

ALERT

FCC Adopts Procedures for Limited New Class A Television Window

December 15, 2023

On December 12, 2023, the Federal Communications Commission (FCC or Commission) released a Report and Order (Order) that adopted rules to implement the Low Power Protection Act (LPPA). The rules, consistent with the FCC's proposals in its March 2023 Notice of Proposed Rulemaking (NPRM), give a discrete group of low power television (LPTV) stations a limited window to apply for Class A status.

Congress enacted the LPPA on January 5, 2023, to provide certain LPTV stations with the opportunity to obtain a Class A designation, which entitles them to primary status and provides protection from full power station interference.

To qualify for Class A status under the statute, stations must have satisfied Class A and LPTV requirements from October 7, 2022, to January 5, 2023—the 90-day period before Congress enacted the LPPA. Stations must also demonstrate that they will not cause interference and, significantly, they must operate in a Designated Market Area (DMA) with no more than 95,000 households.

FCC Eligibility Requirements

The new FCC rules track with the guidelines from the LPPA, requiring LPTV stations seeking Class A status to certify that, between October 7, 2022, and January 5, 2023, they satisfied the following eligibility criteria:

- First, the station must have broadcast at least 18 hours per day;
- Second, the station must have broadcast three hours per week, on average, of locally produced programming (i.e.,

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programming produced “within the predicted noise-limited contour of a Class A station [or] . . . stations in a commonly owned group”); and

- Third, the station must have complied with Class A and LPTV requirements.

The FCC rules also incorporate the LPPA requirements prohibiting interference and limiting the window to stations operating in DMAs with 95,000 or fewer households, measured by Nielsen Local TV Report data (which accounts for less than 35 out of the 210 DMAs). In its interpretation of the LPPA, the FCC determined that LPTV stations that are granted Class A status will not be required to comply with the DMA threshold if the population exceeds 95,000 households because of changes beyond the station’s control. Market size changes beyond the station’s control include (1) population growth; (2) a change in DMA boundaries; or (3) the merger of a qualifying DMA into another.

Application Process

LPTV stations will have one year from the effective date of the new rules (30 days after publication in the Federal Register) to apply for a Class A license.

The FCC will consider eligible LPTV stations’ applications for Class A designation as modifications of the stations’ existing licenses. To facilitate review, the Commission will consider LPTV stations’ existing facilities only, rather than incorporating pending modifications or unbuilt construction permits.

Eligible LPTV stations must file applications online using FCC Form 2100, Schedule F. Stations must also provide documents, such as an operating schedule and list of locally produced programs, showing that they satisfy LPPA requirements. The Commission will consider, on a case-by-case basis, situations in which stations cannot apply by the deadline for reasons beyond their control.

For additional information, please contact one of the attorneys listed on this alert or the Wiley attorney who regularly handles your FCC matters.