

April 5: Deadline to File Waiver Request with the FCC for TV White Spaces Protection

By Steve J. Horvitz and Brendan Holland

March 10, 2011

The Federal Communications Commission (FCC) recently revised its “white spaces” rules, referring to the unused spectrum between television channels, to facilitate the use of unlicensed communications devices on spectrum originally allocated exclusively for broadcast television. The white spaces regulations protect incumbent licensees from potential interference created by these new unlicensed devices. In fact, the FCC has mandated that the new devices be designed to shift operation away from frequencies where they might pose an interference problem.

Under the FCC’s rules, a database will be established to catalog facilities entitled to interference protection. Unlicensed devices will be prohibited from operating on a broadcast television station’s over-the-air frequency within that station’s protected contour. In addition, the rules protect existing receive sites, such as cable headends and TV translator stations, that rely on the reception of *over-the-air* signals of broadcast television stations. These receive sites will be protected from interference if they are located within 80 kilometers (approximately 50 miles) from the edge of a television’s station’s protected contour. To secure this protection, these receive sites will need to register in a white spaces database.

FCC-authorized database administrators will eventually establish and publicize a mechanism to register appropriate receive sites. In the meantime, there is a *one-time* opportunity to seek interference protection for facilities located *outside* the standard protection zone. **Cable headends, TV translators, low power television stations, and other Multichannel Video Programming Distributor (MVPD) receive sites that are located outside a broadcast station’s standard protection zone have until April 5, 2011, to file a waiver request seeking interference protection.**

Practically speaking, the vast majority of cable headends, TV translators, and MVPD receive sites that rely on the reception of an *over-the-air* broadcast signal are located well within the broadcast station’s standard protection zone. Thus, the April 5th deadline applies only to those unique cases in which an existing *over-the-air* receive site is located more than 80 kilometers beyond the edge of the broadcast station’s protected contour.

As the filing deadline is in less than a month, we encourage potentially affected parties to promptly review their operations. Television broadcasters, who may not themselves operate a facility eligible for a waiver, should consider if there are cable headends, TV translators, or other MVPD receive sites far beyond their contour that might benefit from a waiver request. In such cases, the broadcaster should coordinate with the operators of those facilities to ensure a timely submission.

Although the FCC has so far provided little guidance regarding the expected content of a waiver request, the filing should be fairly straightforward. The waiver should describe the location of the receive site, the broadcast station that is being received, the equipment used to receive the broadcast station, and the distance involved. It should also include an explanation as to the continued need to receive the station’s over-the-air signal. Once filed, the FCC will put the waiver request out for public notice and then make a determination as to whether the request should be granted.

We can provide you with additional assistance if you have questions regarding eligibility and procedures for securing a white spaces waiver.

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.