proceeding, subject to the rules and policies adopted therein.\footnote{3}

II. Spectrum Act Preservation Mandate: We take this opportunity to remind stations that, as provided in the Spectrum Act and the NPRM, the extent to which a facility that is not covered by Section 6403(b)(2) (a “non-covered facility”) will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.\footnote{4}

For stations with non-covered authorized facilities, we take this opportunity to remind them, before additional investments are made in these non-covered facilities, that the extent to which the non-covered facility will be preserved in the repacking process will be decided by the Commission in the Incentive Auction rulemaking proceeding.\footnote{5}

Accordingly, the Media Bureau will process applications from permittees modifying their non-covered facilities to revert to the service area resulting from the station’s licensed facilities as of February 22, 2012. If a permittee of a non-covered facility fails to file for this modification, the extent of preservation of the non-covered facility will be determined by the Commission in the Incentive Auction rulemaking proceeding.

This action is taken by the Chief, Media Bureau pursuant to authority delegated by 47 CFR 0.283 of the Commission’s rules.

Federal Communications Commission.

Barbara Kreisman,
Chief, Video Division, Media Bureau.

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\footnote{3}{The decision to impose these limitations on the filing and processing of modification applications is procedural in nature, and therefore is not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. 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 v. FCC, 320 F.2d 673, 680–82 (D.C. Cir. 1963). Moreover, we find that there is good cause for not delaying the effect of these procedures 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 these procedures. See 5 U.S.C. 553(b)(B), (d)(3).}

\footnote{4}{See Spectrum Act at Sections 6403(b)(2), 6403(i)(1); NPRM, 27 FCC Rcd at 12390, 12397 paras. 98, 113.}

\footnote{5}{Id.}