



Federal Communications Commission
Washington, D.C. 20554

March 26, 2012

DA 12-472

Small Entity Compliance Guide

Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations

Second Report and Order
FCC 11-110
MB Docket No. 03-185
Released: July 15, 2011

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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Objectives of the Proceeding

In the Second Report and Order, the Commission took steps to resolve certain issues in order to allow a timely and successful completion of the low power television digital transition. Specifically, the Commission took the following steps: (1) adopted a hard deadline of September 1, 2015 for the termination of all analog low power television facilities; (2) established rules permitting those stations needing additional time to complete their digital transition to obtain a “last minute” six-month extension of the September 1, 2015 digital construction deadline; (3) required existing analog and digital low power television stations in the 700 MHz band (channels 52-69) to submit displacement applications by September 1, 2011, and to cease operations in the 700 MHz band by December 31, 2011; (4) increased the power limits for VHF low power television channels to 3 kilowatts (the current analog power limit); (5) delegated to the Media Bureau the authority to establish timeframes and procedures for stations that have not already converted to notify the Commission of their conversion plans; (6) widened the class of low power television broadcasters subject to the Commission’s ancillary and supplementary fee rules; (7) modified the Commission’s minor change rule so that it covers a proposed change in a low power television station’s transmitter site of up to 30 miles (48 kilometers) from the reference coordinates of the station’s transmitting antenna; (8) revised the rules to begin accepting actual vertical pattern relative field values from applicants and permittees in the low power television service on a voluntary basis; and (9) allowed low power television stations to specify the use of the “emission mask” (an engineering device that limits interference to other stations) currently used by full power television stations to accommodate additional low power television stations and enable more efficient use of available spectrum.

Rules That the Commission Amended

The Commission adopted Section 74.731(l) and established an analog shutoff date of September 1, 2015 for low power TV, TV translator and Class A TV stations.

The Commission adopted Section 74.788(d) to extend the digital construction deadline of outstanding construction permits for digital on-channel conversion (a so-called “flash-cut”) and digital companion channel construction permits to September 1, 2015 and to state that after September 1, 2015, the tolling provisions of Section 73.3598 shall apply.

The Commission adopted Section 74.786(g) and established a date of December 31, 2011, by which all existing analog and digital low power television stations on channels 52-69 (the so-called “out of core” channels) must terminate operations on their out-of-core channel.

The Commission adopted Section 74.787(c) and required that out-of-core stations that have not already done so must file an application for an in-core channel 2-51 by September 1, 2011.

The Commission amended Section 74.793(c) to increase to 3 kilowatts the maximum amount of power that low power stations operating on VHF channels may specify.

The Commission adopted Section 73.3572(h) to create procedures by which Class A television stations may designate whether they desire to flash-cut to digital on their analog channel or on their digital companion channel.

The Commission adopted Section 74.798 to provide that stations with the technical ability to locally-originate programming provide some type of notification to their viewers prior to ceasing analog operations and transitioning to digital. The Commission left the format and timeframe for such notification to the station’s discretion.

The Commission amended Section 74.624(g) to make low power television station permittees subject to the Commission’s ancillary and supplementary fee rules.

The Commission amended Section 74.787(b)(1) to change the minor change rule to limit transmitter site changes in minor change applications to no more than 30 miles (48 kilometers) from the reference coordinates of the existing station’s transmitting antenna.

The Commission amended Section 74.794 to allow low power television stations to use the emission

mask used by full power television stations.

The Commission amended Section 74.793 to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services that the FCC adopted in its 2004 *Digital LPTV Order*, 19 FCC Rcd 19331 (2004).

Impact on Small Business

The Commission's adoption of an analog shutoff date of September 1, 2015 will minimize impact on small entities by allowing them four additional years from the full power television transition that occurred on June 12, 2009, to complete their transition to digital. Adoption of an earlier low power transition date was rejected as it was felt that many small entities would not be ready to transition any sooner and would be forced off the air.

With respect to the adoption of extending all outstanding low power television station digital construction permits to September 1, 2015, this adoption will minimize the impact on small entities as it will provide them with additional time to complete construction of their digital facilities. Requiring that these outstanding construction permits expire pursuant to their original construction deadlines, *i.e.*, prior to the September 1, 2015 low power digital transition deadline, was rejected as digital operations are not required until September 1, 2015. The Commission felt that many small entities might be forced to abandon digital construction and subsequently forced off the air if they were unnecessarily forced to complete construction prior to September 1, 2015, pursuant to their original digital construction permits.

With regard to the adoption of the "last minute" extensions for low power stations who demonstrate that they meet the criteria pursuant to Section 74.788(c) of the rules, 47 C.F.R. § 74.788(c), this adoption will minimize any adverse impact on qualified small entities as these small entities will be given one last six-month extension to complete construction of their digital facilities. The Commission rejected disallowing a "last minute" extension for qualified low power stations because without the "last minute" extension, small entities may be forced to abandon construction and to go off the air due to unexpected delays in the months leading up to the September 1, 2015 transition date.

Concerning the Commission's adoption of the hard deadline of May 1, 2015, after which low power stations must meet the stricter tolling criteria established in Section 73.3598 of the rules, to apply for a "last minute" extension pursuant to the criteria set forth in Section 74.788(c) of the rules, the Commission found that the burden on small entities is justified. The Commission determined that the burden of requiring small entities to meet the stricter tolling criteria established in Section 73.3598 of the rules after May 1, 2015 is outweighed by the public interest in bringing the low power digital transition to a successful and timely conclusion and by the ample time low power stations will have had to complete their transition to digital operations.

With respect to requiring stations on out-of-core channels to transition at an earlier date – on December 31, 2011, the Commission found that the burden on small entities of adopting this earlier deadline is more than outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. The Commission determined that adoption of a later transition date for low power television stations on these channels would delay progress on clearing these channels.

With regards to requiring all out-of-core low power television stations to file a displacement application for an in-core channel by September 1, 2011, the Commission found that this deadline is necessary to meet the December 31, 2011 out-of-core digital transition deadline. Furthermore, with respect to the December 31, 2011 transition deadline, the burden on small entities to meet the September 1, 2011 out-of-core displacement application deadline is outweighed by the need to clear out-of-core channels for new uses by commercial wireless (including mobile broadband) and public safety entities. Additionally, the Commission determined that adoption of a later out-of-core displacement application deadline would delay progress on clearing these channels.

The Commission adopted streamlined procedures for stations to notify the Commission as to whether they intend to convert to digital on their existing analog channel (a so-called "flash cut") or if they intend to continue to operate their second digital channel and terminate operations on their analog channel help to

prevent a significant impact on small entities. As a result of the streamlined procedures, low power stations will not be burdened with having to complete and file a lengthy progress report, as was required of full power television stations, but rather will only have to file a simple informal notification to make their final digital choice known to the Commission.

With respect to requiring all stations in the low power television service, which terminate their analog service after the effective date of the rule provisions in this proceeding, to notify their viewers of their transition to digital operations, the Commission determined that the burden on small entities is outweighed by the public's need to be informed of individual stations' digital transitions. The Commission, however, eased the impact on small entities by giving those low power stations that locally originate programming and would be required to notify their viewers with on-air announcements, the option to notify their viewers by some other reasonable means should compliance cause financial hardship.

The Commission's adoption of streamlined procedures for Class A stations to choose to either "flash cut" to digital on their analog channel or to operate on their digital companion channel, while preserving their primary, protected status on the channel they chose to retain, will help to prevent a significant impact on small entities. As a result of these streamlined procedures, Class A stations will not be burdened with filing a minor change application with the Commission to transfer their primary protected status from their analog channel to their desired digital channel.

With respect to subjecting low power television station permittees to the Commission's ancillary and supplementary fee rules, the Commission found that the burden on small entities of having to comply with these rules is outweighed by the need to eliminate ambiguity in the rules and to provide efficient use and administration of spectrum.

The Commission did not find that there would be a significant impact on small entities by its proposed change to its low power television minor change rule. The change would have little impact and any impact would affect all entities equally.

The Commission did not find that there would be a significant impact on small entities by its decision to permit stations to use the emission mask used by full power television stations. Use would be voluntary and any impact would affect all entities equally.

The Commission's decision to revise the vertical patterns used in the temporary interference prediction methodology for the low power television services would not have a significant impact on small entities. Use of the actual vertical patterns of proposed low power television facilities will simplify the engineering filings on FCC Form 346, making it easier for all applicants to complete the form, and thus saving applicants time and money. Any burden from this requirement would impact all entities equally.

Steps a Small Entity Must Take to Transition to Digital

In order to complete the transition to digital, a small entity low power television station, TV translator or Class A television stations would be required to complete the following steps.

First, the station would have to decide whether to transition on its existing analog channel through a "flash-cut" or whether to obtain a second digital companion channel and to transition on that channel while terminating its analog channel.

Second, the station would have to determine the best location for its digital operation.

Third, the station would prepare and file an application (FCC Form 346 and 301-CA).

Fourth, the station would obtain a grant of its construction permit.

Fifth, the station would have to design its facility and order the necessary equipment.

Sixth, the station would have to hire an installation crew and complete installation of its digital facility and conduct testing.

Seventh, the station would have to decide to commence operation of its digital facility.

Eighth, the station would have to file a license application.

Ninth, the station would have to submit a notification to the Commission of its transition plan.

Tenth, the station would have to air viewer notifications of its impending transition.

Finally, on or before September 1, 2015, the station would have to terminate operation of its analog facilities.

Recordkeeping and Other Compliance Requirements

The *Second Report and Order* adopted the following new reporting requirements: (1) to require, where technically feasible, low power television services to provide notice of their upcoming digital transition to their viewers; (2) to require low power television stations that have not taken steps to convert to digital by a date certain to submit a notification of their conversion plan; and (3) to require permittees of low power television stations operating pursuant to a digital STA to file the annual ancillary and supplementary services report. These new reporting requirements will not differently affect small entities.

Weblink and Citations

A copy of the *Second Report and Order* is available at

http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-110A1.doc, FCC 11-110, 26 FCC Rcd 10732 (2011); 76 Fed. Reg. 44821(July 27, 2011).