



PUBLIC NOTICE

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Freeze on the Filing of TV and DTV “Maximization” Applications in Channels 60-69

Beginning immediately, and until further notice, the Commission will not accept for filing modification applications that would increase a television broadcast station’s analog or DTV service area in the 746-806 MHz spectrum band, currently comprising television channels 60-69, in one or more directions beyond the combined area resulting from the station’s parameters as defined in the following: (1) the DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to release of this Public Notice.¹ The Commission will continue to process applications on file as of the date this Public Notice is released. The Commission may consider, on a case by case basis and consistent with the public interest, amendments to those applications, for example, to resolve interference with other stations or pending applications or resolve mutual exclusivity with other pending applications.²

The Commission has reallocated and is in the process of recovering channels 60-69 in order to provide spectrum for use by other services, particularly public safety and other land mobile services, and is in the process of considering other issues relating to DTV service maximization as part of its periodic reviews of the digital television conversion process. Portions of these channels have already been licensed to Guard Band and Public Safety entities. Prohibiting the filing of new maximization applications in this band will protect these newly licensed entities from shifts or expansion in existing broadcast service, and will facilitate the eventual clearing of this spectrum and the auction of the commercial portions of the spectrum. Imposition of an immediate freeze will ensure that new maximization applications are not filed in this band in anticipation of future limitations, thus defeating the administrative purpose of the action herein.

¹ Since July 7, 1998, the Commission has not accepted requests for modifications for analog stations on channels 60-69 that would result in an overall increase in the service area of the station. The policy we announce herein does not alter this existing policy.

² On June 18, 2002, a similar freeze on the filing of analog and DTV maximization applications on TV channels 52-59 was announced. See *Public Notice*, Freeze on the Filing of TV and DTV “Maximization” Applications in Channels 52-59, DA 02-1440, released June 18, 2002.

Consistent with existing policy, the Bureau will consider, on a case-by-case basis, requests for waiver of this freeze where the modification application: (1) would permit co-location of transmitter sites in a market in circumstances consistent with the Commission's policy of encouraging co-location to reduce the cost of construction, particularly of DTV facilities, or to achieve more efficient spectrum use; or (2) is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as where zoning restrictions preclude tower construction at a particular site or where unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. As with any request for waiver of our rules, a request for waiver of the freeze imposed in this Notice will be granted only upon a showing of good cause and where grant of the waiver will serve the public interest.

The decision to impose this freeze is procedural in nature and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. *See* 5 U.S.C. §553(b)(A), (d); *Kessler v. FCC*, 326 F. 2d 673 (D.C. Cir. 1963). Moreover, there is good cause for the Commission's not using notice and comment procedures in this case, or making the freeze effective 30 days after publication in the Federal Register, because to do so would be impractical, unnecessary, and contrary to the public interest because compliance would undercut the purposes of the freeze. *See* 5 U.S.C. §553(b)(B), (d)(3).

This action is taken by the Chief, Media Bureau pursuant to authority delegated by Section 0.283 of the Commission's rules.

For additional information, contact Kim Matthews of the Policy Division, Media Bureau, at (202) 418-2120.