

FCC Freezes Facility Modifications to Full Power and Class A Stations

April 5, 2013

On April 5, 2013, the Media Bureau (Bureau) issued a Public Notice announcing that it is freezing most facility modifications for full power and Class A stations in preparation for the broadcast incentive auction. The freeze applies both to new and pending applications.

Beginning immediately and until further notice, the Bureau will not process modification applications seeking changes that would increase the service area of a full power or Class A television station. The Bureau also will not accept Class A displacement applications that would increase the station's protected contour, although Class As may continue to file minor change applications to implement the digital transition.

The Bureau will continue to process pending modification applications that do not increase a full power station's noise-limited contour or a Class A station's protected contour beyond the parameters specified in the station's authorization. Licensees with pending applications that do not comply with this limitation have 60 days in which to file amendments or request a waiver. Waiver requests will be considered on a case-by-case basis upon a public interest and good cause showing. Pending, non-complying applications that are not amended will be processed after the Federal Communications Commission (Commission) releases a Report & Order in the Incentive Auction rulemaking proceeding, subject to the rules and policies adopted therein.

The Bureau explained that the freeze is necessary in order to implement the Spectrum Act and ensure a "stable database of full power and Class A broadcast facilities" while it continues to develop and analyze potential repacking methodologies. The Bureau noted

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that, because the decision to impose the freeze is procedural in nature, it is not subject to the Administrative Procedure Act's notice and comment requirements.

The Bureau also reminded stations that the Commission has interpreted Section 6403(b)(2) of the Spectrum Act to require re-packing protection only for those facilities licensed, or with an application to cover already on file, as of February 22, 2012.¹ Facilities not covered by Section 6403(b)(2) will be preserved in the repacking process only to the extent decided by the Commission in the Incentive Auction rulemaking proceeding. Accordingly, the Bureau cautioned licensees with non-covered facilities to proceed cautiously before making any additional investments. The Bureau also encouraged licensees with non-covered facilities to file modification applications seeking to revert those facilities "to the service area resulting from the station's licensed facilities as of February 22, 2012." If a permittee of a non-covered facility fails to file for this modification, the Commission will determine in the Incentive Auction rulemaking proceeding what protection to extend to the non-covered facility.

¹ The Bureau did acknowledge, however, that the Commission "did not interpret Section 6403(b)(2) as prohibiting it from granting protection to additional facilities where appropriate."