



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 11-1428
Released: August 22, 2011

**GENERAL FREEZE ON THE FILING AND PROCESSING OF APPLICATIONS
FOR CHANNEL 51
EFFECTIVE IMMEDIATELY
AND
SIXTY (60) DAY AMENDMENT WINDOW FOR PENDING CHANNEL 51
LOW POWER TELEVISION, TV TRANSLATOR AND CLASS A APPLICATIONS**

On March 15, 2011, CTIA - the Wireless Association (CTIA) and the Rural Cellular Association (RCA) (referred to jointly as the Petitioners) submitted a "Petition For Rulemaking and Request for Licensing Freezes" wherein they urged the Commission to "promote deployment of wireless broadband services in the Lower 700 MHz A Block (A Block) by taking action to prevent further interference caused by TV broadcast stations on channel 51."¹ The Petitioners ask that the Commission: "(1) revise its rules to prohibit future licensing of TV broadcast stations on channel 51, (2) implement freezes, effective immediately, on the acceptance, processing and grant of applications for new or modified broadcast facilities seeking to operate on channel 51, and (3) accelerate clearance of channel 51 where incumbent channel 51 broadcasters reach voluntary agreements to relocate to an alternate channel."²

As described in further detail below, in this Public Notice, the Media Bureau: (1) announces a general freeze, effectively immediately, on the filing of new applications on channel 51 and the processing of pending applications on channel 51; (2) lifts the existing freeze as applied to, and will accept, petitions for rulemaking filed by full power television stations seeking to relocate from channel 51 pursuant to a voluntary relocation agreement; and (3) opens a 60-day window for parties with pending low power television station applications on channel 51 to amend their applications to request an alternate channel assignment.

Channel 51 Application Freeze

To permit the Commission to evaluate the matters raised in the Petition, the Media Bureau announces a freeze, effective immediately, on the filing of: (1) applications for low power television, TV translator, replacement translators, and Class A television³ facilities on channel 51, including flash-cut, digital companion channels, and displacement applications on this channel; and (2) applications for minor

¹ See Petition for Rulemaking and Request for Licensing Freezes by CTIA –the Wireless Association and Rural Cellular Association, filed March 15, 2011 (Petition) at 1. The Media Bureau sought initial comment on the Petition. See Media Bureau Seeks Comment on a Petition for Rulemaking and Request for Licensing Freezes," *Public Notice*, DA 11-562, RM 11626, released March 28, 2011.

² Petition at 1.

³ In this Public Notice, low power television stations (LPTV), TV translators, replacement translators, and Class A TV stations are referred to collectively as "low power television stations."

change for low power and full power television stations on channel 51.⁴ We take this action to preserve the status quo and to ensure that new applications are not filed in anticipation of the future limitations proposed in the Petition.

We agree with the Petitioners that the freeze is “consistent with the Commission's prior spectrum rulemaking proceedings, and past precedent clearly supports the Commission's authority to adopt immediate freezes pending the outcome of rulemaking changes.”⁵ As the Petitioners point out, in numerous other proceedings, the Commission has determined that, where a change in license service rules or spectrum allocations was contemplated, it would serve the public interest to cease accepting and processing applications for operation in such spectrum.⁶ We agree that freezing the acceptance of channel 51 applications will “stabilize the channel 51 environment” and “create the necessary conditions” to allow the Commission to consider the matters raised in the Petition in an “effective, efficient and meaningful manner.”⁷

The freeze imposed herein is temporary while we consider the issues raised by the Petitioners and affects only the submission of applications for new or modified facilities. It does not affect existing full power or low power television stations on channel 51. Those stations may continue to operate and/or construct previously-authorized facilities. As further explained below, during the freeze, the Commission will continue to accept applications for minor modification where the applicant can demonstrate that waiver of the freeze is necessary to permit the station to make changes to its existing facility for technical or other reasons to maintain quality service to the public. Therefore, stations needing to make critical modifications to their operating facilities will not be foreclosed from doing so.

During the freeze, the Commission will not accept any applications for new low or full power television facilities on channel 51.⁸ The Media Bureau will consider, on a case-by-case basis, requests for

⁴ The Media Bureau has frozen acceptance of petitions for rulemaking filed by full power television stations seeking to change channels, including channel 51. See “Freeze on the Filing of Petitions for Digital Channel Substitutions, Effective Immediately,” *Public Notice*, DA 11-959, released May 31, 2011. The filing of petitions for rulemaking for new digital full power television stations, including those for channel 51, is frozen as well. See “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,” *Public Notice*, 19 FCC Rcd 14810 (MB 2004) (*2004 Digital Freeze PN*). Therefore, there can be no petitions for rulemaking filed for new channel 51 allotments. In addition, the Media Bureau does not currently accept any applications for major changes to existing analog and digital LPTV and TV translator facilities. See “Freeze on the Filing of Applications for New Digital Low Power Television and TV Translator Stations,” *Public Notice*, 25 FCC Rcd 15120 (MB 2010).

⁵ Petition at 12. See, e.g., Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Further Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 25 FCC Rcd 13833 (2010); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *First Report and Order*, 11 FCC Rcd 16570, ¶2 (1996); and Implementation of Sections 3(n) and 332 of the Communications Act, *Third Report and Order*, 9 FCC Rcd 7988, ¶¶107-108 (1994).

⁶ Petition at 12.

⁷ CTIA Comments at 4 citing Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 Bands, *Memorandum Opinion and Order*, 12 FCC Rcd 2910, 2915 at ¶ 10 (1997) (*39 GHz Freeze Order*) (“It is well established that the Commission may initiate a freeze without prior notice and hearing when the purpose is, as here, the creation of conditions under which formal rulemaking proceedings can be held in an effective, efficient and meaningful manner.”) (*citing Kessler v. FCC*, 326 F.2d 673, 679-81 (D.C. Cir. 1963) (*Kessler*)).

⁸ We note that WFXG-DT, Augusta, Georgia, was allotted channel 51 as its post-transition DTV channel and has been operating a licensed facility on that channel since 2006. In 2008, Southern Media Holdings, Inc. (SMH), the licensee of the station, filed a petition for rulemaking requesting the substitution of channel 31 for channel 51, and the Commission granted that petition. See *Report and Order*, MB Docket No. 08-103, 23 FCC Rcd 18020 (Video Division 2008). SMH later decided it could not afford to construct a new channel 31 facility and filed a petition for

waiver of this freeze when an application for modification of an existing low or full power television facility is necessary or otherwise in the public interest for technical or other reasons to maintain quality service to the public, such as when facilities are damaged or otherwise must be replaced; zoning restrictions preclude tower construction at a particular site; or unforeseen events, such as extreme weather events or other extraordinary circumstances, require relocation to a new tower site. Such applications will be eligible for a waiver of the freeze only when the facilities proposed therein do not expand the station's existing coverage area and merely propose to replace existing service. Specifically, full power television modification applications will not be eligible for a waiver of the freeze if they would increase a station's DTV service area in one or more directions beyond the combined area resulting from the station's parameters as defined in the following: (1) the Post-Transition DTV Table of Allotments; (2) Commission authorizations (license and/or construction permit); and (3) applications on file with the Commission prior to implementation of the freeze.⁹ We will not accept low power television modification applications that would increase the station's protected service contour. We will consider waivers of the freeze for applications that propose an expansion of service where the applicant can show that some expansion of service is necessary in order to preserve existing coverage or quality of service. As with any request for waiver of our rules, we will only grant a request for waiver of the freeze upon a showing of special circumstances warranting a deviation from the freeze and when grant of the waiver will serve the public interest.¹⁰

The decision to impose this freeze is procedural in nature, and therefore the freeze is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.¹¹ Moreover, we find that there is good cause for not delaying the effect of the freeze until 30 days after publication in the Federal Register. Such a delay would be impractical, unnecessary, and contrary to the public interest because it would undercut the purposes of the freeze.¹²

To facilitate the clearing of channel 51, however, we hereby lift the current freeze as applied to, and will accept, petitions for rulemaking filed by full power television stations seeking to relocate from channel 51 pursuant to a voluntary relocation agreement.

Channel 51 Application Amendment Window

So that "any party with a pending application for Channel 51 operation at the time of the freezes . . . [is] given an opportunity to amend their applications to request an alternate channel assignment,"¹³ the Media Bureau announces that applicants for low power television facilities on channel 51, including digital flash cut, digital companion channels, and displacement, must submit an amendment to their

rulemaking to change its allotment back to channel 51. *See Notice of Proposed Rulemaking*, MB Docket No. 11-54, 26 FCC Rcd 3870 (Video Division 2011). If the Commission approves SMH's petition, it will be permitted to file a minor change application to implement the channel substitution for WFXG-DT.

⁹ This was the approach used by the Commission during the freeze on so-called "expansion applications" in place from 2004 to 2008. *See 2004 Digital Freeze PN*, 19 FCC Rcd at 14810.

¹⁰ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969).

¹¹ *See* 5 U.S.C. § 553(b)(A), (d); *see also Neighborhood TV Co. v. FCC*, 742 F.2d 629, 637-38 (D.C. Cir. 1984) (holding that the Commission's filing freeze is a procedural rule not subject to the notice and comment requirements of the Administrative Procedure Act); *Buckeye Cablevision, Inc. v. United States*, 438 F.2d 948, 952-53 (6th Cir. 1971); *Kessler* at 680-82.

¹² *See* 5 U.S.C. § 553(b)(B), (d)(3).

¹³ Petition at 12 and n.30.

pending application to specify another permissible channel below 51 within sixty (60) days of the release date of this Public Notice.¹⁴ For the reasons set forth below, we will also apply the freeze to processing of any pending low power television applications for facilities on channel 51 or minor change applications on channel 51 that are not amended by the deadline established herein. We do not address herein the Petitioners' request for the Commission to "dismiss those applications that do not make this request within a specified period."¹⁵

In addition, we will not apply the freeze set forth above to applications by low power television channel 51 licensees and permittees proposing to relocate to a new operating channel below 51.

Amendments filed in response to this Public Notice will be treated as "minor changes" to the pending applications, and thus no filing fees will be required. Amendments must be filed electronically using FCC Form 346. Paper-filed amendments will not be accepted. Instructions for use of the electronic filing system are available in the CDBS User's Guide, which can be accessed from the electronic filing web site at:

<http://www.fcc.gov/mb/cdbs.html>

For assistance with electronic filing, call the Media Bureau Help Desk at (202) 418-26MB (418-2662).

For additional information or questions, please contact Hossein Hoshemzadeh (technical) or Shaun Maher (legal) of the Video Division, Media Bureau at (202) 418-1600.

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¹⁴ Appendix A includes a list of pending applications for digital low power television facilities on channel 51.

¹⁵ Petition at 12 and n.30.

**APPENDIX A
PENDING CHANNEL 51 APPLICATIONS**

| PREFIX | ARN | CH | CITY | ST | APPLICANT |
|--------|-------------|----|----------------|----|---|
| BNPDTT | 20090825BWD | 51 | MAUNA LOA | HI | HAWAII PUBLIC TELEVISION FOUNDATION |
| BNPDTL | 20090825BGD | 51 | PALM SPRINGS | CA | JOURNAL BROADCAST CORPORATION |
| BNPDTL | 20090825BYH | 51 | EVANSVILLE | IN | EICB-TV EAST, LLC |
| BNPDTL | 20090828ACX | 51 | BIRCH BAY | WA | DEEPAK VISWANATH |
| BNPDTL | 20090825BQR | 51 | MOUNTAIN VIEW | HI | RICHARD DALTON |
| BNPDTL | 20090825CBN | 51 | LAREDO | TX | MARANATHA CHURCH OF LAREDO INCORPORATED |
| BNPDTL | 20090825AQY | 51 | LA GRANGE | GA | DTV AMERICA 1, LLC |
| BNPDTL | 20090825BAJ | 51 | COLUMBUS | GA | DTV AMERICA 1, LLC |
| BNPDTL | 20100120ACS | 51 | EMPORIA | KS | EICB-TV EAST, LLC |
| BNPDTL | 20100217ABS | 51 | FAYETTEVILLE | AR | DTV AMERICA II, LLC |
| BNPDTL | 20100223ADF | 51 | GAYLORD | MI | CTB SPECTRUM SERVICES TWO, LLC |
| BNPDTL | 20100223AAE | 51 | MAPLE VALLEY | MI | CTB SPECTRUM SERVICES TWO, LLC |
| BNPDTT | 20100308AAS | 51 | LUND & PRESTON | NV | WHITE PINE TELEVISION DISTRICT #1 |
| BNPDTL | 20100223ADN | 51 | ELMHURST | MI | CTB SPECTRUM SERVICES TWO, LLC |
| BNPDTL | 20100304ABB | 51 | RANGER | TX | CTB SPECTRUM SERVICES TWO, LLC |
| BNPDTL | 20090825AAZ | 51 | COLUMBUS | GA | GEORGIA EAGLE MEDIA, INC. |
| BNPDTL | 20100407ABF | 51 | PONCE | PR | MAKO COMMUNICATIONS, LLC |
| BNPDTL | 20100318ABB | 51 | CARBONDALE | CO | PIKES PEAK TELEVISION, INC. |
| BNPDTL | 20100405AAC | 51 | OCALA | FL | FRANK DIGITAL BROADCASTING LLC |
| BNPDTL | 20100402ACX | 51 | MONTGOMERY | AL | SYNCOM MEDIA GROUP, INC. |
| BNPDTL | 20100903AAA | 51 | FRAZIER PARK | CA | IGLESIA JESUCRISTO ES MI REFUGIO, INC. |
| BNPDTL | 20100409ABQ | 51 | NORFOLK | NE | EICB-TV EAST, LLC |
| BNPDTL | 20090825BTN | 51 | PALM SPRINGS | CA | JOSE RIVERA MIRAMONTES |
| BNPDTL | 20100428ABW | 51 | DULUTH | MN | CTB SPECTRUM SERVICES TWO LLC |
| BNPDTL | 20100506ACS | 51 | MONTEREY | CA | JEFF CHANG |
| BNPDTL | 20100510ADG | 51 | EL DORADO | AR | LANDOVER 2 LLC |
| BNPDTL | 20100510ABR | 51 | HYSHAM | MT | LANDOVER 2 LLC |
| BNPDTL | 20100510ACB | 51 | VALDOSTA | GA | LANDOVER 2 LLC |
| BNPDTL | 20100510ACV | 51 | CASPER | WY | LANDOVER 2 LLC |
| BNPDTL | 20100506ACI | 51 | BELFIELD | ND | LANDOVER 2 LLC |
| BNPDTL | 20100505AHG | 51 | GREAT FALLS | MT | LANDOVER 2 LLC |
| BNPDTL | 20100505ADN | 51 | HORACE | ND | LANDOVER 2 LLC |
| BNPDTL | 20100505AEC | 51 | WATERTOWN | SD | LANDOVER 2 LLC |
| BNPDTL | 20100505ALT | 51 | VALLEY CITY | ND | LANDOVER 2 LLC |
| BNPDTL | 20100506AEC | 51 | GLENDIVE | MT | LANDOVER 2 LLC |

| PREFIX | ARN | CH | CITY | ST | APPLICANT |
|---------|-------------|----|-------------------|----|--|
| BNPDTL | 20100430ABY | 51 | YUMA | AZ | CTB SPECTRUM SERVICES FOUR LLC |
| BNPDTL | 20100505AID | 51 | GILLETTE | WY | LANDOVER 2 LLC |
| BNPDTL | 20100505AKK | 51 | ALBANY | MN | LANDOVER 2 LLC |
| BNPDTL | 20100505AJI | 51 | DEADWOOD | SD | LANDOVER 2 LLC |
| BNPDTL | 20100505AJZ | 51 | MULDROW | OK | LANDOVER 2 LLC |
| BNPDTL | 20100505AMG | 51 | BISMARCK | ND | LANDOVER 2 LLC |
| BNPDTL | 20100514AIM | 51 | WESTMORELA ND | NH | LANDOVER 2 LLC |
| BNPDTL | 20100513AEC | 51 | MAGDALENA | NM | LANDOVER 2 LLC |
| BNPDTL | 20100513ALK | 51 | GREENVILLE | FL | LANDOVER 2 LLC |
| BNPDTL | 20100510AFE | 51 | MERRILL | WI | LANDOVER 2 LLC |
| BNPDTL | 20100510AGX | 51 | AZTEC | NM | LANDOVER 2 LLC |
| BNPDTL | 20100510AGA | 51 | AUBURN | MS | LANDOVER 2 LLC |
| BNPDTL | 20100510AHT | 51 | KADOKA | SD | LANDOVER 2 LLC |
| BNPDTL | 20100510AJC | 51 | KIMBALL | SD | LANDOVER 2 LLC |
| BNPDTL | 20100510AND | 51 | DICKSON | OK | LANDOVER 2 LLC |
| BNPDTL | 20100513ABT | 51 | ELMIRA | NY | SARAH W. STOPFORD |
| BNPDTL | 20100510AKY | 51 | GERONIMO | OK | LANDOVER 2 LLC |
| BNPDTL | 20100512AHL | 51 | GOLCONDA | NV | LANDOVER 2 LLC |
| BNPDTL | 20100513ADL | 51 | WENDOVER | UT | LANDOVER 2 LLC |
| BNPDTL | 20100514ABZ | 51 | BUTTONWILLO W | CA | LANDOVER 2 LLC |
| BNPDTL | 20100514AFT | 51 | BURLINGTON | CO | LANDOVER 2 LLC |
| BNPDTL | 20100514AHB | 51 | HAYS | KS | LANDOVER 2 LLC |
| BNPDTL | 20100406ACN | 51 | ERICK | OK | CTB SPECTRUM SERVICES LLC |
| BNPDTL | 20100609AGP | 51 | MINOT | ND | LANDOVER 2 LLC |
| BNPDTL | 20100609AHT | 51 | HAMER | ID | LANDOVER 2 LLC |
| BNPDTL | 20100723AAB | 51 | GUAYNABO | PR | JULIO E. MENCHACA VALENTIN |
| BNPDTT | 20100730ADV | 51 | TECOLOTE | NM | REGENTS OF THE UNIVERSITY OF NEW MEXICO (KNMD-DT) |
| BNPDTL | 20100817AAR | 51 | REHOBOTH | DE | AIRPORT INVESTORS L.P. |
| BNPDTL | 20100913AAO | 51 | SALISBURY | MD | AIRPORT INVESTORS L.P. |
| BNPDTL | 20100728ADQ | 51 | CLEMSON | SC | GAME DAY ENTERTAINMENT, LLC |
| BNPDTT | 20100909ABM | 51 | FILLMORE, ETC. | UT | MILLARD COUNTY |
| BNPDTL | 20101004AAZ | 51 | GRAND FORKS | ND | 1. WILLIAM L. BRUGGEMAN, JR. AND RUTH J. BRUGGEMAN JWROS |
| BNPDTL | 20100514AIQ | 51 | PHILOMATH | OR | LANDOVER 2 LLC |
| BNPDTL | 20100510AAJ | 51 | YUMA | AZ | LANDOVER 2 LLC |
| BMJPDTT | 20100607AAK | 51 | BEAVER | UT | UNIVERSITY OF UTAH |
| BDISDTA | 20100913ACH | 51 | ITHICA | NY | WSYT LICENSEE L.P. |

| PREFIX | ARN | CH | CITY | ST | APPLICANT |
|---------------|-------------|-----------|------------------|-----------|---------------------------------|
| BDCCDTL | 20110127ACA | 51 | LITTELFIELD | AZ | HISPANIC CHRISTAIN COMMUNITY |
| BDISTT | 20091210AAJ | 51 | PORT TOWNSEND | WA | CW TELEVISION STATIONS, INC. |
| BMJADTL | 20100524AGP | 51 | PEACH SPRING | AZ | FIBERLESSNET, INC. |
| BDFCDTL | 20100726AAK | 51 | SAN ANTONIO | TX | MINTZ BROADCASTING |
| | | | - END- | | |