

FCC Sets Deadlines for LPTV, TV Translator and Class A Stations to Convert to Digital - And Gives Hints When Television Spectrum May Be Reclaimed for Broadband

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The deadlines for the **digital conversion of LPTV stations, TV translators and Class A TV stations** were announced on Friday, in [an Order](#) where the FCC also provided some indication of their expected timetable for the reclamation of some of the television spectrum for broadband use – and that expectation is nowhere near as aggressive as originally announced two years ago in the FCC's Broadband Report. The digital conversion of LPTV and translator stations will happen by September 1, 2015. The FCC also ordered an earlier December 31, 2011 deadline for the digital conversion and clearing of the reclaimed spectrum by those stations still operating in parts of the former television band (Channels 52 through 69) that have already been reclaimed and mostly auctioned for wireless uses. The digital conversion of Class A stations and other operational issues were also discussed in the order. The details of the order may also reveal the Commission's thinking on the [proposed reclamation of other portions of the TV spectrum for broadband use](#), and of the [use of Channels 5 and 6 for radio](#). Details on the deadlines and other actions by the FCC in this order are set out below.

Conversion Deadline and Process for Stations in Core TV Band

LPTV, translator and Class A stations (referred to in the rest of this article simply as "LPTV stations" except with respect to the specific Class A rules discussed below) will have a hard **deadline for digital conversion of September 1, 2015**. As of that date, all analog television operations in the US will cease. If LPTV stations do not already have a construction permit authorizing digital operations, **they must file for such a permit by May 1, 2015**. All existing construction permits for a digital flash-cut on the LPTV station's current channel are automatically extended by this Order until the September 15, 2015 deadline. **This does not extend outstanding construction permits for digital companion channels**. Extensions of those permits must be requested by the permittee.

Any new construction permit for a flash cut or a companion channel will have a deadline of September 1, 2015. The FCC did recognize that there might be reasons why a station can't meet that deadline, and allowed for requests for 6 month extensions of that date – but such requests must be filed by May 1, 2015. Waiver grounds would include unforeseeable events and financial hardship. Extensions would only be granted until May 1, 2016 for the construction of digital facilities. However, **stations receiving such an extension will still need to terminate their analog operations by September 1, 2015**. They cannot continue to operate in analog during this extended construction period. While the FCC recognizes that there may be circumstances that arise that delay construction after May 1, 2015, any extension request filed after that May 1, 2015 deadline will only be granted by meeting the stricter tolling provisions normally applied to construction permits – justifying extensions only for Acts of God, administrative or judicial review of the FCC authorization, judicial review of zoning or other land use affecting the construction of the station, the need for international coordination of the construction of a station, or the bankruptcy of a licensee. Such extensions are granted only for the length of the matter causing the delay – and also will not alter the September 1, 2015 analog termination date.

The FCC rejected proposals that would have set the analog termination date based on when the FCC finally determined a plan for repacking TV stations to clear some of the television spectrum for broadband. As such a clearing would require the "repacking" of full-power stations, potentially affecting the channels used by LPTV stations; this was not felt to be enough of a burden to justify a further delay in the digital transition. The FCC recognized that setting this hard deadline could require some LPTV stations to have to change channels again after any such repacking. However, the Commission felt that the statute governing the digital TV transition requires hard deadline, not one that might float indefinitely. The FCC stated that it hoped that, by 2015, there will be sufficient information available about any spectrum repacking that LPTV stations will have a good idea about potential channel availability. The Commission also noted that this date would give stations time to get over the current economic climate, so as to be able to raise the money to finance the conversion. The Order notes that NTIA still has over \$30,000,000 available to assist qualifying rural stations make this conversion. While the authority to spend that money runs out in 2012, the FCC urged NTIA to request that Congress extend that deadline.

Out of Core Stations

There are still some LPTV stations operating in parts of the television band already reclaimed for wireless uses – spectrum which has, for the most part, already been auctioned off. The FCC already has in place a policy requiring that LPTV stations vacate this spectrum within 120 days when a wireless user indicates plans to activate its use of the channels. In this order, **the FCC has decided to require that LPTV stations operating on channels 52-69 vacate those channels by December 1, 2011 – less than 6 months from now.** The FCC justifies this incredibly fast deadline by pointing to letter that was sent by the FCC's Media Bureau, Video Division to such stations since January 1, 2010, warning such stations that the need to vacate the channel was imminent. The Commission also cited warnings in other previous orders (as well as the Notice of Proposed Rulemaking in this proceeding). The FCC notes that there are about 600 stations that continue to operate outside the TV core band, and about half of these have already filed applications seeking a construction permit for a core channel.

Any station that operates outside the core that does not already have a construction permit for a core band operation **must file for a construction permit for the core band by September 1, 2011.** The FCC states that there will be no hardship extensions of the December 31 deadline – meaning that such stations must terminate operations no later than December 31 of this year no matter what. However, any construction permit for digital operations that is granted to these stations will have an expiration date of September 2015, so a station receiving a construction permit later this year that does not have time to construct by the end of the year can temporarily terminate operations and sign on in digital after the December 31 deadline. The Commission notes, however, that the Communications Act requires that stations that sign off the air be back in operation within a year, or they will have their licenses canceled (unless they can present a compelling showing that the public interest justifies a longer period of silence) - so the 2015 deadline may not be a real deadline for starting operations - December 2012 might be the real deadline for operating in digital or risking the loss of their license. Finally, the **FCC warns applicants against specifying operations on Channel 51**, as there is a pending petition by CTIA (the wireless telecommunication association) asking that all TV operations on Channel 51 be frozen because of possible interference to wireless operators on what was channel 52.

The FCC notes that stations in this band may end up having to pursue multiple displacement applications as they won't have benefit of any repacking plan for full power stations when they make their decision to move later this year. But the FCC decided that it was time to clear these stations off the spectrum that has already been claimed for wireless uses – rejecting claims by Public TV groups and others that this

transition is too soon - citing public TV funding cycles, the practical difficulties in constructing (e.g. equipment delivery, tower crews, etc.) so expeditiously, and worries about FCC delays in processing construction permit applications authorizing in-core operations. The FCC's sole bone thrown to these groups was to direct the Media Bureau to expedite action on construction permit applications, or to issue emergency STAs to allow these stations to operate to some degree in the core while their applications were being processed.

New Stations

One other class of station was mentioned in the order – new stations. For permittees that have construction permits authorizing new stations with both analog and digital channels, the **new station must be on air by the construction permit deadline for the analog operation**. There is no automatic extension of these construction permits. The FCC felt that any longer extension would be giving these new stations an opportunity not granted to other new licensees – a longer construction period than is usually permitted. However, these stations can construct their digital facilities and forego construction of their analog stations – just as long as the digital operation is up and operating by the construction permit deadline of analog permit.

Class A Stations

Class A television stations have a protected status that LPTV and TV translators do not have, i.e. they cannot be displaced by full-power stations or other primary spectrum users. There has long been a question of how the Class A designation (which was assigned in a one-time window almost a decade ago) could be transferred from a Class A station's analog channel to its digital channel. The FCC stated that, for those Class A stations that have already flash cut to digital, their Class A designation will automatically follow the license to the digital operation. If stations plan to flash cut to digital in the future, the designation will go with the license at the time of the flash cut.

For those Class A stations with a digital companion channel, the process is minimally more complicated, as such stations must file a Form 302, Application for a License, to transfer the Class A status to the digital channel. The Commission makes it sound as if this will be a simple process, granted routinely to transfer the Class A status to the digital channel.

Other issues

The FCC also decided several other issues related to the Digital conversion of these stations. The Commission decided that power could be increased on stations operating in the VHF band from the 300 watts now authorized to 3000 watts in order to overcome the interference that has plagued stations on that portion of the band.

NPR and others had requested that LPTV stations not be able to use channel 6, as it has the potential to interfere with noncommercial radio stations at the lower reserved end of the FM band. Others have requested that these channels be reallocated for radio use. The FCC has rejected this proposal – apparently deciding to maintain this channel for TV use for the foreseeable future. The FCC did note, however, that LPTV stations, as secondary stations, must protect full-power FM operations in the noncommercial band. That question has come up from time to time in the past without a clear answer.

There was also a question of what to do with pending applications for new LPTV stations. In May 2010, these applicants were given 60 days to file amendments to convert their applications to digital. The Commission never took any action against those applicants who did not file the required amendments. In this Order, the FCC decided to dismiss all remaining analog applications who did not follow the May 2010 order.

Questions were also raised about notice required before digital transition, to educate the public about the conversion. The FCC said that it would address consumer education issues later – closer to the 2015 deadline. Questions to be considered include what notice is necessary as the digital transition has principally occurred with full-power stations. The FCC recognizes that the public will need to be reminded to re-scan their digital receivers to find the stations on their new channels when stations make a change in channels before the 2015 deadline. A question unique to these stations is that many stations, particularly translators, don't originate programs, so how can they provide notice to viewers?

Stations making a conversion between now and 2015 must give the FCC 30 days notice before any flash cut or to surrender of an analog license. Unlike in the full-power transition there is no need for stations to make a public interest showing of their need to convert early. As so much of the transition has already occurred, the FCC did not see any need to slow any stations intent to convert before 2015. However, if they do terminate analog operations before 2015, they must warn consumers about the conversion, by broadcasting prior notices at times when most people are watching the station. If the station has no origination capabilities – and it would be a hardship to come up with such origination capabilities – the station needs to come up with other ways of notifying its community of the conversion, whether it be through the primary station or through some other method (e.g. newspaper publication).

A number of technical changes in LPTV operations were also authorized. The **FCC modified the definition of a minor change in an LPTV station's facilities** - limiting such status to any change where the proposed transmitter site has not been moved more than 30 miles from reference coordinates of current principal community. This limit applies to station moves, even if the previously used contour overlap methodology would have allowed move of a greater distance. The FCC noted that it would entertain waivers of this 30 mile limit, and clarified that the contours of the current and proposed facilities must overlap - the 30 mile rule does not permit a move of that magnitude unless these contours overlap. Changes were also made in rules dealing with the submission of **antenna vertical patterns**, and the use of **full-power television station's emission mask** to compute interference.

Finally, beginning December 1 of this year, **LPTV stations operating any ancillary nonbroadcast service using their digital channel must pay the same 5% fee paid by full-power stations.**

Conclusion and Implications

The decisions made here preview many of the decisions that the FCC may make in other proceedings brought about by the portions of the digital conversion that has already occurred. Various proposals are pending to allow channels 5 and 6 to be used for radio. Given the decision on the proposals to restrict the use of channel 6 that were rejected by the FCC in this order, it appears that the broader proposals for the use of these channels for radio are on hold while the FCC considers spectrum repacking issues as part of the proposed reclamation of parts of the television band for wireless broadband use.

The issue of use of Channel 6 LPTV stations for radio-like uses also seems to have been resolved by this Order. The audio from these stations can only be received on FM radio receivers when they are operating in an analog mode. Some had argued that there should be some degree of analog operations allowed after the LPTV digital transition ends, to allow these audio operations to continue. The Order does not appear to make any provision for such carry-over analog operations - so these quasi-FM stations may well be out of the audio business by September 2015.

Finally, the Order implies that any repacking of the television spectrum will not be completed by 2015. This is far after the 2012 reclamation that the Commission suggested in their Broadband Report. Now, it appears that the FCC does not expect that it will have identified the final channels on which television stations will operate after any repacking until some point after 2015. This may well reflect realities - as Congress has not yet authorized the incentive auctions that make the reclamation possible by sharing some auction revenue with television stations to convince some to give up their licenses to clear spectrum. Once that Congressional authorization comes, the Commission must finalize its repacking plan which, while the process has begun, will still not be easy to fully implement. So this realization that spectrum repacking will not be complete by 2015 seems to reflect reality.

This Order is, of course, subject to reconsideration and appeal. Look for some parties to seek such review of many of the more controversial issues decided here. Like the full-power transition, this will not be a quick and easy process.