

ALERT

FCC Releases Rules Governing Digital Transition of Low Power Television Stations; Sets September 1, 2015 Deadline

July 19, 2011

On Friday, July 15, 2011, the Federal Communications Commission (FCC or Commission) released its Second Report and Order regarding the digital transition of low power television, television translator, television booster, and Class A television stations (collectively, "LPTV stations"). In the item, the agency established several hard deadlines. On **September 1, 2015**, all LPTV stations operating on "in-core" channels (channels 2-51) must cease analog transmissions. By **September 1, 2011**, LPTV stations currently operating on "out-of-core" channels (channels 52-69) must file displacement applications proposing operations on in-core channels and must cease all operations on channels 52-69 by **December 31, 2011**. The Commission also made amendments to the LPTV service rules both to facilitate LPTV stations' digital transitions and to address technical issues that have arisen since LPTV stations began to convert from analog to digital operations.

In-Core LPTV Digital Transition

In the Second Report and Order, the FCC took the following steps to facilitate the digital transition of in-core LPTV stations:

- *September 1, 2015 Transition Date:* As noted above, the Commission established a September 1, 2015 deadline for the termination of all analog LPTV operations. To provide LPTV broadcasters with flexibility to make their digital transition, the Commission has extended to September 1, 2015 the construction deadlines of all outstanding construction permits for digital flash-cut or digital companion channel facilities.

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(Construction permits for new digital stations will continue to receive the usual three-year construction period).

- *Last Minute Extension Requests:* In-core LPTV stations that will not be able to complete construction of their digital facilities by September 1, 2015 may request a single six-month extension of their digital construction permits to March 1, 2016. Such requests must be filed with the FCC by May 1, 2015, after which, requests for additional time will be evaluated under the Commission's tolling standards. LPTV stations granted a "last minute" extension must still terminate analog operations on September 1, 2015.
- *Consumer Education:* Given its decision to move the LPTV digital transition date from 2012 to 2015, the Commission declined to adopt specific consumer education measures at this time and indicated that the issue will be addressed in a future proceeding.
- *Surrender of Channels:* At least 30 days prior to the September 1, 2015 deadline, LPTV stations that have not already taken steps to convert to digital must notify the FCC of their decision either: (1) to "flash cut" their existing analog facility to digital or (2) to surrender their analog station license and continue operating their digital companion channel. Stations with digital companion channels may - but are not required to - surrender their analog authorizations before the September 1, 2015 deadline.
- *Timely Construction of Digital Facilities:* The FCC adopted its proposed policy that, if an entity holds a construction permit for an unbuilt analog and unbuilt digital companion channel, and the analog permit expires and is forfeited, the digital construction permit shall be forfeited notwithstanding the later expiration date on the digital construction permit. Alternatively, however, if a LPTV station completes construction of its digital facilities and begins operating those facilities and files a license application before the expiration date of the station's analog permit, the FCC will permit the station to forego construction of its unbuilt analog facility.
- *Viewer Notification:* The FCC will require LPTV stations to give notice to viewers before terminating analog operations and transitioning to digital-only operations. The agency, however, did not specify the content or timing of the required viewer notifications. LPTV stations that have the technical capacity to originate programming locally must provide on-air notices. LPTV stations that lack the ability to originate programming locally or conclude that airing of viewer notifications would pose some sort of a hardship may use alternate means to provide the required notice. LPTV stations that have already ceased analog operations do not need to provide notice to viewers.
- *Conversion of Class A Station Status:* The FCC adopted its proposal to allow 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 for the channel they choose to retain for digital operations. Under the FCC's amended rules, stations can preserve Class A status by filing a Form 302-CA either (a) to cover their flash cut construction permit or (b) to transfer their primary status from their analog facility to their digital companion channel facility.

Out-of-Core LPTV Transition

To further its goal of efficiently clearing the 700 MHz band, the FCC adopted separate rules governing LPTV stations' use of out-of-core channels 52-69:

- *December 31, 2011 Deadline to Vacate 700 MHz Band:* LPTV stations operating on out-of-core channels 52-69 must cease **all** operations (*i.e.*, analog and digital) by December 31, 2011. On December 31, 2011, all out-of-core LPTV authorizations will be cancelled; all outstanding out-of-core construction permits will be rescinded; and any pending application (analog or digital) for an out-of-core channel will be dismissed if, by September 1, 2011, the permittee has not submitted a displacement application proposing operations on an in-core channel.
- *September 1, 2011 Deadline to Seek Displacement Relief:* Out-of-core LPTV stations must file displacement applications proposing operations on in-core channels by September 1, 2011. Displacement applications filed by out-of-core LPTV stations after this date will be dismissed. Out-of-core stations that do not submit displacement applications by September 1, 2011 will be required to cease all operations on December 31, 2011, when their out-of-core authorizations will be cancelled.
- *Notification to Analog LPTV Stations:* In the Second Report and Order, the FCC revised its rules to require a primary wireless licensee in the 700 MHz band to notify *all* affected out-of-core LPTV stations (*i.e.*, both analog and digital) of its intent to initiate or change operations. Upon receipt of such notice, an LPTV station, whether analog or digital, must cease operation of any interference-causing facility within 120 days, unless it obtains the agreement of the primary licensee to continue operations. Previously, wireless licensees were only required to provide notice to digital LPTV stations operating in the 700 MHz band.

Technical Amendments

In light of its experiences with the full-power DTV transition and LPTV broadcasters' digital transition efforts, the FCC made the following changes to its LPTV service rules:

- *Digital Power Increase in Very High Frequency (VHF) Band:* The FCC modified its rules to permit digital LPTV stations operating on VHF channels 2-13 to operate with up to 3 kW of power.
- *Dismissal of Analog Applications:* In the Second Report and Order, the Commission dismissed all unamended applications for new analog LPTV facilities that remained pending after the May 24, 2010 deadline to amend these applications to specify operation on digital facilities.
- *Ancillary and Supplementary Services:* The Commission adopted its proposal to expand the scope of its ancillary and supplementary service rules to include LPTV permittees operating pursuant to a digital Special Temporary Authorization (STA). As a result, permittees operating under a digital STA will need to file an Ancillary and Supplementary Services Report (FCC Form 317) by December 1, 2011.
- *Definition of "Minor Change:"* In the Second Report and Order, the Commission adopted its proposal to amend the definition of "minor changes" of LPTV stations and expanded the application of the "30 mile" rule to *all* LPTV modification applications, not just displacement applications. Under the amended rule, any digital LPTV modification that proposes a change in transmitter site of greater than 30 miles

(48 kilometers) from the reference coordinates of the existing station's antenna location will be considered a new proposal for a LPTV station.

- *Antenna Vertical Radiation Patterns:* The Commission amended its rules to allow applicants and permittees to submit, on a voluntary basis, actual vertical pattern relative field values. Also, licensees and permittees will be permitted to submit actual vertical patterns for their existing facilities (in order to modify the official record of their station's contour) by filing for a minor change to their existing facilities or a minor modification of their existing construction permit.
- *Full Power DTV Emission Mask:* The Commission adopted its proposal to permit LPTV applicants to use the DTV emission mask available to full power television stations to protect existing stations operating on first adjacent channels.
- *Other Matters:* At the conclusion of the item, the Commission noted and rejected a litany of commenters' proposals as beyond the scope of the proceeding. For example, the agency rejected several proposals impacting LPTV operations on channel 6, a proposal to allow LPTV stations to participate in incentive auctions, a proposal to allow LPTV stations to use the OFDM modulation standard instead of the 8VSB standard, and a proposal to limit the filing of displacement applications to channels below channel 50.