



PUBLIC NOTICE

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MEDIA BUREAU ANNOUNCES DATE BY WHICH LPTV AND TV TRANSLATOR STATIONS MUST BE “OPERATING” IN ORDER TO PARTICIPATE IN POST-INCENTIVE AUCTION SPECIAL DISPLACEMENT WINDOW

GN Docket No. 12-268
MB Docket No. 03-185

By this Public Notice, the Media Bureau announces that, in order to participate in the post-Incentive Auction special displacement window, low power television (LPTV) and TV translator stations must be operating on the date that the *Channel Reassignment Public Notice* is released following the completion of the reverse auction.¹

In the *Incentive Auction R&O*, the Commission delegated authority to the Media Bureau to announce, after release of the *Channel Reassignment Public Notice* and after eligible full power and Class A television stations have an opportunity to file construction permit applications for their new facilities, including an alternative channel or expanded facility, a limited window for operating LPTV and TV translator stations to submit displacement applications.² The Commission’s rules limit eligibility to file in the displacement window to “operating low power TV and TV translator stations that are displaced . . . as a result of the broadcast television spectrum incentive auction.”³ The Commission delegated authority to the Media Bureau to announce the terms of the limited displacement window consistent with the approach outlined in the *Incentive Auction R&O*.⁴

¹ In the *Incentive Auction R&O*, the Commission stated that, following the completion of the reverse auction, the Media and Wireless Bureaus will release a “*Channel Reassignment Public Notice*” specifying the new channel assignments and technical parameters of the full power and Class A television stations that are assigned new channels in the repacking process or as the result of a winning bid in the reverse auction. See *In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567, 6783-4, para. 529 (2014) (*Incentive Auction R&O*), *aff’d*, *Nat’l Assoc. of Broadcasters, et al. v. FCC*, 789 F.3d 165 (D.C. Cir. 2015); see also 47 C.F.R. §§ 27.4, 73.3700(b)(4)(iii).

² See *Incentive Auction R&O*, 29 FCC Rcd at 6635-36, para. 659. In addition, the Commission determined that if a Class A station obtains a license after February 22, 2012, but is displaced by the auction repacking process, it will be eligible to file for a new channel in one of the first two filing opportunities for alternate channels. See *Incentive Auction R&O*, 29 FCC Rcd at 6671, para. 234; Second Order on Reconsideration, 30 FCC Rcd 6746, 6775, para. 63 (2015). On further reconsideration the Commission directed the Media Bureau to allow displaced Class A stations to file during the first filing opportunity. See Order on Reconsideration, 31 FCC Rcd 1367, 1382, para. 22 (2016).

³ 47 C.F.R. § 73.3700(g)(1) (emphasis added); *Incentive Auction R&O*, 29 FCC Rcd at 6635-36, para. 659. More specifically, the window is limited to those operating stations that (1) are displaced by a full power or Class A television station as a result of the incentive auction or the repacking process, (2) will cause interference to or receive interference from frequencies repurposed for new, flexible use by a 600 MHz Band wireless licensee, or (3) are licensed on frequencies that will serve as part of the 600 MHz Band guard bands. See *id.*

⁴ *Id.*

For these purposes, we interpret an “operating” LPTV or TV translator station that is displaced as a result of the incentive auction to mean one that is operating on the date of release of the *Channel Reassignment Public Notice*.⁵ Moreover, we clarify that for these purposes a station is “operating” if it has licensed its authorized construction permit facilities or has an application for a license to cover on file with the Commission on that date.⁶ LPTV stations will not be required to actually cease operations on their current channels until well after the *Channel Reassignment Public Notice* is released.⁷ But the new full power and Class A channel assignments announced in the *Channel Reassignment Public Notice* and the new 600 MHz band plan announced contemporaneously will enable LPTV stations to determine whether they will eventually be required to move from their current channel to accommodate a new primary licensee and thus whether they would wish to consider filing for a displacement channel during the special displacement window. Determining the universe of displaced operating LPTV stations as of the release of the *Channel Reassignment Public Notice* will also assist the Media Bureau in identifying channels that can be proposed by displaced stations based on repacking and optimization software and issuing a public notice listing potential channel assignments in advance of the displacement window.⁸

By announcing the deadline for identifying operating LPTV stations now, well in advance of the release of the *Channel Reassignment Public Notice*, we seek to provide LPTV and TV translator station permittees with “sufficient warning of this crucial deadline to allow them to complete construction and license permitted facilities.”⁹ Permittees of digital LPTV and TV translators that are not operating on the date of release of the *Channel Reassignment Public Notice* will have to wait until the completion of the special displacement window for operating LPTV and TV translator stations before being able to file a displacement application and propose a channel from the smaller universe of unused television

⁵ 47 C.F.R. § 73.3700(g)(1); *Incentive Auction R&O*, 29 FCC Rcd at 6635-36, para. 659; *id.* at 6835, n. 1833 (explaining that the requirement that displacement applications be submitted only after the primary station obtains a construction permit or license will not apply to LPTV and TV translator stations displaced as a result of the broadcast television spectrum incentive auction).

⁶ *Id.* at 6652-53, para. 186 (explaining that it is reasonable to assume that a facility is in operation if an application for a license to cover is on file). We note that we cannot predict with certainty the date of the conclusion of the now active auction or the release of the *Channel Reassignment Public Notice*. See *Initial Clearing Target of 126 Megahertz Set For The Broadcast Television Spectrum Incentive Auction; Bidding In the Clock Phase of the Reverse Auction (Auction 1001) Will Start on May 31, 2016*, Public Notice, DA 16-453 (rel. April 29, 2016). However, given the current status of the ongoing Incentive Auction, we anticipate release of this clarification provides sufficient time for permittees that have already commenced, but not yet completed construction, or that have made equipment investments but not yet commenced construction, to complete their construction and license their authorized facilities in order to qualify for the limited displacement window for operating stations.

⁷ Displaced LPTV stations in the spectrum transferred to wireless use (other than those in the spectrum assigned to guard bands) will not be required to relocate until the new wireless licensee is ready to commence operations, which in many cases may be more than 39 months. 47 C.F.R. § 73.3700(g)(4)(iii). Displaced LPTV stations in the spectrum assigned to guard bands, including the duplex gap, must relocate no later than the end of the 39-month transition period. 47 C.F.R. § 73.3700(g)(4)(v). In the spectrum continuing to be allocated and assigned to broadcast television, LPTV stations may continue to operate until displaced by a full power or Class A television station that is reassigned a new channel in the repacking process. See *Incentive Auction R&O*, 29 FCC Rcd at 6840 n.1866.

⁸ See *Amendment of Parts 73 and 74 of the Commission’s Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, MB Docket No. 03-185, Third Report and Order and Fourth Notice of Proposed Rulemaking, 30 FCC Rcd 14927, 14946, para. 41 (2015) (*LPTV DTV Third Report and Order*).

⁹ Letter from Joan Stewart, Wiley Rein, LLP to Marlene H. Dortch, Secretary, FCC, MB Docket 03-185 at 1- 2 (filed Dec. 3, 2015). (*Gray Ex Parte*).

channels.¹⁰ We also remind LPTV and TV translator permittees that the Commission has extended the construction deadline for new digital LPTV and TV translator stations to the new digital transition date for the LPTV and TV translator service, which is 51 months after the release of the *Channel Reassignment Public Notice*.¹¹ Thus, any construction efforts they may make between now and release of the *Channel Reassignment Public Notice* are completely voluntary.

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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¹⁰ See *LPTV DTV Third Report and Order*, 30 FCC Rcd at 14936 n.50.

¹¹ *Id.* at 14932-33, para. 9 and 14935, para. 16.