the public interest would be served by facilitating completion of maximized facilities wherever possible. With respect to maximization applications filed pursuant to this Public Notice, compliance with the 90-day settlement period will not facilitate this result. Thus, with respect to mutually exclusive applications filed between now and the end of the statutory transition deadline, we intend to grant mutually exclusive applications subject to the condition that the applicants resolve their mutual exclusivity within 30 days of grant. If the applicants fail to resolve their mutual exclusivity within 30 days, we will cancel their construction permits and the applicants will be required to file new applications.

We emphasize that the mere filing and pendency of a maximization application or petition for digital channel substitution will not excuse a station's compliance with the construction deadlines for full, authorized DTV facilities established in the *Third DTV Periodic Report and Order*.⁹ While we have adopted procedures herein to facilitate expeditious processing of applications and petitions, the Commission may require further information for applications that are not readily grantable, and stations should take all steps necessary to promptly submit any additional information requested by the staff.

FCC Forms 301 and 340 must be filed electronically using the Commission's Consolidated Database System ("CDBS") Electronic Filing system via the Internet from the Media Bureau's Web site at: <http://www.fcc.gov/mb/cdbs.html> or http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm. In order to complete electronic filing, all applicants must indicate on the electronic pre-form whether they are filing a maximization application. Petitions for rulemaking with respect to channel substitution must be filed with the Office of the Secretary and an electronic copy sent to joyce.bernstein@fcc.gov and ron.graser@fcc.gov.

We also take this opportunity to clarify the exact time of day for expiration of post-transition construction permits. The CDBS automated filing system has issued post-transition DTV construction permits with an expiration of February 17, 2009 at 3:00 a.m. local time. We hereby extend the expiration of all of these permits to February 17, 2009, 11:59:59 p.m. local time.

⁸ 47 C.F.R. § 73.623(h)(3).

⁹ *Third DTV Periodic Report and Order*, 13 FCC Rcd at 3014.

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