FCC Releases Proposed Television Repack Transition Plan

September 30, 2016

On September 30, 2016, 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 seeking comment on its proposed process for determining the schedule for the post-auction repack of broadcast television stations. Comments on the proposed scheduling plan are due on October 31, 2016 and reply comments are due on November 15, 2016.

The Media Bureau’s proposal includes two essential elements: (1) a Phase Assignment Tool, which will assign stations to one of up to 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.

As soon as the final stage rule has been satisfied, the FCC will know that the auction is closing during that stage. Accordingly, the Bureau will determine the final television channel assignment plan at that time (while the forward auction remains in progress). Once the channel assignment plan is complete, the FCC will send confidential letters to each eligible station that will remain on the air after the auction identifying the station’s post-auction channel assignment, technical parameters, and assigned transition phase. Although stations presumably can use this information to begin their transition planning, they will remain subject to the anti-collusion rules, which prohibit them from sharing information with other broadcasters, forward auction applicants, and, perhaps, even their attorneys and consulting engineers.

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). Each phase will have a designated testing period, when broadcasters can commence use of their new facilities for testing purposes. The testing period for Phase 1
will begin sometime after all stations going off air have relinquished their licenses. Once the testing period for Phase 1 is complete, the testing period for Phase 2 will begin, and so on. At the end of each testing period, stations in that phase will be required to cease broadcasting on their pre-auction channels. The chart below illustrates the Bureau’s proposed transition timeline.

The Commission is proposing to use a Phase Assignment Tool to group stations together to support a managed transition process. In assigning stations to phases, the Bureau is proposing to follow the following constraints:

- 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 has not proposed an aggregate cap on the amount of new interference a station could receive during the transition.

- No stations in Canada will be assigned to transition before the third transition phase, and no Canadian stations will be assigned to a temporary channel.

- There will be no more than 10 transition phases.

- No U.S. stations will be assigned a temporary channel. However, the Public Notice asks whether U.S. stations that are part of “complex dependencies” (where several stations cannot transition until others are complete) and that operate at relatively low power (such as Class A stations) should be assigned temporary channels in close proximity to their ultimate post-auction channel assignments. The Public Notice also seeks comment on related issues if transition channels are used, including whether such
channels should have must-carry rights and whether temporary channels in the 600 MHz band should be protected from inter-service interference. The Bureau notes that MVPDs will be reimbursed for any expenses relating to carriage of stations on temporary channels.

- 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.

Once those constraints have been satisfied, the Commission will then apply the following objectives, in sequential order, to optimize phase assignments:

- U.S. stations whose pre-auction channels are in the 600 MHz band should be assigned to earlier phases to clear the 600 MHz band as quickly as 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.

Once the Commission has assigned each station to a phase, the agency proposes to run a 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 transmitter 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.
FCC Releases Proposed Television Repack Transition Plan

- 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.

- The Bureau is proposing to divide tower crews 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 is proposing to assume the following crew availability:

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of Crews</th>
<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>USA – Difficult Sites</td>
<td>25</td>
<td>26</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>USA – Other Sites</td>
<td>26</td>
<td>28</td>
<td>30</td>
<td></td>
</tr>
<tr>
<td>Canada</td>
<td>22</td>
<td>22</td>
<td>22</td>
<td></td>
</tr>
</tbody>
</table>

- The Phase Scheduling Tool will assume that where there is more than one station on a tower, the total time required will be the time for the most difficult station plus 10% for the second station and 5% for each additional station, up to 30%.

- 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 crew time).

The Public Notice seeks comment on several additional issues related to the transition.

First, the Bureau proposes to consider concerns raised by individual stations about their deadlines based on existing rules and procedures, but seeks comment on whether to establish an alternate process or to waive any rules or procedures.
Second, the Bureau proposes to view favorably requests for expanded facilities that are otherwise compliant with the FCC’s rules and will have little or no impact on the phase assignments or transition schedule. In contrast, the Bureau proposes to view unfavorably requests that may delay or disrupt the transition (such as by causing interference in excess of two percent to another station, creating additional linked-station sets, necessitating a move to a different transition phase, or causing a drain on transition resources).

If you have any questions or would like to file comments in response to the Public Notice, 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.