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Focusing On The Fine Points

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With the major DTV rulemaking proceedings out of the way, the Commission has been working on fine-tuning the remaining DTV Transition issues as they crop up.

Most significantly, at the end of May the FCC lifted the freeze, in place since 2004, on maximization applications and channel change requests. The Commission had imposed the freeze on these filings to simplify the process of finalizing the post-transition DTV Table. With the final DTV table of allotments now largely set in stone (not counting a relatively small handful of special cases), the Commission opened a window from May 30 - June 20 for the submission of applications and petitions for rulemaking. These could include maximization applications (to expand beyond a station's original replication facilities) and even DTV channel change proposals.

All applications and petitions filed during this window will be reviewed to determine preliminarily if there are any timely-filed conflicting proposals. If a proposal is not subject to any conflicts, the proposal will presumably be granted promptly, to permit the station to effectuate the changes in advance of the February, 2009, transition deadline.

If the Commission does identify one or more conflicting proposals, the Commission will go ahead and grant all the conflicting proposals, with the condition that the parties resolve their conflicts within 30 days. If the parties cannot resolve the conflicts, then the Commission will dismiss the conflicting authorizations, and require the parties to re-file. Applications filed (or re-filed) after June 20 are to be processed on a first-come, first-served basis.

The FCC warned parties that they could not rely on these submissions for seeking extension of the February 17, 2009, transition deadline. We expect to have, in the very near future, information about the number of mutually-exclusive proposals identified by the FCC, and we will provide an update on our blog (www.commlawblog.com) to pass along important information released by the Commission.

When it lifted the freeze on full-service modifications, the Commission also included language suggesting that the freeze on Class A TV stations may be lifted in the near future.

The Commission has also released a public notice reminding the public and TV broadcasters that the Second Quarter Consumer Education Initiative Reports (Form 388) are due no later than July 10, 2008. When the Commission first imposed the Form 388 requirement in April, it required the form to be filed through ECFS as, in effect, a rulemaking comment. Perhaps recognizing that such a report might better be filed like most other reports – *i.e.*, through CDBS – the Commission has now created a Form 388 in CDBS, and has ordered reporting broadcasters to file through CDBS from here on out.

Lastly, the Commission has issued an Order on Clarification relating to two aspects of its December, 2007, Report and Order. First, the Commission clarified that certain announcements made to the public over television stations relating to the early termination of analog facilities, or the extension of time to construct post-transition facilities, may be combined into a single spot, rather than aired as separate spots, to satisfy the Commission's requirements. The Commission also clarified that licensees do not have to update their Event Information Table on a real-time basis when circumstances change the program line-up. The new PSIP standard became effective May 29, 2008, and the Commission left open the possibility of changing the real-time requirements should the PSIP standard change in the future.

These various tweaks are to be expected as the Commission wraps up the broad strokes of the DTV transition and sets to work on various details. We can expect more of the same during the remaining seven-month countdown to transition. We will keep you updated with these changes as they occur. Always check our blog for late-breaking information.