



Federal Communications Commission
Washington, D.C. 20554

May 3, 2024

DA 24-418

SMALL ENTITY COMPLIANCE GUIDE

Implementation of the Low Power Protection Act

FCC 23-112

MB Docket No. 23-126

Released December 12, 2023

In accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, this Small Entity Compliance Guide (Guide) is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the rules adopted in the above-referenced Federal Communications Commission (FCC or Commission) rulemaking dockets. This Guide is not intended to replace or supersede these rules, but to facilitate compliance 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 cannot anticipate all situations in which the rules apply. Furthermore, the Commission retains the discretion to adopt case-by-case approaches, where appropriate, that may differ from this Guide. Any decision regarding a particular small entity will be based on the statute and any relevant rules.

In any civil or administrative action against a small entity for a violation of rules, the content of the 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 in the above-referenced docket and the appropriateness of its application to a particular situation. The Commission will then consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The Commission may decide to revise this Guide without public notice to reflect changes in its approach to implementing a rule or it may clarify or update the text of the Guide. Direct your comments, recommendations, or request for further assistance to the FCC's Consumer Center:

1-888-CALL-FCC (1-888-225-5322)

Videophone: 1-844-4-FCC-ASL (1-844-432-2275)

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I. OBJECTIVES OF THE PROCEEDING

In the *Report and Order (Order)* in MB Docket No. 23-126,¹ the Commission adopted rules to implement the Low Power Protection Act (LPPA),² which was enacted on January 5, 2023. The LPPA provides certain low power television (LPTV) stations with a limited window of opportunity to apply for primary spectrum use status as Class A television stations. The Order establishes the period during which eligible stations may file applications for Class A status, eligibility and interference requirements, as well as the process for submitting applications and furthers the Commission's goals of implementing the LPPA without placing significant additional costs and burdens on small entities.

II. COMPLIANCE REQUIREMENTS

The *Order* implements the LPPA through the adoption of section 73.6030 in part 73 of Title 47 of the U.S. Code of Federal Regulations.³ Key areas of importance are as follows:

A. Application Period (47 CFR § 73.6030(c))

Consistent with the language of the LPPA, the Order gives LPTV stations a period of one year to apply for a Class A license. Once the Office of Management and Budget (OMB) has approved the application form and certain rules adopted in the Order,⁴ the Media Bureau will issue a public notice announcing when the one-year filing window will open. The application window will be limited to the one-year application window specified in the LPPA, but the Commission will examine, on a case-by-case basis, a potential applicant's claim that it was unable to file an application by the deadline due to circumstances beyond its control.

B. Eligibility Requirements (47 CFR § 73.6030(b))

The Order provides that the Commission "may approve" an application submitted by an LPTV station to convert to Class A status pursuant to the LPPA if the station meets the following eligibility criteria:

- During the 90-day period preceding the date of enactment of the LPPA (i.e., between October 7, 2022 and January 5, 2023), the LPTV station met the following requirements: (1) the station must have broadcast a minimum of 18 hours per day; (2) the station must have broadcast an average of at least 3 hours per week of programming that was produced within the market area served by such station, or the market area served by a group of commonly controlled LPTV stations that carry common local programming produced within the market area served by such group; and (3) the station must have been in compliance with the Commission's requirements applicable to LPTV stations;
- The station demonstrates that it will comply with the interference requirements applicable to existing Class A stations (those that converted to Class A status pursuant to the 1999 Community Broadcasters Protection Act (CBPA)); and
- As of January 5, 2023, the station operated in a Designated Market Area (DMA) with not more than 95,000 television households.
- The Commission will allow deviation from these criteria only where deviations are

¹ *Implementation of the Low Power Protection Act*; MB Docket No. 23-126, Report and Order, FCC 23-35, rel. Dec. 12, 2023) (*Report and Order*).

² Low Power Protection Act, Pub. L. 117-344, 136 Stat. 6193 (2023) (LPPA).

³ 47 CFR § 73.6030.

⁴ *Id.* § 73.6030(c) and 73.6030(d).

insignificant or where there are such compelling circumstances that equity requires a deviation. Additionally, the Order notes that television translator stations are unlikely to satisfy the eligibility requirements of the LPPA.

Finally, beginning on the date of its application for a Class A license and thereafter, a station applying to convert to Class A status pursuant to the LPPA must be in compliance with the Commission's operating rules for full-power stations. The Commission's rules will apply to small and other applicants for Class A status under the LPPA, and to stations that are awarded Class A licenses under that statute, all Part 73 regulations except for those that cannot apply for technical or other reasons. For example, Class A stations must comply with the requirements for informational and educational children's programming, the political programming and political file rules, and the public inspection file rule. The Order also requires that stations that convert to Class A status pursuant to the LPPA, comply with all rules applicable to existing Class A stations, including interference requirements, and to continue to comply with the operational and programming requirements for eligibility for Class A status under the statute.

C. Interference Requirements (47 CFR § 73.6030(b)(6))

The Order provides that LPTV stations that convert to Class A status pursuant to the LPPA must comply with the interference rules applicable to existing Class A stations (those that converted to Class A status pursuant to the CBPA).

D. Designated Market Area (47 CFR § 73.6030(a)(b)(e))

Consistent with the language of the LPPA, the Order requires that an LPTV station seeking to convert to Class A status demonstrate that, as of January 5, 2023, the station operates in a Designated Market Area with not more than 95,000 television households. In the Order, the Commission further concluded that the term "operates" means that the LPTV station applying for Class A status under the LPPA must demonstrate that its transmission facilities, which include the structure on which its antenna is mounted, are located within the qualifying DMA. Additionally, the Order further states that the Commission will use the Nielsen Local TV Report in determining the DMA where the LPTV station's transmission facilities were located as of January 5, 2023. To make the necessary demonstration, the Commission will require applicants to provide the following information as it existed on January 5, 2023: (1) the coordinates of the station's transmission facilities (i.e., the structure on which its antenna is mounted); (2) the city/town/village/or other municipality and county in which the transmission facilities are located; and (3) the qualifying DMA in which the station's transmission facilities are located.

E. License Standards (Ongoing Eligibility Requirements) (47 CFR § 73.6030(e))

The LPPA requires that a station that converts to Class A status pursuant to the statute continue to meet the eligibility requirements of the LPPA during the term of the station's Class A license. In addition, the *Order* requires stations that convert to Class A status to remain in DMAs with not more than 95,000 television households in order to maintain their Class A status except for situations in which the population in the station's DMA later exceeds the threshold amount through (1) population growth, (2) a change in the boundaries of a qualifying DMA such that the population of the DMA exceeds 95,000 television households, or (3) the merger of a qualifying DMA into another DMA such that the combined DMA exceeds the threshold amount. LPPA Class A stations will not be permitted to initiate a move to a different DMA with more than 95,000 television households at the time of the move and still retain their Class A status.

In addition, the *Report and Order* also requires that stations that convert to Class A status pursuant to the LPPA comply with all rules applicable to existing Class A stations, including interference requirements. Stations that convert to Class A status pursuant to the LPPA must continue to meet the minimum operating requirements for Class A stations. Licensees unable to continue to meet the

minimum operating requirements for Class A television stations, or that elect to revert to low power television status, must promptly notify the Commission, in writing, and request a change in status.

F. Application Process (47 CFR § 73.6030(c)(d)(f))

The Order provides that applications to convert to Class A status will be limited to the conversion of existing LPTV facilities as they exist at the time of application, without consideration of any pending modifications to those facilities or unbuilt construction permits. Further, the Order requires that applications for modification of an LPTV station's existing license to convert to Class A status pursuant to the LPPA must be filed using FCC Form 2100, Schedule F. Such applications must be filed electronically and must include the required \$425 filing fee. In addition, applicants must provide local public notice of the application pursuant to the Commission's rules.

An applicant must also certify in its application that its station meets the operating and programming requirements of the LPPA. An applicant must also submit, as part of its application, documents to support this certification, including a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023, as well as a list of locally produced programs aired during that time period. In addition, an applicant should submit whatever additional documents available to the applicant that it believes best support its certification that it meets the operating and programming requirements of the Act. The Commission staff may later determine that additional documentation is needed to evaluate an application and may at that time require an applicant to submit additional, specific documentation during consideration of the application.

III. RECORDKEEPING AND REPORTING REQUIREMENTS

The Commission's actions in the *Order* created new or additional recordkeeping and reporting requirements. For example, the rules require that applicants seeking to convert to Class A status under the LPPA certify in their application that they have complied with the LPPA's eligibility requirements during the 90 days preceding the January 5, 2023 enactment of the statute. Additionally, an application must include a statement concerning the station's operating schedule during the 90 days preceding January 5, 2023 as well as a list of locally produced programs aired during that time period. The applicant may also submit other documentation to support its certification that the licensee meets the eligibility requirements for a Class A license under the LPPA. If necessary, the Commission staff may also request additional documentation during consideration of the application.

The Order also requires all stations seeking to convert to Class A designation pursuant to the LPPA to submit an application to the Commission within one year from the date the Commission announces that the application window is open. The Commission will not continue to accept applications to convert to Class A status under the LPPA beyond the one-year application period set forth in the statute. The Commission will examine, however, on a case-by-case basis, a potential applicant's claim that it was unable to file an application by the deadline due to circumstances beyond its control.

IV. IMPLEMENTATION DATE

The rules adopted in the *Order* will become effective February 9, 2024 (30 days after January 10, 2024, the date the *Order* was published in the Federal Register), except for sections 73.6030(c) and 73.6030(d) which contain new or modified information collection requirements that require review by OMB. At the conclusion of the OMB review process, the Media Bureau will announce the effective date of that information collection in a document published in the Federal Register. The Media Bureau will also issue a Public Notice that establishes the one-year application filing window once the revised application form (FCC Form 2100, Schedule F) is available for use by applicants.

V. INTERNET LINKS

A copy of the *Order*, FCC 23-112, MB Docket No. 23-126, is available at:

<https://www.fcc.gov/document/commission-implements-low-power-protection-act>.

A copy of the Federal Register Summary of the *Order* is available at:

<https://www.federalregister.gov/documents/2024/01/10/2023-28619/low-power-protection-act>.