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## Comment Dates Set in FCC Proceeding Transitioning Low Power Television Stations to Digital Operations

by Lauren Lynch Flick and Paul A. Cicelski

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*The FCC's Further Notice of Proposed Rulemaking seeking comment on the conversion of low power television stations from analog to digital operation was published in the Federal Register today. Comments on the FCC's proposals are due on **December 17, 2010**, with reply comments due on **January 18, 2011**.*

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Although Congress established a deadline of June 12, 2009 for all full-power television stations to discontinue analog operations and begin operating only in digital, LPTV and TV Translator stations, as well as Class A TV stations, were seen as needing more time to marshal the resources to transition to digital operation. Accordingly, the Congressionally-mandated analog cut-off date did not apply to these stations. As a result, all full power television stations have ceased over-the-air analog broadcasts, but a significant number of Class A, LPTV and TV translator stations continue to transmit in analog and many questions persist as to how to transition these stations to digital-only operation. The FCC has released a Further Notice of Proposed Rulemaking (FNPRM) in its proceeding examining the digital transition for Class A, LPTV and TV Translator stations. The FNPRM seeks comment on the procedures and timelines by which these stations will complete the transition to digital operations.

### Analog Cut-off Date

The FNPRM does not propose a specific date by which **all** Class A, LPTV and TV Translator stations must transition to digital operations. However, the FCC does seek comment on adopting a cut-off date sometime in 2012, ultimately giving these stations approximately three years from the June 12, 2009 full-power transition date to convert to digital operation. The FCC asks whether an analog cut-off date in 2012 would provide Class A, LPTV and TV translator stations enough time to convert to digital operations and, if so, what date in 2012 it should specify. Looking for detailed information on equipment and other costs associated with the transition, the FCC requests, among other things, information on how to address "hardship" cases for stations that are unable to make a timely conversion. The FCC also asks whether to

allow stations located in communities relying solely on low power over-the-air service to request more time to continue analog operation after the transition date.

### Transition Date for “Out of Core” Stations

While not proposing a specific analog cut-off date for all low power stations, the FNPRM does propose to establish **December 31, 2011** as the analog cut-off date for stations operating on “out of core” channels (channels 52 to 69). This cut-off date would serve to expedite clearing of the 700 Mhz band for wireless use. According to the FCC, this pre-2012 transition date for out-of-core channels would expedite the clearing of these channels while permitting out-of-core stations time to find in-core channels and prepare digital displacement applications. In order to facilitate this expedited transition, the FCC is asking for comment on whether out-of-core LPTV and TV translator stations should be required to file digital displacement applications by **June 20, 2011** – six months prior to the “out-of-core transition date.”

### Filing Freeze

The FNPRM imposes a freeze on the filing of (1) applications for new analog LPTV and TV translator facilities; and (2) applications for new or modified, analog or digital, low power television stations on channels 52-69, including applications for digital flash-cut and digital companion channels. However, according to the FNPRM, the Media Bureau will, on a case-by-case basis, consider waivers of the freeze when necessary for technical or other reasons to maintain service to the public.

### Channel Election

In some cases, Class A, LPTV and TV Translator stations operate digital companion channels that have allowed them to provide both analog and digital service to their communities during the digital transition. The Commission has previously stated that LPTV and TV translator stations will ultimately have to choose whether to continue operating digitally on their companion channel and return their original analog channel license, or flash cut to digital operation on their analog channel and surrender the digital companion channel license. The FNPRM proposes to delegate to the Media Bureau the authority to establish the specific timeframes and procedures for accomplishing the surrender of channels. It specifically asks whether those stations that choose to surrender their analog station license and continue operating on their digital companion channels should be permitted to simply notify the Commission of that decision. The Media Bureau would also establish timeframes and procedures applicable to stations choosing to “flash cut” to digital operation on their existing analog channel and return their digital companion channel.

### Class A Television Surrender of Channels

Many Class A television stations also operate with analog and digital channels. Like LPTV and TV Translator stations, the FCC has said that these stations will have the option at the end of the transition to choose which channel will be their final post-transition channel, and that the primary protected status the station enjoyed on its analog channel will attach to the final post-transition channel the station chooses. To accomplish this, the FNPRM proposes that Class A TV station licensees file a minor change application to specify either their “flash cut” channel, the one on which they are now operating in analog, or their digital companion channel, as their final post-transition channel. The FCC is also proposing that Class A stations be required to certify that their proposed facilities meet all Class A interference protection requirements.

### Definition of Minor Change Application

The FCC asks whether it should modify the current definition of a minor change so that a change in a Class A, LPTV or TV translator's transmitter site of up to 30 miles (48 kilometers) would be permitted as a minor change, regardless of overlap with the station's previously authorized contour.

### Antenna Vertical Radiation Patterns

The FCC is asking for comment on whether to revise the vertical antenna patterns used in its signal prediction methodology for LPTV and TV translator services. The proposed revisions are intended to make predictions of the service areas of these stations and their potential for interfering with other stations more realistic, and determinations of mutual exclusivity between applications more accurate. The FCC also seeks comment as to whether the power levels and interference protection criteria currently specified in its rules are appropriate to ensure that post-transition LPTV signals will be of sufficient quality.

### Use of Full-Power DTV Emission Mask

The FCC seeks comment on whether to adopt rules that would allow low power stations to use full-power DTV emission masks.

### Ancillary and Supplementary Services

Finally, the FCC is seeking comment on whether to extend to permittees of stations operating pursuant to Special Temporary Authority (STA) the obligation to pay fees to the federal government for transmitting digital ancillary/supplemental data. It previously took this same step for full-power television stations. If it were to do so for LPTV stations, the Commission would require such permittees to file Annual DTV Ancillary/Supplementary Services Reports on FCC Form 317 and to provide the FCC with information regarding the ancillary and supplementary services offered.

As noted above, comments on these proposals are due **December 17, 2010** and reply comments are due **January 18, 2011**. Please contact any of the lawyers in the Communications Practice Section for assistance in the preparation and filing of comments or reply comments.

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