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**To: All Television Clients**

**December 31, 2008**

## **FCC Proposes New “Replacement” Digital Television Translator Service**

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The FCC recently released a Notice of Proposed Rulemaking (“NPRM”) seeking comment on the creation of a new “replacement” digital translator service to enable full-power television stations to continue to provide service to viewers within their analog coverage area who would otherwise lose over-the-air service due to the station’s digital transition.

The FCC also announced that it will begin accepting applications for replacement translators beginning January 5, 2009. Because the FCC will not process those applications until new rules have been adopted, stations may simultaneously request special temporary authority (“STA”) to operate replacement translators pending the outcome of this proceeding.

The FCC has sought comment on the following issues:

- Its tentative conclusion to limit the eligibility for replacement translators to full-power television stations that demonstrate that a portion of their analog service area will not be served by their full, post-transition digital facilities;
- Its tentative conclusion that replacement translators be licensed only on channels 2-59, and that applicants for replacement translators on those channels be required to certify to the unavailability of a suitable in-core

channel that would allow the replacement translator to produce a digital service area comparable to its associated full-power station’s analog service area;

- Its tentative conclusion that the service area of a replacement translator be limited to the demonstrated loss area of its associated full-power television station, and its tentative conclusion to allow a *de minimis* expansion of the full-power station’s service area in order to fully cover that loss area;
- Its tentative conclusion that replacement translator applications would have priority over all other low power television and TV translator applications, except displacement applications with which they would have co-equal priority;
- Its tentative conclusion that replacement translators be afforded “secondary” status such that they would not be permitted to cause interference to, and must accept interference from, full-power television stations, certain land mobile radio operations and other primary services;
- Its tentative conclusion that replacement translator licenses be associated with a full-power station’s license so that the replacement translator could



not be separately assigned or transferred; and

- Whether replacement translator stations should be afforded a construction period of only six months, rather than three years, in order to expedite construction of such facilities.

Applications and STA requests for replacement translators must include a technical showing that a portion of the main station's analog service area will not be served by its full, post-transition digital facilities and that the replacement translator will serve only the demonstrated loss area. If a station proposes a replacement translator that would expand the full-power station's service area, it must demonstrate that it is impossible to site a replacement translator that replaces the loss area without also slightly expanding the full-power station's service area.

Applicants for translators on channels 52-59 also must certify to the unavailability of any in-core channel that would enable it to produce a digital service area comparable to its associated full-power station's analog service area. These applicants must also certify that they have notified: (i) all potentially affected 700 MHz commercial wireless licenses using the proposed TV channel's spectrum and the spectrum in the first adjacent channels; and (ii) all co-channel

and first adjacent channel licensees whose geographic service area boundaries are within 75 miles and 50 miles, respectively, of the proposed replacement translator's location.

Applications will be processed on a first-come, first-served basis. The FCC proposes to allow a ten-day opportunity for mutually exclusive replacement translator applicants to settle or otherwise propose an engineering solution to resolve the mutual exclusivity. If there is no settlement or engineering solution, mutually exclusive applications will be resolved by auction.

It is anticipated that the NPRM will be published in the Federal Register on January 2, 2009. If that publication occurs as scheduled, comments in this proceeding will be due January 12, 2009, and reply comments will be due January 22, 2009.

If you have any questions concerning the filing procedures for digital replacement translators, or wish to file comments in this proceeding, please contact an attorney in our office.

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