



# FCC Releases Television Repack Transition Scheduling Plan

January 30, 2017

On January 27, 2017, the Federal Communications Commission's (FCC or Commission) Media Bureau, in consultation with the Incentive Auction Task Force, the Wireless Telecommunications Bureau, and the Office of Engineering and Technology, released a Public Notice adopting a methodology to establish construction deadlines for a phased transition schedule for the post-auction repack (Repack PN).[1]

The Media Bureau largely adopted the methodology it proposed in its earlier September Public Notice. This methodology includes two elements: (1) a Phase Assignment Tool, which will assign stations to one of 10 sequential "transition phases," which will include common testing periods and dates by which stations must cease broadcasting on their pre-auction channels; and (2) a Phase Scheduling Tool, which will estimate how long it will take to complete each transition phase based on the availability of resources.

Now that the final stage rule has been satisfied, the FCC knows that the auction will close during this stage. Using the methodology adopted in the Repack PN, the Bureau will begin running studies in order to assign each transitioning station to a (i) new post-auction channel and (ii) transition phase. Once this process is complete, the FCC will send confidential letters to each station that must change channels after the auction identifying the station's post-auction channel assignment, technical parameters, and assigned transition phase. These letters are expected to be sent within the next couple of weeks.

## Quiet Period Rules Remain in Effect

By sending out the post-auction channel assignments prior to the end of the forward auction, the Bureau expressed its hope that this information would "give broadcasters additional time for post-auction transition planning." [2] However, contrary to guidance provided in earlier public notices—which strongly cautioned that revealing a bid or bidding strategy to counsel or a consultant could violate the quiet period rules—the Repack PN states that communication with consulting engineers, equipment vendors, and counsel would not violate the anti-collusion rule even if a bid or bidding strategy were disclosed, *provided that* they in turn did not communicate that information (even inadvertently) to another broadcaster.

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## Practice Areas

Telecom, Media & Technology

The Repack PN did not lift or relax its rules governing prohibited communications; therefore, the quiet period rules remain in effect and broadcasters are cautioned to not communicate a station's bid or bidding strategy to anyone outside of established pre-auction firewalls.

While granting broadcasters no immediate relief from these rules, the Bureau conceded that some relaxation of the rules may be appropriate and stated that it will address the issue when the post-auction channel assignment information is provided to broadcasters.

### **Phase Assignment Tool - Repack Constraints**

As proposed, the Bureau adopted the following eight constraints to guide its repack of eligible stations, each of which must be satisfied in order for a station to be assigned to a channel and transition phase:

- A station cannot cause more than two percent temporary new interference to another station during the transition. This is more than the 0.5 percent new interference that the FCC considers *de minimis* for post-transition operations. The Bureau rejected a request to impose an aggregate cap on the amount of new interference a station could receive during the transition. However, the Bureau agreed that if a station is predicted to receive more than five percent temporary aggregate interference, it will attempt to find an alternate transition phase for that station.
- No stations in Canada will be assigned to transition before the third transition phase.
- There will be no more than 10 transition phases.
- All stations within a designated market area (DMA) will be assigned to no more than two different transition phases.
- The difference in the number of stations in the largest transition phase and the smallest transition phase will be no more than 30 stations.
- Every transitioning station will be assigned to one transition phase.
- No transition phase can have more than 125 linked-stations (stations that are dependent on each other, such as a station moving to channel 22 and a station currently occupying channel 22).
- No station falling into the "complicated" category (as defined in the Widelity report) can be assigned to Phase 1.

As proposed, no station (either U.S. or Canadian) will be required to use a temporary channel. However, stations may request use of a temporary channel if it will assist their transition.

### **Phase Assignment Tool - Repack Objectives**

Once the above-listed constraints have been satisfied, the Commission will then apply the following objectives, in sequential order, to optimize phased assignments:

- U.S. stations whose pre-auction channels are in the 600 MHz band will be assigned to earlier phases to clear the 600 MHz band as quickly as possible. Canadian stations and U.S. stations with pre-auction channels in the remaining television band will be assigned to later phases whenever possible.
- Minimize the sum, over all DMAs, of the number of times viewers in a DMA must rescan.
- Minimize the total number of linked-stations.

- Minimize the difference between the number of stations in the largest transition phase and the smallest transition phase.

### Phase Scheduling Tool

Once the Commission has assigned each station to a phase, the agency will run the Phase Scheduling Tool to determine how long it will take to repack all of the stations in each phase. The Phase Scheduling Tool will divide the process into a “Pre-Construction Stage” and a “Construction Stage.” Although the tool will assume that actions within a stage can occur simultaneously, it will assume that the Construction Stage cannot begin until a station has completed the Pre-Construction Stage. The Phase Scheduling Tool will account for both: (1) the time a station would need to complete the tasks required to transition if all resources are available; and (2) the estimated availability of constrained resources.

- The *Pre-Construction Stage* will consist of: (1) the time required for antenna equipment to be ordered, manufactured, and delivered; and (2) the time required for all other planning and administration activities (including zoning, administration, legal work, and pre-construction alterations to tower and transmitted equipment).
  - The Phase Scheduling Tool will assume that administration and planning will take 72 weeks for “complicated” cases, 32 weeks for other DTV stations, and 24 weeks for Class A stations.
  - The Phase Scheduling Tool will assume that it will take 24 weeks to deliver directional DTV antennas and 12 weeks to deliver non-directional and Class A antennas.
  - As a further constraint, the Phase Scheduling Tool will assume that antenna manufacturers will begin with an inventory of 20 antennas and thereafter deliver 80 per month in Year 1, 84 per month in Year 2, and 88 per month in Year 3.
- The *Construction Stage* will consist of: (1) the time for construction-related work (installation of transmitter components, combiners, RF mask filters and the transmission line to the tower base; installation of liquid cooling systems, AC power, and connection to remote control equipment and input signal connections; tower modifications; and final testing of the system); and (2) the time required by tower crews to complete installation of equipment on the tower.
  - The Phase Scheduling Tool will assume that construction related work will take 32 weeks for “complicated” cases, 24 weeks for other DTV stations, and 12 weeks for Class A stations.
  - The Phase Scheduling Tool will assume that it takes 10 days for tower work on a tower up to 499 feet, 15 days for a 500-999 foot tower, 25 days for a 1,000 to 1,999 foot tower, and 40 days for a tower more than 2000 feet. Adjustments will be made for side antennas, panels, flexible transmission lines, and installation of auxiliary antennas.
  - Tower crews are divided into three “buckets”: (1) U.S. crews capable of working on difficult sites; (2) U.S. crews capable of working on other sites; and (3) Canadian crews. Based on the record, the Bureau will assume the following crew availability:

Country	Number of Crews		
	Year 1	Year 2	Year 3
USA – Difficult Sites	25	26	27
USA – Other Sites	26	28	30
Canada	22	22	22

- The Phase Scheduling Tool will assume that where there is more than one station on a tower, construction will commence when the first station on the tower is ready to begin its construction work and the total time to complete construction for all stations on that tower is equal to (a) the time required for the most difficult station (the first station) plus (b) the sum of the time estimates for all stations other than the first station multiplied by 50 percent.
- The Phase Scheduling Tool also will assume that 75% of all stations will need to install an auxiliary antenna (requiring one additional week of tower crewtime).
- The Phase Scheduling Tool does not specifically take weather into account. The Bureau rejected requests to add flexibility into the schedule for severe weather concerns. However, the Bureau did commit to examine the output of the Phase Scheduling Tool and adjust deadlines for stations in early transition phases to accommodate weather.

Each of the 10 transition phases will begin on the date that the Commission releases its Auction Closing and Channel Reassignment Public Notice. All broadcasters can begin construction efforts at that time (and no longer will be subject to the anti-collusion rules). The Bureau affirmed that each phase will have a sequential testing period, which will be defined by a start and end date. The end date will be the phase completion date. The Bureau had proposed that each stage would have a testing period of at least four weeks. It declined to adopt this proposal as it determined that it may need to adjust the time period of a testing period to accommodate the overall transition schedule. Additionally, if a change to the transition schedule is necessary, the Bureau committed that impacted stations would only be moved to a later phase, not an earlier phase.

**Requests to Change a Station's Construction Deadline/Transition Phase**

Stations will have an opportunity to request an alternate or expanded facility. In response to commenters, the Bureau confirmed that these stations *may* request an extension of their construction deadline (and transition phase) but these stations will have a high burden of proof. In evaluating the request, the Bureau will examine the impact that granting the request will have on the transition schedule. The Bureau determined that it can rely on existing rules and procedures to respond to these requests.

**Temporary Joint and Individual Use of Channels**

Stations may—but will not be required—to request the use of temporary channels. Repacked stations may request either individual or joint use of a temporary channel. Stations must request permission to use a temporary channel by filing for a STA and detailing the specific technical parameters of the station(s) operations.

- The STA must prove that it complies with the Commission’s technical rules (including signal coverage to its community of license) and will not interfere with the transition.
- Stations may request authority to operate *individually* on a temporary channel in the new wireless band, but they must demonstrate that there is no reasonable alternative to operating in that band, obtain written consent from the wireless licensee of the channel that the broadcaster wishes to temporarily operate on, and written consent from any other wireless licensee that would otherwise be required to protect the broadcaster’s operations.

- Stations seeking *joint* temporary use of a channel must include a written authorization from the licensee of the host station in its STA request.
- Class A stations may request authority to operate under Part 73 rules that govern power levels and interference in order to jointly use a full power station's channel on a temporary basis.
- Likewise, a full power station that proposes to jointly use a Class A station's channel must comply with Part 74 rules concerning power levels and interference.

### Interim and Auxiliary Facilities

The Bureau committed to facilitating the use of interim and auxiliary facilities and equipment to ease the transition for stations. Specifically, a station may file a request for a STA to operate on its post-auction channel using an auxiliary facility prior to its construction deadline. However, such requests will be evaluated carefully and will closely consider the impact on the transition schedule and interference constraints.

If you have any questions, please contact the Wiley Rein attorney who regularly handles your FCC matters or the attorneys listed on this alert. ***However, please remember that the anti-collusion rules remain in effect. If you suspect that your question might convey bids or bidding strategies of any broadcast television station of forward auction applicant, you should first contact your designated Wiley Rein auction attorney.***

[1] *Incentive Auction Task Force and Media Bureau Adopt a Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GNDocket No. 12-268, Public Notice, 31 FCC Rcd 10802 (MB 2016).

[2] *Incentive Auction Task Force and Media Bureau Seek Comment on Post-Incentive Auction Transition Scheduling Plan*, MB Docket No. 16-306 and GNDocket No. 12-268, Public Notice, 31 FCC Rcd 10802 (MB 2016).