



# PUBLIC NOTICE

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## **Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes**

Beginning immediately, and until further notice, the Commission will not accept for filing certain requests by analog and digital television broadcast stations for changes to existing DTV and analog TV service areas and channels. Specifically, until further notice, the Commission will not accept for filing the following:

- Petitions for rulemaking to change DTV channels within the DTV Table of Allotments.
- Petitions for rulemaking for new DTV allotment proceedings.
- Petitions for rulemaking to swap in-core DTV and NTSC channels.
- Applications to change DTV channel allotments among two or more licensees.
- Petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license.
- Television modification applications that would increase a station's DTV service area in channels 2-51 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; and television modification applications that would increase a station's analog service area in channels 2-51 in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) Commission authorizations (license and/or construction permit) and (2) applications on file with the Commission prior to release of this Public Notice. The Bureau may consider, on a case by case basis and consistent with the public interest, amendments to those applications to, for example, resolve interference with other stations or pending applications or to resolve mutual

exclusivity with other pending applications. In earlier Public Notices, we have frozen maximization applications for channels 52-59 and 60-69.<sup>1</sup>

- Class A station displacement applications and applications for coverage changes that would serve any area that is not already served by that Class A station's authorized facilities. As an exception to this freeze, on-air Class A stations demonstrating that they face imminent disruption of service may request Special Temporary Authority ("STA") to continue operations. Displacement applications filed by out-of-core LPTV stations that have been deemed Class A-eligible requesting to move to an in-core channel where Class A authority could be granted will not be acted on during this freeze, but for such stations, immediate non-Class A LPTV displacement relief may be requested through an STA.

Notwithstanding this freeze, licensees will not be prevented from filing modification applications when the application would resolve international coordination issues or when a broadcast station seeks a new tower site due to the events of September 11, 2001.

The Commission is in the process of developing a channel election and repacking process that will assign to eligible television broadcasters a post-transition DTV channel in the core television spectrum (*i.e.*, channels 2-51). Channel election procedures will be announced in the Commission's *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, RM 9832. This freeze is a necessary first step to ensure a stable television database prior to the commencement of the channel election process. Prohibiting the filing of new applications and petitions requesting new channels or service areas will allow broadcasters to evaluate stations' technical parameters and thereby facilitate channel elections and the creation of a new DTV Table of Allotments. Imposition of an immediate freeze will ensure that new applications and petitions are not filed in anticipation of future limitations, thus defeating the administrative purpose of the action herein, and will ensure that technical parameters do not continue to change while broadcasters make their channel election decisions.

The Bureau will consider, on a case-by-case basis, requests for waiver of this freeze when a modification application is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when zoning restrictions preclude tower construction at a particular site or when 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 Public Notice will be granted only upon a showing of good cause and when 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, and not delaying the effect of the freeze until 30 days after publication in the Federal Register, because to do either 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).

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<sup>1</sup> *See* Public Notice, 17 FCC Rcd 11290 (2002); Public Notice, 18 FCC Rcd 627 (2003).

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

For additional information, contact Kim Matthews of the Policy Division, Media Bureau, at (202) 418-2120 or Barbara Kreisman of the Video Services Division, Media Bureau, at (202) 418-1600.