

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Third Periodic Review of the	)	MB Docket No. 07-91
Commission’s Rules and Policies	)	
Affecting the Conversion	)	
To Digital Television	)	
	)	

**REPORT AND ORDER**

**Adopted: December 22, 2007  
2007**

**Released: December 31,**

By the Commission: Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell  
issuing separate statements.

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## I. INTRODUCTION

1. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals and may no longer transmit analog signals.<sup>1</sup> With this Report and Order in our third periodic review, we resolve issues necessary to complete the conversion of the nation's broadcast television system from analog to digital television ("DTV"). We conduct these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition.<sup>2</sup> In the Notice of Proposed Rulemaking in this third periodic review ("*Third DTV Periodic Review NPRM*"), we sought comment on several issues necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition (digital) facilities.<sup>3</sup> We received 125 comments, 22 reply comments, and numerous *ex parte* filings in response to the *Third DTV Periodic Review NPRM*.<sup>4</sup>

2. With the DTV transition deadline less than 14 months away, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. We want to ensure that no consumers are left behind in the DTV transition. We recognize that the transition is a complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off. Therefore, we adopt rules to offer broadcasters regulatory flexibility, while at the same time requiring broadcasters to maintain the best possible television service to the public and meet viewers' over-the-air reception expectations after the transition date.

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<sup>1</sup> See Digital Television and Public Safety Act of 2005 ("DTV Act"), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) ("DRA") (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A). DTV Act § 3002(b) directs the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)." 47 U.S.C.A. § 309 Note. DTV Act § 3005(a) also created a coupon program to subsidize the purchase of digital-to-analog ("D-to-A") converter boxes. *Id.*

<sup>2</sup> The Commission has conducted two prior periodic reviews: the first in MM Docket No. 00-39 and the second in MB Docket No. 03-15. See notes 9 and 10, *infra*.

<sup>3</sup> *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478 (2007) ("*Third DTV Periodic Review NPRM*").

<sup>4</sup> See Appendix A – List of Commenters. Comments in response to the *Third DTV Periodic Review NPRM* were due Aug. 15, 2007, and replies were due Aug. 30, 2007. See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Order Granting Extension of Time for Filing Comments and Reply Comments, 22 FCC Rcd 15046 (2007) (order granting seven-day extension of time to file comments in the proceeding).

## II. EXECUTIVE SUMMARY

3. In this Report and Order in our third periodic review, we (1) provide a progress report on the transition; (2) describe the status and readiness of stations to complete their transition; (3) adopt procedures and rule changes necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition facilities while maintaining the best possible television service to their viewers; and (4) address other issues related to the transition. Stations face many challenges in order to be ready to make their transition by the February 17, 2009 statutory transition deadline. Stations must focus their full attention on constructing their final digital facilities before they must cease analog operations. In this Report and Order, we take the following actions to facilitate the completion of the transition for full-power television stations:<sup>1</sup>

- We establish February 17, 2009 as the construction deadline for stations building digital facilities based on a new channel allotment in the post-transition DTV Table of Allotments (“DTV Table”) and accompanying Appendix B (“DTV Table Appendix B”)<sup>2</sup>, i.e., stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations. These stations will not be required to construct a digital facility on their pre-transition DTV channel and will be permitted to forego further construction to the extent such a facility has been partially built. [Section V.B.1., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(vii) in Appendix B.]
- We establish May 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. [Section V.B.2., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(v) in Appendix B.]
- We establish August 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. [Section V.B.2., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(vi) in Appendix B.]

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<sup>1</sup> We note that the statutory transition deadline applies only to full-power stations. See 47 U.S.C. §§ 309(j)(14) and 337(e). The transition timing for low power, translator and Class A stations will be addressed in a separate proceeding. See *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*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19336 ¶ 12 (2004) (“*LPTV DTV Report and Order*”).

<sup>2</sup> The details of each station’s channel assignment, including technical facilities and predicted service and interference information, are set forth in the DTV Table Appendix B. See 47 C.F.R. § 73.622(i), which codifies the post-transition DTV Table. See also *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, 22 FCC Rcd 15581 (2007) (“*Seventh Report and Order*” and “*Eighth Further Notice*”). The Commission proposed channel assignments and reference facilities for stations’ post-transition operations in a 2006 Notice of Proposed Rule Making in MB Docket No. 87-268. See also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Further Notice of Proposed Rule Making, 21 FCC Rcd 12100 (2006) (“*Seventh FNPRM*”) (setting forth a channel for each eligible broadcast TV station in the proposed new DTV Table).

- We establish February 17, 2009 as the construction deadline for stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities. [Section V.B.3., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(vii) in Appendix B.]
- We establish stricter standards for granting extensions of time to construct digital facilities for all construction deadlines on or before February 17, 2009. In addition, for construction deadlines occurring February 18, 2009 or later, we will consider such requests under the tolling standard set forth in Section 73.3598(b) of the rules. We adopt our revised FCC Form 337, as proposed. [Section V.B.5., *infra*, revised Rule 47 C.F.R. § 73.624(d)(3) in Appendix B and changes to FCC Form 337 in Appendix C.]
- We adopt FCC Form 387 and require all full-power television stations to file it by February 18, 2008, detailing their current transition status, additional steps necessary for digital-only operation upon expiration of the February 17, 2009 transition deadline, and a timeline for making those steps. Stations must update the form as events warrant and by October 20, 2008 if they have not completed construction. [Section V.A.1., *infra*, and changes to FCC Form 387 in Appendix C.]
- We will permit stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. [Section V.B.7., *infra*.]
- We will permit stations to operate their post-transition facilities, pursuant to special temporary authority (“STA”), at less than their full, authorized facilities, provided: (1) They demonstrate a unique technical challenge (as defined in Section V.B.5., *infra*) and they can serve at least 85 percent of the same population that receives their current analog TV and DTV service; or (2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein and they serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. In addition, stations must demonstrate that they do not cause impermissible interference to other stations or prevent other stations from making their transition. Finally, stations that cannot serve at least 100 percent of the same population that receives their current analog TV and DTV service must comply with a viewer notification requirement. [Section V.B.7., *infra*.]
- We clarify that, under existing rules, a station may temporarily reduce or cease service on their pre-transition analog or digital channel for a period of 30 days or less, upon notification to the Commission and without prior approval, when necessary to complete construction of the post-transition digital facility. [Section V.C.1., *infra* and revised Rule 47 C.F.R. § 73.1615.]

- We will provide stations with the flexibility to permanently reduce or terminate their analog or pre-transition digital service before the transition date, provided the station satisfies the following two requirements: (1) The station demonstrates that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and (2) The station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station. [Section V.C.2-3., *infra.*]
- To provide additional flexibility within 90 days of the February 17, 2009 transition date (*i.e.*, beginning on or after November 19, 2008), we will allow stations to permanently reduce or terminate their analog or pre-transition digital service without prior approval upon notification to the Commission 30 days prior to the planned permanent service reduction or termination. The station must still comply with a viewer notification requirement. [Section V.C.4., *infra.*]
- We will permit stations that are moving to a different DTV channel for post-transition operations to cease operations on their pre-transition digital channels and begin operating on their new channels before the transition date, provided: (1) The early transitioning stations will not cause impermissible interference to another station; and (2) The early transitioning stations continue to serve their existing viewers for the remainder of the transition and commence their full, authorized post-transition operations upon expiration of the February 17, 2009 transition deadline. [Section V.C.3.a., *infra.*]
- We will offer expedited processing of stations' applications to build their post-transition facilities, provided that their application: (1) does not seek to expand the station's facilities beyond its final DTV Table Appendix B facilities; (2) specifies facilities that are no more than five percent smaller than those specified in the post-transition DTV Table Appendix B (with respect to predicted population); and (3) is filed within 45 days of the effective date of this Report and Order. We adopt our revised FCC Forms 301 and 340, as proposed. [Section V.D., *infra* and changes to FCC Forms 301 and 340 in Appendix C.]
- We announce our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities. Until this date, we will maintain our freeze and will not accept maximization applications to expand facilities. [Section V.E., *infra.*]
- We adopt a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that will not use their pre-transition DTV channel for post-transition operation. This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears. [Section V.E., *infra.*]
- We adopt a 0.5 percent new interference standard (*i.e.*, only considering interference in addition to that contained in the post-transition DTV Table Appendix B) to apply to applications for post-transition facilities and also to future maximization

applications and applications to implement new allotments. [Section V.F., *infra* and Rule 47 C.F.R. § 73.616 in Appendix B.]

- We update the Commission’s rules to reflect the latest revisions to the ATSC standards concerning DTV transmission and PSIP. [Sections V.H.1-3., *infra* and Rule 47 C.F.R. § 73.682(d) in Appendix B.]
- We revise Section 73.624(g) to require DTV stations that are permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions to file FCC Form 317 and pay fees on any revenue derived from feeable ancillary or supplementary services in the same way required of DTV licensees. [Sections V.H.4., *infra* and Rule 47 C.F.R. § 73.882(d) in Appendix B.]
- We clarify our station identification requirements for digital stations in situations where one of a station’s multicast streams is being used to air programming provided by another broadcast station, such as a low power station, or another programming source. [Section V.H.5., *infra*.]
- We discuss MVPDs’ obligations with respect to carriage of digital stations after the transition. [Section V.G., *infra*.]

### III. BACKGROUND

4. Congress specifically requires the Commission to periodically evaluate the progress of the nation’s transition to DTV.<sup>1</sup> The Commission initiated this third DTV periodic review in April 2007.<sup>2</sup> The previous two DTV periodic reviews began in March 2000<sup>3</sup> and January 2003,<sup>4</sup> respectively. In addition to these periodic reviews, the Commission conducts the ongoing DTV proceeding, in which we recently established the DTV Table of Allotments for stations’ post-transition operations (“post-transition DTV Table”).<sup>5</sup>

<sup>1</sup> See 47 U.S.C. §336(g).

<sup>2</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9478.

<sup>3</sup> See *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Notice of Proposed Rule Making, 15 FCC Rcd 5257 (2000) (“*First DTV Periodic NPRM*”). As a result of this proceeding, the Commission made a number of determinations in furtherance of the digital transition. See *Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Report and Order, 16 FCC Rcd 5946 (2001) (“*First DTV Periodic Report and Order*”) (addressing channel election and interference protection deadlines), *on recon.*, 16 FCC Rcd 20594 (2001) (“*First DTV Periodic MO&O*”), Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978 (2002) (“*DTV Tuner Order*”) (addressing DTV receiver standards and labeling requirements). See also *Third Memorandum Opinion and Order on Reconsideration*, 17 FCC Rcd 18571 (2002) (denying a Petition for Reconsideration of the determination that DTV area expansion applications must protect certain earlier-filed NTSC applications).

<sup>4</sup> See *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Notice of Proposed Rule Making, 18 FCC Rcd 1279 (2003) (“*Second DTV Periodic NPRM*”). The Commission, among other things, determined how the channel-election process would operate and established replication and maximization deadlines. *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18281 (2004) (“*Second DTV Periodic Report and Order*”).

<sup>5</sup> See 47 C.F.R. § 73.622(i), which codifies the post-transition DTV Table. See also *Seventh Report and Order*, App. B. The Commission proposed the post-transition DTV Table in the October 2006 *Seventh Further Notice*. See *Seventh FNPRM* at App. B. The Commission established the initial DTV Table of Allotments in 1997. See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588 (1997) (“*Sixth Report and Order*”). The details of each station’s channel assignment under the initial DTV Table, including technical facilities and predicted service and

## A. DTV Transition

5. In early 2006, Congress enacted significant statutory changes to the DTV transition in the DTV Act. Most importantly, it set February 17, 2009, as the date certain for the end of the DTV transition, at which time all full-power television broadcast stations must cease their analog transmissions.<sup>6</sup> The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts.<sup>7</sup> The DTV Act also requires broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless uses.<sup>8</sup> All full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital at the end of the transition on February 17, 2009.<sup>9</sup>

6. In April 2007, the Commission initiated this third periodic review of the nation's conversion from analog to DTV broadcasting.<sup>10</sup> The Commission sought comment on a range of proposals intended to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. The Commission made a number of proposals regarding the procedures and standards applicants must follow in filing applications for facilities specified in the final, post-transition DTV Table of Allotments ("DTV Table").<sup>11</sup>

7. Development of DTV Table. In the 2004 *Second DTV Periodic Report and Order*, the Commission established a three-round channel-election process through which eligible broadcast licensees and permittees (collectively, "licensees") selected their post-transition channels inside the core TV spectrum (*i.e.*, channels 2-51).<sup>12</sup> At the start of this process, licensees proposed their post-transition facilities.<sup>13</sup> After each channel election round, the Commission announced proposed post-transition channels – called tentative channel

interference information, were set forth in the initial Appendix B of the Sixth Report and Order ("initial Appendix B"). See *Sixth Report and Order*, 12 FCC Rcd at 14693, app. B. The initial Appendix B was amended in 1998. See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (1998) ("*DTV Sixth Memorandum Opinion and Order*") and Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1998) ("*DTV Second Memorandum Opinion and Order*"). Simultaneous with the adoption of the *Sixth Report and Order*, the Commission announced DTV channel assignments for eligible licensees in the *Fifth Report and Order* in the same docket. See *Fifth Report and Order*, 12 FCC Rcd 12809, 12892, app. E (1997) ("*Fifth Report and Order*").

<sup>6</sup> 47 U.S.C. § 309(j)(14) ("A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009."). See also 47 U.S.C. § 337(e).

<sup>7</sup> Previously, 47 U.S.C. § 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline under several market-by-market criteria. 47 U.S.C. § 309(j)(14)(B)(2005). Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception. This new hard deadline obviates the need for any further discussion of how to interpret and implement the former Section 309(j)(14)(B) of the Act, an issue previously deferred by the *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18282, ¶ 6.

<sup>8</sup> See 47 U.S.C. § 337(e)(1).

<sup>9</sup> *Id.*

<sup>10</sup> See generally *Third DTV Periodic Review NPRM*, 22 FCC Rcd 9478.

<sup>11</sup> *Id.* at 9516-9519, ¶¶ 92-96.

<sup>12</sup> *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18292, ¶ 33. The Commission received 11 petitions for reconsideration of the *Second DTV Periodic Report and Order*, raising a number of issues, most of which have been rendered moot by the completion of the channel election process.

designations (“TCDs”). In order to facilitate the development of a final, post-transition DTV Table, the Media Bureau announced a freeze on the filing of certain requests for allotment or service area changes.<sup>14</sup> The Commission has maintained the filing freeze to ensure that each station has an opportunity to apply for and construct its authorized facility.<sup>15</sup>

8. The channel election process culminated in the adoption of the post-transition DTV Table in the August 2007, *Seventh Report and Order*.<sup>16</sup> The post-transition DTV Table provides eligible stations channels for post-transition operations inside the core TV spectrum and is the result of informed decisions made by eligible licensees during the Commission’s channel election process, as well as the Commission’s efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public, including service to local communities.<sup>17</sup> The post-transition DTV Table will ultimately replace the current (pre-transition) DTV Table at the end of the transition; however, we note that, in certain defined circumstances, stations may be permitted to temporarily remain on their pre-transition DTV channel after the transition date.<sup>18</sup>

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<sup>13</sup> In November 2004, licensees filed certifications via FCC Form 381 in order to define their proposed post-transition facilities. In these certifications, licensees chose whether to (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility. See Public Notice, “DTV Channel Election Information and Deadlines,” 19 FCC Rcd 19569 (MB 2004) (“*Certification Deadline PN*”). Stations that did not submit certification forms by the deadline were evaluated based on replication facilities. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18296, ¶ 41.

<sup>14</sup> See Public Notice, “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,” 19 FCC Rcd 14810, 14810-11 (MB 2004) (“*August 2004 Filing Freeze PN*”). The freeze, which was imposed on August 3, 2004 – prior to the commencement of the channel election process, precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. The freeze does not prevent the processing of pending applications. See *id.* See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

<sup>15</sup> In the *Seventh Report and Order*, we denied seven requests of stations seeking a waiver of the filing freeze, except for one station which demonstrated unique circumstances. *Seventh Report and Order*, 22 FCC Rcd at 15618-9, ¶ 90.

<sup>16</sup> *Seventh Report and Order* at apps. A and B. See also 47 C.F.R. § 73.622(i). Approximately 123 stations have filed petitions for reconsideration of the *Seventh Report and Order*, which remain pending. Most of the Petitions request changes to facilities previously certified. These requests will be addressed in a separate Order of Reconsideration after the conclusion of the period for oppositions and responses. In the *Eighth Further Notice*, which accompanied the *Seventh Report and Order*, the Commission announced TCDs for three new permittees that recently attained permittee status and also considered requests for substantive modifications to the post-transition DTV Table which were made after the close of the comment period for the *Seventh Further Notice*. Comments on these proposed changes to DTV Table in the *Eighth Further Notice* were due Oct. 10, 2007 and replies were due Oct. 25, 2007. See Public Notice, “Media Bureau Announces Comment and Reply Comment Dates for the DTV Eighth Further Notice of Proposed Rule making, MB Docket No. 87-268,” 22 FCC Rcd 16846 (2007).

<sup>17</sup> See *Seventh Report and Order*, 22 FCC Rcd at 15583, ¶ 2.

<sup>18</sup> As explained below in Section V.B.7.a., some stations will be permitted to use their pre-transition DTV channel, temporarily, after the February 17, 2009 transition date. The current NTSC Table, which is contained in 47 C.F.R. § 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease. We anticipate initiating another proceeding to address these and other “clean-up” changes to our rules to eliminate outdated references to analog and out-of-core operations. See *Seventh Report and Order*, 22 FCC Rcd at 15583, ¶1 n.1.

9. Approximately 123 Petitions for Reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle, representing approximately 200 stations, most of them requesting changes to their Appendix B facilities to accommodate their preference to use their existing analog antenna when they return to their analog channel for post-transition digital operation.<sup>19</sup> In addition, we have received several Petitions for Reconsideration filed after the 30-day statutory deadline.<sup>20</sup> Moreover, we recognize that not all stations that may want to revise their Appendix B facilities to assure that they will be permitted to continue serving their analog viewers with their post-transition digital facility have filed Petitions for Reconsideration, and that not all of those stations that have failed to file petitions can be, alternatively, fully addressed through the application process adopted in this Report and Order.<sup>21</sup> Therefore, in light of the urgent need to finalize post-transition facilities so that all full power stations can complete the transition by February 17, 2009, we delegate to the Media Bureau the authority to amend the DTV Table of Allotments and Appendix B to the DTV Table of Allotments as needed up to the full power transition deadline. Such proceedings at the Bureau level may be expedited as necessary, including being conducted without notice and comment where good cause is found because the requested change does not adversely affect any other station's post-transition operations.<sup>22</sup>

10. Reclamation of the 700 MHz Bands. As a result of the DTV transition, 108 megahertz of spectrum in the 700 MHz Band (TV Channels 52-69) will be made available for critically important public safety needs and new wireless services. In passing the DTV Act,<sup>23</sup> Congress directed the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008, and deposit the proceeds of the auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008.<sup>24</sup> Accordingly, in April 2007, we made changes to the 700 MHz band plan to enable public safety entities to use wireless broadband technology and prepare for the auction of the remaining spectrum in that band.<sup>25</sup> Furthermore, in July 2007, we specifically redesignated 10 megahertz of public safety

<sup>19</sup> We addressed and resolved 30 similar requests that were raised during the comment period for the *Seventh Report and Order*, and we will address these additional requests on reconsideration.

<sup>20</sup> 47 U.S.C. § 405 (“A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”)

<sup>21</sup> See discussion in Section V.E., *infra* (allowing expansion of facilities up to five miles if necessary to serve current analog viewers).

<sup>22</sup> See 5 U.S.C. § 553(b)(3)(B) (allowing for implementation without notice and comment if good cause exists where “notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”). Where any requested change to the Table or Appendix may affect another station's operations, we expect the Bureau to issue an NPRM and provide an opportunity for public comment. Stations should file in Docket No. 87-268 when seeking a correction to Appendix B.

<sup>23</sup> See 47 U.S.C. § 337(e)(1).

<sup>24</sup> DTV Act § 3003-4.

<sup>25</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, WT Docket No. 01-309, *Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services*, WT Docket 03-264, *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 06-169, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket No. 96-86, *Declaratory Ruling on*

700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network.<sup>26</sup> The Wireless Telecommunications Bureau has scheduled the auction of the remaining commercial spectrum of the 700 MHz Band on January 24, 2008.<sup>27</sup>

11. Prior to the DTV Act, the Commission reallocated the 700 MHz Band in separate proceedings, first for the 60 megahertz covering TV Channels 60-69 (“Upper 700 MHz Band”)<sup>28</sup> and then for the 48 megahertz covering TV Channels 52-59 (“Lower 700 MHz Band”).<sup>29</sup> In the Balanced Budget Act of 1997 (“Balanced Budget Act”),<sup>30</sup> Congress specifically directed that the allocation of the Upper 700 MHz Band include 24 megahertz of spectrum for public safety and 36 megahertz for commercial services. Accordingly, the Commission divided the Upper 700 MHz Band to include a 24-megahertz allocation for public safety use,<sup>31</sup> and a 36-megahertz allocation for commercial use, of which 6 megahertz comprised the Guard Bands spectrum.<sup>32</sup> With regard to the Lower 700 MHz Band, Congress also directed that the Commission “reclaim and organize” spectrum beyond that in the Upper 700 MHz Band, “in a manner consistent with

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*Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (2007) (“700 MHz First Report and Order”).*

<sup>26</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Second Report and Order, 22 FCC Rcd 15289 (2007) (“700 MHz Second Report and Order”).*

<sup>27</sup> See Public Notice, “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008: Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76,” AU Docket No. 07-157 (rel. Oct. 5, 2007); Public Notice, “Auction of 700 MHz Band Licenses; Revised Procedure for Auctions 73 and 76: Additional Default Payment for D Block Set at Ten Percent of Winning Bid Amount; Disputed Issues in the Negotiation of Network Sharing Agreement,” WT Docket No. 06-150, (rel. Nov. 2, 2007).

<sup>28</sup> See *Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, Report and Order, 12 FCC Rcd 22953 (1998), recon. 13 FCC Rcd 21578 (1998) (“Upper 700 MHz Reallocation Order”); Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476 (2000) (“Upper 700 MHz First Report and Order”).*

<sup>29</sup> See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (“Lower 700 MHz Report and Order”); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), GN Docket No. 01-74, Memorandum Opinion and Order, 17 FCC Rcd 11613 (2002) (“Lower 700 MHz MO&O”).*

<sup>30</sup> See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3004 (1997) (adding new § 337 of the Communications Act); Upper 700 MHz Reallocation Order, 12 FCC Rcd at 22955 ¶ 5.

<sup>31</sup> See 47 U.S.C. § 337(a) (enacted by the Balanced Budget Act of 1997 § 3004, which added new Section 337(a) and established an initial timetable for conducting auctions).

<sup>32</sup> See *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06-169 and 96-86, Notice of Proposed Rule Making, 21 FCC Rcd at 10414, ¶ 1 n.1 (2006).*

the objectives” of Section 309(j)(3) of the Act.<sup>33</sup> While Congress did not direct the amount of spectrum to be reclaimed, the Commission determined that all broadcasters using digital transmission systems could be accommodated in the core TV spectrum (*i.e.*, TV Channels 2-51). As a result, the 48 megahertz of spectrum in the Lower 700 MHz Band (698-746 MHz) would become available for new services through competitive bidding.<sup>34</sup>

## B. DTV Construction Deadlines

12. In 1997, the Commission adopted a DTV construction schedule that provided for varying construction deadlines based on the size of the market and type of station, with all stations required to construct by May 1, 2003.<sup>35</sup> In the 2004 *Second DTV Periodic Report and Order*, the Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel.<sup>36</sup> By July 1, 2005, top-four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations were to move to another channel post-transition, they were required to serve at least 100 percent of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they were to remain on their current DTV channel after the transition. If they were to move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006.<sup>37</sup> The Commission stated that stations that met the applicable “use-or-lose” deadline and that are going to move to a different channel after the transition would be permitted to carry over their authorized maximized areas to their new channels.<sup>38</sup> In addition, these “use-or-lose” replication/maximization deadlines became the new deadlines for stations operating temporary DTV facilities pursuant to STA to complete construction of their licensed DTV facilities.<sup>39</sup> Approximately 80 percent of the stations in each of these categories met their respective deadlines.<sup>40</sup>

13. In the *Second DTV Periodic Report and Order*, the Commission also noted that certain stations had not yet been granted an initial DTV construction permit. The Commission

<sup>33</sup> 47 U.S.C. § 309(j)(14)(C)(i)(II) (2005).

<sup>34</sup> See *DTV Memorandum Opinion and Order of the Sixth Report and Order*, 13 FCC Rcd at 7435-36, ¶ 42 (1998). The Commission stated that expanding the DTV core spectrum would permit recovery of 108 megahertz of spectrum at the end of the DTV transition period. *Id.* at 7436, ¶ 45. Interference protections for current channel 51 licensees and new channel 51 allotments, vis a vis Wireless Communications Service auction winners, is discussed in Section V.F. (¶ 169), *infra*.

<sup>35</sup> Under this schedule, television stations in the 10 largest TV markets and affiliated with the top four television networks (ABC, CBS, Fox, and NBC) were required to build DTV facilities by May 1, 1999. Stations affiliated with those networks in television markets 11 through 30 were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their DTV facilities by May 1, 2003. 47 C.F.R. § 73.624(d)(1).

<sup>36</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319, ¶¶ 72-87.

<sup>37</sup> *Id.* at 18314-18315, ¶ 78.

<sup>38</sup> *Id.* at 18317-18318, ¶¶ 85-86.

<sup>39</sup> In 2001, the Commission temporarily deferred (until the Second DTV Periodic Review) the establishment of construction deadlines for these stations, provided they constructed initial DTV facilities designed to serve at least their communities of license. See *First DTV Periodic MO&O*, 16 FCC Rcd at 20597-98, ¶ 10, 20603-04, ¶ 24.

<sup>40</sup> See ¶ 14, *infra*.

required that, by August 4, 2005, all such stations construct and operate “checklist” facilities that conform to the parameters of the DTV Table and other key processing requirements. The Commission stated that it would consider requests for waiver of the August 4, 2005 deadline on a case-by-case basis, using the criteria for extension of DTV construction deadlines.<sup>41</sup>

14. In 2007, the Commission in the *Construction Deadline Extension Order* and the *Use or Lose Order* addressed applications filed by stations for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called “use or lose” waivers).<sup>42</sup> In the *Construction Deadline Extension Order*, the Commission considered 145 requests for an extension of time to construct a DTV facility.<sup>43</sup> For 107 stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these applications and gave these stations until November 18, 2007,<sup>44</sup> in which to complete construction.<sup>45</sup> For 29 stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these applications and gave these stations until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction.<sup>46</sup> In the *Use or Lose Order*, the Commission considered 192 requests for waiver of the “use or lose” deadlines.<sup>47</sup> For 102 stations whose pre-transition DTV channel is the same as

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<sup>41</sup> *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18327-18328, ¶ 111. See 47 C.F.R. § 73.622(f) (2); Public Notice, “Commission Details Application Filing Procedures for Digital Television,” 1997 WL 637847 (MB rel. Oct. 16, 1997). “Checklist” facilities have power and antenna height equal to or less than those specified in the DTV Table and are located within a specified minimum distance from the reference coordinates specified in the DTV Table. Because these facilities comply with the interference requirements specified in the rules, no further consideration of interference is required. In addition, because the DTV Table was coordinated with Canada and Mexico, “checklist” facilities generally did not require further international coordination.

<sup>42</sup> See generally DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline, Order, 22 FCC Rcd 9789 (2007) (“*Construction Deadline Extension Order*”); and DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 “Use or Lose” Deadlines Requests for Waiver of the August 4, 2005 “Checklist” Deadline, Order, 22 FCC Rcd 9750 (2007) (“*Use or Lose Order*”). Three petitions for reconsideration were filed to the *Construction Deadline Extension Order* and 11 petitions for reconsideration were filed to the *Use or Lose Order*. See Public Notice, “DTV Channel Election Information and Deadlines,” 19 FCC Rcd 19569 (MB 2004) (“*Certification Deadline PN*”).

<sup>43</sup> See *Construction Deadline Extension Order*, 22 FCC Rcd at 9789-90, ¶ 1. The Commission granted 140 of these extension requests, 110 of which were to stations remaining on their current DTV channel for post-transition use. *Id.*

<sup>44</sup> November 18, 2007 is based on six months from the release date of the *Construction Deadline Extension Order* (May 18, 2007).

<sup>45</sup> See *id.* at 9792, ¶¶ 10-61.

<sup>46</sup> See *id.* at 9802-9805, Section III.B. (¶¶ 62-81). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 73, the Commission also granted CP extensions until February 17, 2009 to four stations, facing unique technical challenges (*e.g.*, side-mounted/top-mounted antenna-related issues) preventing them from completing construction of their DTV facilities. See *Construction Deadline Extension Order*, 22 FCC Rcd at 9789-90, ¶ 1 and 9805-9806 Section III.C. (¶¶ 82-87). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9508, ¶ 77, the Commission denied the extension requests of five stations: two of which met their DTV construction obligations and were permitted to continue to operate their licensed facilities, while the other three stations were admonished for failing to meet their DTV construction obligations. See *Construction Deadline Extension Order*, 22 FCC Rcd at 9806-9809, Section III.D. and E. (¶¶ 88-99).

<sup>47</sup> See *Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1. The Commission granted 185 of these “use-or-lose” waiver requests, 130 of which were to stations remaining on their current DTV channel for post-transition use. *Id.* The *Use*

the station's post-transition DTV channel, the Commission granted these stations a waiver and gave them until November 18, 2007, to meet the "use or lose" deadline.<sup>48</sup> For 38 stations whose pre-transition DTV channel is different from the station's post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction.<sup>49</sup> In both of these orders, the Commission reminded stations that the hard deadline for termination of analog TV service prevents consideration of any request for extension of full-power analog TV service beyond that date. The Commission advised stations given an extension or waiver to utilize this time to take all steps possible to complete construction as further extension or waiver requests may be evaluated under a more stringent standard.<sup>50</sup> Those stations that have a construction permit for which the original time to complete construction has not yet expired or that had their original construction permit extended to a date that has not yet expired were not addressed in the *Construction Deadline Extension Order* or *Use-or-Lose Order*. These stations were directed to continue to follow existing rules and procedures (*i.e.*, continue to build their current DTV construction permit and, if that construction permit will expire before they can complete construction, file a request to obtain Commission approval for extension of the construction permit).<sup>51</sup>

#### IV. PROGRESS REPORT

15. The transition to DTV is a complex undertaking, affecting virtually every segment of the television industry and every American who watches television. The Commission has been facilitating the transition to DTV by adopting a standard for digital broadcasting, creating an initial and post-transition DTV Table, awarding DTV licenses, establishing operating rules for the new service, monitoring the physical build-out of DTV broadcast stations, and helping to

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*or Lose Order* was adopted simultaneously with the *Construction Deadline Extension Order*.

<sup>48</sup> The Commission granted these applications an additional six months from the release date of the *Use or Lose Order* in which to complete construction. *See id.* at 9751, Section V.A. (¶¶ 10-63).

<sup>49</sup> *See id.* at 9760-9761, ¶ 64. As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 73, the Commission also granted 45 stations, facing unique technical challenges (*e.g.*, side-mounted antenna-related issues) preventing them from meeting the applicable replication/maximization requirements, "use or lose" waivers and CP extensions until February 17, 2009. *See Use or Lose Order*, 22 FCC Rcd 9751, ¶ 1 and 9764-9769, Section III.C. (¶¶ 79-115). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9507, ¶ 78, the Commission denied the "use or lose" waiver requests of seven stations. *See Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1 and 9769-9771, Section III.D. (¶¶ 116-126). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9507, ¶ 75, the Commission granted 10 stations their requests for waiver of the "checklist" deadline (the August 4, 2005 deadline established for all television stations to construct and operate "checklist" DTV facilities). *See Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1 and 9771-9772, Section III.E. (¶¶ 127-136).

<sup>50</sup> *See Construction Deadline Extension Order*, 22 FCC Rcd at 9790, ¶¶ 2-3; and *Use or Lose Order*, 22 FCC Rcd at 9752, ¶¶ 3-4.

<sup>51</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9501, ¶ 57. Since the release of the *Construction Deadline Extension* and *Use-or-Lose orders*, 83 stations have filed extension requests and 69 stations have filed for use-or-lose waivers. These numbers include requests for additional time as well as new requests filed with respect to deadlines that occurred after the Orders were drafted. The *Third DTV Periodic Review NPRM* did not require the usual reporting and progress requirements for some stations according to the rules of the *Construction Deadline Extension Order*, in light of the ongoing consideration of this Report and Order. *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9510, ¶ 77 n.142. Similarly, the *Third DTV Periodic Review NPRM* withheld admonishment of some stations under the *Use or Lose Order* pending adoption of rules in this proceeding. *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9510-11, ¶ 78.

educate consumers about the transition. At the end of the transition, television broadcast operations will be limited to the core TV spectrum.<sup>1</sup> This will enable the recovery of a total of 108 MHz of spectrum (*i.e.*, TV channels 52-69)<sup>2</sup> for critically important public safety needs and new wireless services.<sup>3</sup>

#### A. DTV Operations

16. As of December 17, 2007, 1,706 television stations in all markets (representing approximately 99 percent of all stations) have been granted a DTV construction permit (“CP”) or license. A total of 1,635 stations are now broadcasting a digital signal. Of these, 1,396 stations have authorized licensed facilities or program test authority and 239 stations are operating pursuant to STA or experimental DTV authority.<sup>4</sup>

17. In the top 30 television markets, all 119 top-four network-affiliated television stations are on the air in digital; 113 are licensed DTV facilities or program test authority and six have STAs. In markets 1-10, all 40 top-four network affiliated stations are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11-30, all 79 top-four network affiliated stations are providing DTV service, 75 with licensed DTV facilities and four with STAs.<sup>5</sup>

18. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of December 17, 2007, 1,157 of these stations (94 percent) are broadcasting a digital signal. In addition, approximately 373 NCE television stations were required to commence digital operations by May 1, 2003. As of December 17, 2007, 359 (96 percent) of these stations are broadcasting a digital signal.<sup>6</sup>

#### B. Consumer Capability to Receive DTV Signals

19. Over-the-Air Viewer Reception. As of January 1, 2007, Nielsen estimates that 36.6 million people or 13 percent of people in the United States relied only on over-the-air television.<sup>7</sup> In addition Nielsen estimates that 15.2 million households, or 14 percent of television households, watched television via an over-the-air signal only.<sup>8</sup> Nielsen predicts that by January 1, 2008, fewer people, specifically 33.6 million, or 12 percent of people in the United States, will

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<sup>1</sup> The “core spectrum” is comprised of low-VHF channels 2 to 4 (54-72 MHz) and 5 to 6 (76-88 MHz), high-VHF channels 7 to 13 (174-216 MHz) and UHF channels 14-51 (470-698 MHz), but does not include TV channel 37 (608-614 MHz), which is used for radio astronomy research. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18292, ¶ 33; *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7419, ¶ 5. See also 47 C.F.R. § 73.603(c).

<sup>2</sup> See 47 U.S.C. § 337(e)(1) (“Any full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after February 17, 2009.”).

<sup>3</sup> See ¶ 10, *supra*.

<sup>4</sup> See *Status Reports on DTV Applications and Buildout Topics*, available at <http://www.fcc.gov/mb/video/dtvstatus.html>. This data is publicly available and frequently updated.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* The commercial and NCE TV stations that have not commenced digital broadcasts were required to file a request for extension of additional time to complete construction of their DTV facilities by the deadline established for them in 47 C.F.R. § 73.624(d)(1).

<sup>7</sup> The Nielsen Company.

<sup>8</sup> *Id.*

watch television via an over-the-air signal only.<sup>9</sup> In terms of households, Nielsen estimates much fewer, 13 percent of all television households, or 14.3 million households, will be over-the-air only.<sup>10</sup>

20. The demand for DTV sets has grown with increased availability of DTV programming and receiving equipment and a steady drop in the price of such equipment. The Consumer Electronics Association (“CEA”) reports that the consumer electronics industry has invested \$66.7 billion in DTV products since 1998.<sup>11</sup> Moreover, CEA reports more than \$75 billion in consumer investment in DTV products. According to CEA, 23.9 million DTV sets and monitors were sold in 2006. CEA predicts that 29.2 million DTV products will be sold in 2007, 33.4 million in 2008, 35.2 million in 2009 and 36.4 million in 2010.<sup>12</sup> CEA estimates that total digital display unit sales will increase by 30 percent in 2007, as compared to 2006. Sales of high-definition television sets are expected to increase to 20.7 million in 2007, a significant increase from 17.3 million sold the previous year.<sup>13</sup>

21. To promote the availability of reception equipment and protect consumers by ensuring that their television sets continue to work in the digital world just as they do today, the Commission established a DTV tuner mandate, which required that all television receiver equipment (*e.g.*, TV sets (all sizes), VCRs, digital video recorders, and any other TV receiving devices) shipped in interstate commerce or imported into the United States, for sale or resale to the public, must be capable of receiving the signals of DTV broadcast stations over-the-air by March 1, 2007.<sup>14</sup>

22. In another consumer protection effort, the Commission adopted an order in April 2007, to require that, as of May 25, 2007, retailers that continue to sell analog-only television equipment provide consumers with information regarding the February 17, 2009 transition date at the point of sale of DTV television receiving equipment.<sup>15</sup> Specifically, the Commission now requires sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and, therefore, will require a converter box to receive over-the-air broadcast television after the February 17, 2009 transition date.<sup>16</sup> As we noted in this order, consumers expect that DTV television receiving equipment for

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> See *Ex Parte* Comments of CEA in MB Docket No. 03-15 (dated April 2, 2007) (“CEA *Ex Parte*”).

<sup>12</sup> *Id.*

<sup>13</sup> Consumer Electronics Association's Semi-Annual U.S. Sales and Forecasts Report, July 2007.

<sup>14</sup> 47 C.F.R. § 15.117(a). In 2002, the Commission initiated the DTV tuner mandate, with a phase-in period based on screen size to minimize the cost impact on consumers. *DTV Tuner Order*, 17 FCC Rcd at 15996 ¶ 40 (requiring that all TV receivers manufactured or shipped in the U.S. with screen sizes 13 inches and above be capable of receiving DTV signals over-the-air no later than July 1, 2007); See also *Consumer Electronics Ass'n v. F.C.C.*, 347 F.3d 291 (D.C. Cir. 2003) (upholding the *DTV Tuner Order*). In 2005, the Commission accelerated the implementation of the DTV tuner mandate to become effective on March 1, 2007 and expanded the mandate to include television sets less than 13 inches. *Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, Second Report and Order, 20 FCC Rcd 18607 (2005) (“2005 DTV Tuner Order”).

<sup>15</sup> See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Second Report and Order, 22 FCC Rcd 8776 (2007) (“*Labeling Order*”).

<sup>16</sup> Specifically, the *Labeling Order* requires that anyone that sells or offers for sale or rent television receiving equipment that does not contain a DTV tuner must display the following consumer alert, in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label,

sale today that is capable of receiving television is and will continue to be able to receive over-the-air broadcast signals, and, if not, then such material information should be disclosed prior to purchase. The successful completion of the DTV transition depends upon satisfaction of this basic consumer expectation.<sup>17</sup>

23. We also note that subsidized digital-to-analog (“D-to-A”) converter boxes will be available to eligible consumers starting January 2008, further promoting access to digital reception equipment.<sup>18</sup> This subsidy program, which was created by the DTV Act, will allow consumers with analog-only TV sets to receive over-the-air broadcast programming after the February 17, 2009 transition date, when analog broadcasting ends. Congress directed the National Telecommunications and Information Administration (“NTIA”) of the U.S. Department of Commerce to administer this subsidy program.<sup>19</sup> In March 2007, NTIA issued final rules to implement the program, which subsidizes the purchase of D-to-A converter boxes.<sup>20</sup> The Commission is working with NTIA to test the D-to-A converters for eligibility to be certified for the coupon program.

24. The Commission has also taken action to ensure that all cable subscribers, including those with analog TV sets, can view broadcast television after the DTV transition.<sup>21</sup> Approximately 35 percent of all television homes, or approximately 40 million households, are analog-only cable subscribers.<sup>22</sup>

25. In September 2007, the Commission adopted rules ensuring that the 98 million TV viewers retain the same access to their local stations after the transition as they do today.<sup>23</sup> The

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at the point of sale: “CONSUMER ALERT: This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission’s digital television website at: [www.dtv.gov](http://www.dtv.gov).” *Id.* at ¶ 14. This requirement applies to the sale or rent of such equipment via direct mail, catalog, or electronic means (*e.g.*, the Internet). *Id.*

<sup>17</sup> *Id.* at ¶ 1.

<sup>18</sup> DTV Act § 3005(c)(1)(A); 47 U.S.C.A. § 309 Note. *See Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes*, NTIA Docket No. 0612242667-7051-01, Final Rule, 72 FR 12097 at ¶ 8 (rel. March 12, 2007) (“*NTIA Coupon Program Final Rule*”); 47 C.F.R. § 301. Starting January 1, 2008, all U.S. households will be eligible to request up to two \$40 coupons to be used toward the purchase of up to two, D-to-A converter boxes, while the initial \$990 million allocated for the program is available. 47 C.F.R. § 301.3-4. If the initial funds are used up and the additional funds (up to \$510 million) are authorized, eligibility for the coupons will be limited to over-the-air-only television households. *NTIA Coupon Program Final Rule*, 72 FR 12097 at ¶ 8. Eligible consumers will have until March 31, 2009 to make a request for these coupons. DTV Act § 3005(c)(1)(A).

<sup>19</sup> DTV Act § 3005(a)(1) directs the Assistant Secretary for Communications and Information to “implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.” *Id.* The purpose of the program is to enable consumers to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service. *NTIA Coupon Program Final Rule*, 72 FR 12097 at ¶ 2; *See* 47 C.F.R. § 301.1.

<sup>20</sup> *See generally NTIA Coupon Program Final Rule*, 72 FR 12097. NTIA established rules for the coupon program in 47 C.F.R. § 301. The rules became effective April 16, 2007.

<sup>21</sup> *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-170 (rel. Nov. 30, 2007) (“*Cable Viewability Order*”).

<sup>22</sup> *Id.* at n.3.

rules will require cable operators to comply with the statutory viewability requirement<sup>24</sup> by choosing to either: (1) carry digital signals in analog format, or (2) for all-digital systems, carry the signals only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. The viewability requirements will be in force from the date of the transition through February 2012 subject to review by the Commission during the last year of this period.<sup>25</sup>

26. The Commission also reaffirmed the existing material degradation standard for cable carriage of digital signals, including the requirement that cable systems carry high definition (“HD”) broadcast signals in HD format.<sup>26</sup> In addition, the Commission has taken several actions to increase consumer awareness about the impending DTV transition. Successful completion of the DTV transition depends upon government and industry working together to promote consumer awareness and minimize the burdens borne by consumers. In July 2007, the Commission adopted a Notice of Proposed Rulemaking for the Commission’s Digital Television Consumer Education Initiative (“*DTV Consumer Education NPRM*”), which requested comment on several proposals relating to consumer education about the DTV transition, including considering the best means of creating a coordinated, national DTV consumer education campaign.<sup>27</sup> We proposed to require television broadcast licensees to conduct on-air consumer education efforts and to require “broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance.”<sup>28</sup> It also sought comment on proposals about notices in MVPD customer billing statements, notices from consumer electronics manufacturers, and consumer electronics retailer training and education, among others.

27. In addition, on September 26, 2007, the Commission held the first in a series of Commission Digital Television Consumer Education Workshops.<sup>29</sup> These workshops provide an

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<sup>23</sup> See FCC, *FCC Adopts Rules to Ensure all Cable Customers Receive Local TV Stations After the Digital Television Transition* (press release), Sept. 11, 2007).

<sup>24</sup> See 47 U.S.C. §§ 534 and 535(g), (h).

<sup>25</sup> See *Cable Viewability Order*, *supra*, note 78.

<sup>26</sup> *Id.* See also, 47 U.S.C. § 534(b)(4)(A) and 535(g).

<sup>27</sup> *DTV Consumer Education Initiative*, MB Docket No. 07-148, Notice of Proposed Rulemaking, 22 FCC Rcd 14091 (rel. July 30, 2007) (“*DTV Consumer Education NPRM*”). Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>28</sup> Public Notice, “Media Bureau Announces Comment and Reply Comment Dates for the DTV Consumer Education Initiative, MB Docket No. 07-148,” 22 FCC Rcd 15197 (2007). Comments were due September 17, 2007 and reply comments were due October 1, 2007. An order addressing the proposals in this docket was circulated on October 16, 2007. See Written Statement Of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives (dated Oct. 17, 2007); [http://fjallfoss.fcc.gov/edocs\\_public/attachmatch/DOC-277414A1.doc.v](http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-277414A1.doc.v)

<sup>29</sup> See News Release, “FCC to Hold Series of Digital Television Consumer Education Workshops; FCC Announces Dates for the First Two Focusing on Seniors and Minority/Non-English Speaking Consumers,” (rel. Oct. 9, 2007). The workshops will focus on communities that have been identified as being likely to be disproportionately impacted by the transition and least aware of it. These communities include, for example, seniors, minorities and non-English speakers, people with disabilities, low-income earners, and those living in rural areas. On November 8, 2007, the Commission hosted a workshop that addressed issues related to ensuring that seniors are prepared for the DTV transition. On December 4, 2007, the Commission hosted a workshop that addressed issues related to ensuring

opportunity for all interested parties to jointly discuss the challenges associated with the upcoming transition and explore ways to develop coordinated consumer education activities. The Commission invites organizations representing a broad range of consumers and other stakeholders to participate, including those who represent senior citizens, low-income consumers, non-English speakers, people with disabilities, tribes, and public interest organizations working on behalf of underserved customers or those living in rural areas.<sup>30</sup>

## V. FINAL DTV TRANSITION RULES

28. By statute, full-power television broadcast stations must cease analog operations by 11:59 p.m. on February 17, 2009.<sup>1</sup> Accordingly, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels by the expiration of the transition deadline on February 17, 2009. We take seriously our goal to ensure that consumers who have diligently prepared for the transition by obtaining the necessary DTV receiver equipment are able to, at a minimum, continue to watch their existing television programming after the transition date. In order to make this transition as smooth as possible for consumers, stations must have their digital facilities in place and ready to commence operations no later than 12:00 a.m. on February 18, 2009. We recognize that the transition is a complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off. Accordingly, we adopt rules, where possible, to offer broadcasters some regulatory flexibility. At the same time, however, we must still ensure that DTV broadcasters will at least reach the audiences that they have been serving with their analog service and that, after the transition date, viewers will continue to have access to the stations that they are accustomed to receiving over the air.

29. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009. Continued operation of analog or pre-transition digital facilities after that date is operation without a license and will result in the imposition of sanctions for unauthorized operations.<sup>2</sup> Only stations that have applied for and been granted specific authority to remain on a pre-transition digital channel may continue operating on that channel.<sup>3</sup> As noted in the *Third DTV Periodic Review NPRM*,<sup>4</sup> we recognize that there may be some situations where a station's ability to commence its post-transition operations will be dependent on another station's construction and operating plans. For example, station A may need to begin testing its digital facility on its post-transition channel in order to be ready to operate after the transition date, but station B is currently using the channel for pre-transition (analog or digital) service. In such situations, close cooperation will be needed between these stations. We expect that broadcasters will make all possible accommodations to

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that minority and non-English-speaking consumers are prepared for the DTV transition.

<sup>30</sup> See FCC, *FCC Announces Preliminary Agenda for Digital Television Consumer Education Workshop on September 26* (press release), August 28, 2007.

<sup>1</sup> 47 U.S.C. § 309(j)(14).

<sup>2</sup> See 47 C.F.R. § 73.1745.

<sup>3</sup> See Section V.B.7., *infra*.

<sup>4</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9515-16, ¶ 91.

ensure that all stations will be able to provide digital service on their post-transition channels at the transition date.

30. We begin by, first, adopting our proposal to gather information about each station's transition status and plan to meet the deadline. Second, we adopt our proposed deadlines for the construction and operation of stations' final digital facilities. Third, we adopt our proposed stricter standards for granting stations extensions of time to construct digital facilities. Fourth, we adopt our proposals to permit qualifying stations to make a "phased transition" in an effort to afford regulatory relief without undermining the expectations of over-the-air viewers. Fifth, we adopt flexible rules allowing stations to reduce and/or terminate their analog and pre-transition digital television service before the transition deadline if doing so is necessary to achieve their transition. Sixth, we adopt our proposal to permit qualifying stations to transition early. Seventh, we address the rules, procedures and interference standards for stations to file applications for construction permits to build their final, post-transition facilities and to request authorization to maximize their facilities. Finally, we address a variety of other issues related to the DTV transition.<sup>5</sup>

#### **A. Broadcasters' Transition Status**

31. Stations are responsible for meeting the statutory deadline for the DTV transition. The Commission has no discretion to waive or change this transition date.<sup>6</sup> Full-power broadcast stations not ready to commence digital operations upon expiration of the deadline for the transition on February 17, 2009 must go dark on their analog channel and risk losing their authorizations to operate after the transition date.<sup>7</sup>

32. We have finalized post-transition channel assignments for every eligible station.<sup>8</sup> In the post-transition DTV Table, 1,812 stations received post-transition DTV channels.<sup>9</sup> Of these, 1,178 stations received the DTV channel on which they are currently authorized, 517 stations received the NTSC channel on which they are currently authorized, and 117 stations received a different channel from which they are currently authorized. In addition, we have proposed post-transition channel assignments for 13 stations that became eligible after the channel election process.<sup>10</sup>

33. The process of transitioning the entire TV broadcast industry to digital-only operation on each station's final channels will be complex. Accordingly, most stations should have their

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<sup>5</sup> We note the Commission's rules for full-power television will need to be updated to eliminate outdated references to analog and out-of-core television service and clarify engineering issues that differ for digital transmission and analog transmission. Such housekeeping matters will be addressed in a separate rulemaking in the DTV proceeding, MB Docket No. 87-268.

<sup>6</sup> See 47 U.S.C. §§ 309(j)(14) and 337(e)(1).

<sup>7</sup> See *supra* ¶ 5.

<sup>8</sup> These post-transition channel assignments largely were based on the choices made by licensees during the channel-election process. Eligibility for a proposed post-transition channel assignment was limited to existing Commission licensees and permittees. See *Seventh FNPRM*, 21 FCC Rcd at 12117-12118, ¶ 50.

<sup>9</sup> This total includes 1,806 stations announced in Appendix A to the *Seventh FNPRM* and six additional stations announced in a subsequent Public Notice. See *id.* at 12123, App. A; and Public Notice, "Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the Seventh Further Notice of Proposed Rulemaking," 22 FCC Rcd 102 (2007) ("*New Permittees PN*"). Additional new permittees may also be announced before the transition deadline. See *Seventh FNPRM*, 21 FCC Rcd at 12118, ¶ 53.

<sup>10</sup> *Eighth Further Notice*, 22 FCC Rcd at 15637, ¶ 140.

plans in place for their transition to digital-only service on their post-transition channel. Some stations may now be ready, or very close to ready, to make their transition. Other stations, however, will need to take significant steps to accomplish their transition. Stations' situations will vary based on their final channel assignments in the new DTV Table and whether they must change their transmission facilities to operate on their post-transition channels.

### 1. Transition Status Reports (Form 387) Adopted

34. We adopt our proposal in the *Third DTV Periodic Review NPRM*<sup>11</sup> to require all full-power television stations to file a form<sup>12</sup> detailing (1) their current transition status, (2) any additional steps needed to commence their full, digital operations, and (3) their timeline to meet the February 17, 2009 transition deadline. The record supports adoption of this form.<sup>13</sup> We agree with commenters and find that these forms will assist the Commission, industry, and the public in assessing progress and making plans for the transition date.<sup>14</sup> We note, however, that these forms are not a substitute for active coordination efforts that may be necessary between and among broadcasters. Stations' forms will be made publicly available on the Commission's website.<sup>15</sup>

35. We will require stations to file these forms no later than February 18, 2008.<sup>16</sup> In addition, stations must update their forms, as necessary, until they report the completion of their transition – specifically, that they have begun operating their full facility as authorized by the post-transition DTV Table Appendix B.<sup>17</sup> As proposed,<sup>18</sup> each station is responsible for the continuing accuracy and completeness of the information furnished in their form.<sup>19</sup> Whenever the information furnished in their form is no longer substantially accurate and complete in all significant respects, the station must file an updated form as promptly as possible and in any event within 30 days to furnish such additional or corrected information as is appropriate.<sup>20</sup>

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<sup>11</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9492, ¶ 35.

<sup>12</sup> FCC Form 387 attached hereto as Appendix C.

<sup>13</sup> See, e.g., APTS/PBS Comments at 22; Capitol Comments at 9; NCTA Comments at 4-5. For example, APTS/PBS states that these reports will permit it and other broadcast organizations “to assist stations in the choreography of the hundreds of channel changes that will need to occur in the coming months.”

<sup>14</sup> We commend Capitol Broadcasting on its stations' detailed transition information which it set forth in its comments. See Capitol Comments at 2-8.

<sup>15</sup> See Digital Television (DTV) Regulatory Information, available at <http://www.fcc.gov/dtv/>.

<sup>16</sup> Although the Commission originally proposed December 1, 2007 as the date broadcasters must file their forms, in response to the comments, we instead adopt February 18, 2008 as that date. See APTS/PBS Comments at 22 (arguing that that the Commission adopt a policy requiring that stations submit the new Form 387 at least 60 days after the Report and Order in this proceeding is published in the Federal Register). We expect that, by February 18, 2008, this Report and Order will have been published in the Federal Register and have become effective and also that the Commission will have obtained the necessary OMB approval for this information collection. See OMB Control No. 3060-1105. The Media Bureau will announce when OMB approval has been obtained and will confirm the February 18, 2008 filing deadline for when broadcasters must file the form.

<sup>17</sup> 47 C.F.R. 73.622(i).

<sup>18</sup> See *Third Periodic DTV NPRM*, 22 FCC Rcd at 9492, Section V. (¶ 35).

<sup>19</sup> This requirement is consistent with 47 C.F.R. § 1.65(a).

<sup>20</sup> See 47 U.S.C. 308(b) (The Commission may request that licensees provide “such other information as [the Commission] may require...during the term of any such licenses...to enable it to determine whether such original application should be granted or denied or revoked...”)

Examples of a significant change would include a change in a station's (1) transition plans, (2) construction or operational status or (3) existing service (*e.g.*, reduction or termination of analog or pre-transition digital service). Stations must continue to file updates until construction of fully authorized post-transition facilities is complete and the station has begun operating its full post-transition DTV Table Appendix B facility. Commenters express concern that some stations may not be able to set a detailed timeline by the due date because some of their transition logistics (*e.g.*, details about equipment and tower crews) are beyond their control.<sup>21</sup> We recognize that some stations may need to update their forms several times as they progress through their transitions. At a minimum, stations that have not completed construction of their post-transition facility and applied for a license to cover by October 20, 2008, must update their form to report their current status as of that date. Stations unable to answer questions on the form on the initial filing date must explain their reasons for not providing an answer and indicate when they expect to update the form to provide an appropriate response. We delegate authority to the Media Bureau to follow up with stations that do not file or update their forms. We intend to use these forms to identify stations that are not communicating their progress and may need to contact stations directly to assess and discuss the station's transition status. In addition, the Media Bureau will prepare a comprehensive summary report of the information provided in the Form 387 no later than August 18, 2008 (six months prior to the February 17, 2009 transition deadline). This report will enable us to assess progress toward completing the transition and to make any mid-transition adjustments in time for the February 17, 2009 deadline.

## **2. Stations Identified as Ready to Commence Post-Transition Operations**

36. There are more than 800 stations that have built their post-transition facility.<sup>22</sup> These stations have built and licensed or applied to license their full authorized DTV facilities as defined in the post-transition DTV Table Appendix B (*i.e.*, their post-transition channel is the same as their pre-transition DTV channel).<sup>23</sup> We note that in the *Third DTV Periodic Review NPRM*, we listed 752 stations on Appendix D.<sup>24</sup> In response to comments, we have now added approximately 50 stations and removed approximately three stations from this list. We have also added other stations to this list that we have identified as having become ready to make their transition because they have filed for a license to cover their post transition (DTV Table Appendix B) facilities since the close of the comment cycle in this proceeding. The stations listed in Appendix D, however, must still file a transition status report, FCC Form 387, to confirm their operational status and indicate their timing for terminating their analog service.

### **B. Construction Deadlines for Full, Authorized DTV Facilities**

37. We establish the following deadlines for full-power television broadcast stations to construct their full, authorized post-transition (digital) facilities (as defined in the post-transition DTV Table Appendix B):<sup>25</sup>

<sup>21</sup> APTS/PBS Comments at 22-23.

<sup>22</sup> This number is increasing as stations complete construction of their post-transition facilities and file for licenses to cover. See Appendix D – List of Stations Identified as Ready to Commence Post-Transition Operations.

<sup>23</sup> See *Seventh Report and Order*, 22 FCC Rcd 15581, at app. B. Some stations are not at full, authorized facilities, as designated in DTV Table Appendix B, but have indicated they are licensed and do not intend to build more.

<sup>24</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9487, ¶ 18 and 9563, app. D (“List of Stations Believed Ready to Commence Post-Transition Operations”).

<sup>25</sup> See revised rule sections 47 C.F.R. 73.624(d)(1)(v)-(vii) in Appendix B, *infra*.

- February 17, 2009 will be the construction deadline for stations building digital facilities based on a new channel allotment in the post-transition DTV Table, *i.e.*, stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations. These stations will not be required to construct a digital facility on their pre-transition DTV channel and will be permitted to forego further construction to the extent such a facility has been partially built.
- February 17, 2009 will also be the construction deadline for stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.
- May 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.
- August 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities.

As discussed in more detail below, we establish particular deadlines and procedures for stations falling into specific defined circumstances. Stations using their pre-transition DTV channel for post-transition operations that do not have a construction permit that matches their post-transition facilities, should apply now for a new or modified construction permit. Stations that have a construction permit that has not yet expired remain subject to that expiration date. For stations granted “checklist” waivers and denied extensions or “use or lose” waivers, their deadline will depend upon whether a station’s pre-transition DTV channel is the same or different from its post-transition channel. Finally, we adopt a stricter standard for stations to obtain an extension of time to construct their post-transition facilities,<sup>26</sup> but offer flexibility to certain stations if they can build facilities that would serve at least the same population that served by their current television service and would not cause impermissible interference to other stations.<sup>27</sup>

38. Commenters generally disagreed with our proposed deadlines<sup>28</sup> and sought more time to complete construction of their full, authorized post-transition facilities.<sup>29</sup> Many commenters noted that Congress did not expressly mandate the date by which broadcasters must operate at full, authorized facilities on their post-transition channel, only that stations must operate in digital and inside the TV core spectrum.<sup>30</sup> Thus, several commenters argued for significant flexibility to achieve their construction deadline, with some seeking the discretion to take up to

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<sup>26</sup> See Section V.B.5., *infra* .

<sup>27</sup> See Section V.C., *infra*.

<sup>28</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9503, 9506-07, ¶¶ 60, 73.

<sup>29</sup> See, *e.g.*, Allbritton Comments at 3; APTS/PBS Comments at 16-18; Bahakel Comments at 4; Central Michigan University Comments at 6; Disney Comments at 5-6; Hawaii Public Television Foundation Comments at 5; MSTV/NAB Comments at 22-26; Nebraska PTV Licensees Comments at 4; PBNP Comments at 5; Quincy Comments at 5; Rocky Mountain Comments at 8; Scripps Howard Broadcasting Comments at 3-4; Sistema Universitario Ana G. Mendez, Inc. Comments at 6; South Carolina Educational Television Commission Comments at 1; St Louis Public Television Comments at 4; University of Michigan Comments at 3.

one year, or more, after the transition date to complete their full, authorized facilities, while stations are providing digital service only to their communities of license.<sup>31</sup> In addition, other commenters argued that the Commission should view the final DTV Table Appendix B as setting forth the maximum coverage contour in which a station may operate, rather than the exact parameters on which they must operate.<sup>32</sup>

39. We find that compliance with our construction deadlines is necessary to ensure that consumers are not left behind in the transition.<sup>33</sup> Viewers who have prepared for the DTV transition should be able to receive television service when analog transmissions cease on February 17, 2009. To achieve this goal, it is imperative that all stations finalize construction of their post-transition facilities and operate at full, authorized facilities by the deadline. Given the February 17, 2009 deadline established by Congress for full-power stations to end analog service, stations' primary goal must now be to ensure that DTV stations will be operating at their full, authorized facilities on their final, post-transition channels by that date.<sup>34</sup> Previously, our efforts had been to facilitate the initiation of DTV service to the public during the transition.<sup>35</sup> This approach was designed, in part, to accomplish the goal of completing the transition by the original December 31, 2006 deadline established by Congress, a deadline that could have been extended under several circumstances. We recognize, as noted by some commenters,<sup>36</sup> that strict compliance with our DTV construction deadlines would require some stations to reduce or terminate their analog service before the transition date. In those cases in which the potential impact of the loss of service prior to the transition would be more disruptive than the effect of reduced coverage area for a limited period of time after the transition, we are providing for flexibility. However, in other cases, the loss of a station's analog service to some viewers pre-transition, will be necessary to enable construction of post-transition facilities and can be preferable to viewers losing all television service from that station after the transition date if DTV facilities are not ready and analog service must cease. To ensure that this flexibility serves the public interest, we are requiring that stations that choose either pre-transition service reduction or post-transition phase-in must inform their viewers of what to expect and the options for continuing to have service.

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<sup>30</sup> Public Broadcasting of Northwest Pennsylvania Comments at 5; Hawaii Public Television Foundation Comments at 5; Central Michigan University Comments at 6; Nebraska Educational Telecommunications Commission and the University of Nebraska Comments at 4; Sistema Universitario Ana G. Mendez, Inc. Comments at 7; South Carolina Educational Television Commission Comments at 4; St. Louis PTV Comments at 4; University of Michigan Comments at 4; Gray Television Comments at 4; Northeastern Educational Television of Ohio, Inc. Comments at 3; University of North Carolina Comments at 5; APTS/PBS Comments at 14-15; Greater Dayton Public Television, Inc. Comments at 6; AFCCE Comments at 2.

<sup>31</sup> See, e.g., MSTV/NAB Comments at 22 (seeking a "one-year post-transition digital ramp-up period"); Quincy Comments at 5 (seeking until February 10, 2010); University of North Carolina Comments at 2 (seeking 12 to 24 months after the transition date).

<sup>32</sup> APTS/PBS Comments at 11-12.

<sup>33</sup> As discussed further below, we will afford regulatory flexibility to stations where doing so would not cause existing viewers to lose service. See discussion of phased transition in Section V.C., *infra*.

<sup>34</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9500, ¶ 54.

<sup>35</sup> See *id.*

<sup>36</sup> See, e.g., AFCCE Comments at 4-6 (arguing that analog service may be disrupted well before the transition date if stations are not permitted additional time after the transition date to construct post-transition facilities).

40. We reject commenters' arguments that we should provide blanket authority for stations to operate at less than full, authorized post-transition facilities after the transition date. Commenters offered several reasons why they may need more time to build their final DTV facilities, which reasons include the following: (1) stations may need to make "complicated technical changes" to their facilities to achieve their transition (e.g., those returning to their analog channel and intending to reuse their analog antenna);<sup>37</sup> (2) there may be a shortage of equipment and qualified tower crews needed to implement final DTV construction;<sup>38</sup> (3) winter weather may prevent some stations from constructing their final facilities;<sup>39</sup> or (4) a single deadline for many stations may cause delays in the processing of needed construction permit applications.<sup>40</sup> We appreciate these specific concerns, but find that giving blanket authority for an industry-wide, staggered deadline beyond the transition date would leave a significant number of over-the-air viewers without television service on and after the transition date, as analog service will have ceased, but some stations would not yet have been required to complete DTV facilities. Only by requiring that full, post-transition facilities are operating on the transition date can we ensure a successful DTV transition; namely, the continued availability of television service.

41. While we set strict construction deadlines in this Report and Order, we also adopt flexible rules and procedures that will address the specific concerns raised by commenters, such as those noted above. For example, we are affording stations facing unique technical challenges, such as the need to reposition their side-mount antennas, until the transition date to construct their full, authorized post-transition facilities, and we anticipate that many of these stations may also qualify for extensions – even under our stricter extension criteria,<sup>41</sup> as well as for the provisions for a "phased transition."<sup>42</sup> We also expect that these stations will benefit from the new flexible rules for service reduction and termination in advance of the transition date.<sup>43</sup> Similarly, while we generally will not consider extension requests by stations on the basis of weather or a shortage of equipment and qualified tower crews, our new extension rules will still allow consideration of requests from those stations with demonstrable and genuine difficulties because of weather or equipment problems.<sup>44</sup> Furthermore, we expect that many stations will transition early and begin operating their final post-transition facilities in advance of the deadline and the onset of the winter months.<sup>45</sup> Finally, we adopt rules for the expedited processing of stations' post-transition construction permit applications to address commenters' concerns about the potential for delays in obtaining the necessary Commission authorizations to construct their

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<sup>37</sup> See, e.g., AFCCE Comments at 4-6; APTS/PBS Comments at 17-18; Quincy Comments at 5.

<sup>38</sup> See, e.g., AFCCE Comments a 4-6; MSTV/NAB Comments at 20-21.

<sup>39</sup> See, e.g., AFCCE Comments at 4-6; APTS/PBS Comments at 17-18; Quincy Comments at 5.

<sup>40</sup> APTS/PBS Comments at 17-18.

<sup>41</sup> See Section V.B.5., *infra*.

<sup>42</sup> See Section V.B.7., *infra*.

<sup>43</sup> See Section V.C., *infra*.

<sup>44</sup> See Section V.B.5., *infra*.

<sup>45</sup> See Section V.C., *infra*.

final DTV facilities.<sup>46</sup> In addition, our processing rules address commenters' concerns<sup>47</sup> that stations may not be able to use their existing analog channel antennas because the antenna patterns of those antennas may not match the antenna patterns specified for them in the post-transition DTV Table Appendix B.<sup>48</sup> In sum, we find that the rules and policies we adopt in this Report and Order will ensure that stations have sufficient time to complete construction of their final DTV facilities by their respective deadlines.

### 1. Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel

42. For stations whose pre-transition DTV channel is different from their post-transition channel (*i.e.*, stations returning to their analog channel or moving to a new channel for post-transition operations), we adopt our proposals in the *Third DTV Periodic Review NPRM*<sup>49</sup> to:

- (1) Establish February 17, 2009 as the deadline by which these stations must complete their post-transition (DTV Table Appendix B) facilities; and
- (2) Permit these stations to forego construction of their pre-transition DTV channel.

Approximately 634 stations fall into this category.<sup>50</sup> We find that these stations face a greater challenge than stations that will remain on the same DTV channel for post-transition operations. Stations moving to a new channel must apply for a construction permit on that channel and build new facilities based on the channel allotments in the post-transition DTV Table Appendix B.<sup>51</sup> We find that stations facing the challenges associated with moving to a new DTV channel should be afforded the maximum possible time to complete their post-transition facilities before analog transmissions must cease. As discussed above, we disagree with commenters that seek a blanket extension for additional time beyond the transition date because that would leave a significant number of viewers without any television service.<sup>52</sup> However, as discussed above, we adopt flexible rules and procedures to assist stations with specific transition challenges and anticipate that those stations that genuinely need additional time to complete construction of their final, post-transition facilities may seek an extension of time pursuant to our revised rules or may avail themselves of our provisions for a "phased transition."

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<sup>46</sup>See Section V.D.1., *infra*. Stations that apply for the facilities to which they certified in 2004 and, thus, are now specified for them in the post-transition DTV Table Appendix B will have this opportunity for expedited processing.

<sup>47</sup> See, *e.g.*, AFCCE Comments at 4-6. AFCCE states that there is a high probability that a new DTV antenna will be required for many of these stations because the new Appendix B directional pattern probably does not match their current analog antenna.

<sup>48</sup>See Section V.E., *infra*. We adopt a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that are not using their pre-transition DTV channel for post-transition operation.

<sup>49</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9503, ¶ 60.

<sup>50</sup> This number includes 517 stations returning to their analog channel post-transition and 117 moving to a new channel for post-transition operations. We note, however, that some of these stations may have a documented unique technical challenge and, therefore, would fall into category three; see Section V.B.3, *infra*.

<sup>51</sup> See *id.* See also Northeastern Educational Television of Ohio, Inc. Comments at 4.

<sup>52</sup> See, *e.g.*, MSTV/NAB Comments at 22 (seeking a "one-year post-transition digital ramp-up period"); Quincy Comments at 5 (seeking until February 10, 2010); University of North Carolina at 2 (seeking 12 to 24 months after the transition date).

43. We also find that these stations may terminate further construction of their pre-transition DTV channel facilities in order to focus their efforts on constructing their permanent DTV facilities on their post-transition channel. Our examination of the record strongly favors affording stations whose pre-transition DTV channels are different from their post-transition channels the flexibility to stop construction of their pre-transition DTV channel facilities.<sup>53</sup> We agree with commenters that argue in favor of such flexibility and find that requiring stations to build or expand facilities that would only be operated until the end of the transition – *i.e.*, for less than 14 months – potentially could undermine the more important public interest objective of ensuring a timely transition to digital broadcasting by diverting limited resources from the construction of final, post-transition facilities. Accordingly, we adopt our proposal to change our “use or lose” policy for these stations to allow them to retain interference protection to their full, authorized post-transition facilities.<sup>54</sup> We discuss below the options available to these stations based on their individual circumstances.

44. We recognize that many of these stations (whose pre-transition DTV channels are different from their post-transition channels) have been diligent in meeting the deadlines established by the Commission for completing construction of their pre-transition facilities in order to provide DTV service to the public and to be permitted to carry over interference protection to their permanent DTV channel. We do not intend to treat these stations unfairly or reward stations that have been less diligent in providing DTV service during the transition. We note that many stations that have not built their transitional facilities have faced impediments to doing so. In addition, most stations that have applied for an extension of time to construct and/or a waiver of the applicable use-or-lose deadline have had those requests granted, indicating that we found they have a valid reason for not meeting the applicable deadline. Finally, we find that we must permit stations to cease investing time and resources in completing pre-transition DTV facilities to ensure that stations are focused on finalizing their post-transition facilities so that viewers will continue to receive television service when analog service ends.

45. Pre-Transition DTV Channel Unbuilt or Not in Operation. We will permit a station that has not constructed an operational pre-transition DTV facility to elect simply to return its construction permit for that facility to the Commission and focus its efforts on construction of its post-transition facility.<sup>55</sup> As stations in this situation are not currently providing digital service to the public, we find it is appropriate at this stage in the transition to allow these channels to be returned. Stations choosing this approach will be able to carry over interference protection to their post-transition channel.

46. Pre-Transition DTV Channel in Operation. We will offer a station with an operational DTV facility on a pre-transition channel several options that would allow it to carry over interference protection to its post-transition channel. First, the station may discontinue further construction on its pre-transition DTV facility and operate that partially-built facility during the remainder of the transition, while it focuses on building its permanent DTV facility. A station choosing this option must file an application to modify its existing construction permit to match its partially-built pre-transition DTV facility.<sup>56</sup> The station would then continue operation of the facility for the remainder of the transition without devoting resources to further

<sup>53</sup> See, *e.g.*, CBS Comments at 5; Gray Television Comments at 4; MSTV/NAB Comments at 18-19; Nexstar Comments at 3; Thunder Bay Comments at 1.

<sup>54</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9504, ¶ 63.

<sup>55</sup> 47 C.F.R. § 73.1750.

<sup>56</sup> 47 C.F.R. §§73.3533, 3538.

build-out of that facility. Second, the station may cease operating its pre-transition DTV facility in certain circumstances, which are discussed below.<sup>57</sup> Third, the station may decide to continue construction of its pre-transition DTV facility. We do not want to deny a station in this third category the opportunity to continue to build its pre-transition DTV facility and to provide service on this facility for the remainder of the transition; however, we find it is appropriate to require that these facilities be completed expeditiously. Therefore, we adopt our proposal in the *Third DTV Periodic Review NPRM* to require that such a facility be completed by the station's current (pre-transition) DTV construction deadline.<sup>58</sup> The station will not be eligible for any further extensions to build its pre-transition DTV facility.

## 2. Stations Whose Post-Transition Channel is the Same as Their Pre-Transition DTV Channel

47. For stations whose post-transition channel is the same as their pre-transition DTV channel (*i.e.*, stations remaining on their current DTV channel for post-transition operations), we adopt construction deadlines based on whether a station has an existing license or construction permit that matches its facility defined in the post-transition DTV Table Appendix B. Approximately 1,178 stations fall into this category.<sup>59</sup>

- (1) May 18, 2008 will be the construction deadline for stations in this category that already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.
- (2) August 18, 2008 will be the construction deadline for stations in this category, but which do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities and, therefore, need to apply for a new or modified construction permit.

Although we are moving back the deadline we proposed in the *Third DTV Periodic Review NPRM*,<sup>60</sup> which would have required stations in this category to have completed construction of their final post-transition (DTV Table Appendix B) facilities by November 18, 2007,<sup>61</sup> we find that it is appropriate to require stations in this category to complete construction prior to February 17, 2009. These stations have already had a significant period of time in which to build digital facilities on their post-transition channels and, indeed, should already have constructed these facilities by their previously established DTV construction deadline,<sup>62</sup> which for many stations was November 18, 2007.<sup>63</sup> Unlike stations that will be moving to a different DTV channel for post-transition use, these stations have generally had the advantage of being able to plan for and commence construction of their post-transition facilities for more than 10 years. In contrast, stations moving to a different channel for post-transition operations have only recently

<sup>57</sup> See discussion in Section V.C.3., *infra*.

<sup>58</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9505, ¶ 66 (proposing to apply the construction deadline established for such a station in the *Construction Deadline Extension Order* or *Use or Lose Order*).

<sup>59</sup> We note, however, that some of these stations may have a documented unique technical challenge and, therefore, would fall into category three; see Section V.B.3, *infra*.

<sup>60</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 70.

<sup>61</sup> This is the deadline established for these stations in both the *Construction Deadline Extension Order* and the *Use-or-Lose Order*. See *supra* note 48.

<sup>62</sup> See 47 C.F.R. § 73.624(d). See also *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18287, ¶ 23.

<sup>63</sup> Approximately 83 stations have filed requests for an extension of time of this deadline.

been assigned their new channel and, thus, are only now able to apply for a construction permit for this channel and commence construction of their final digital facilities. Furthermore, we note that more than 800 of the 1,178 stations in this category have been licensed, or have filed for a license, to operate authorized post-transition facilities.<sup>64</sup> We recognize that some stations in this category may face unique technical challenges, such as the need to reposition their side-mount antenna, or other issues that may prevent them from constructing full, authorized post-transition facilities by the deadlines we establish.<sup>65</sup> As discussed below, these stations that are facing unique technical challenges will receive a construction deadline of February 17, 2009<sup>66</sup> and those that legitimately need additional time to complete construction of their full, authorized post-transition facilities may seek an extension of time pursuant to our revised rules<sup>67</sup> or may avail themselves of the provisions for a “phased transition” discussed below.<sup>68</sup>

48. Stations With CPs that Match Facilities in DTV Table Appendix B. We establish May 18, 2008 as the construction deadline for stations in this category (*i.e.*, stations whose post-transition channel is the same as their pre-transition DTV channel) that already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. There are more than 250 stations with CPs that conform to the facilities in DTV Table Appendix B. This number will fluctuate as stations file modification applications or file license applications.<sup>69</sup> While most stations in this group have built and licensed their construction permit, and are now operating at full, authorized post-transition facilities,<sup>70</sup> some stations in this group still have not built their existing construction permit. These stations include (1) those that received an extension of time until November 18, 2007,<sup>71</sup> in either the *Construction Deadline Extension Order* or the *Use-or-Lose Order*, and that have an extension request of that deadline pending as of the date this Report and Order is adopted; and (2) those that have a construction permit that expired after adoption of the *Construction Deadline Extension Order* (*i.e.*, May 17, 2007) and that have an extension request of that deadline pending as of the date this Report and Order is adopted. By adopting May 18, 2008 as the construction deadline for these stations, we are hereby granting the relief sought in the pending extension requests of these stations and will afford them an extension until that date.<sup>72</sup> We expect that these stations will finally be able to complete construction of their digital facilities and warn these stations that future requests for an extension of the deadline will be reviewed under the stricter standard adopted below. The stations in this group (*i.e.*, stations with a construction permit that matches their DTV Table

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<sup>64</sup> Approximately 855 stations, listed in Appendix D, have satisfied their build-out requirements and are ready to complete their transition.

<sup>65</sup> Quincy Comments at 3-4; Montecito of Wichita Comments at 1-2.

<sup>66</sup> See Section V.B.3., *infra*.

<sup>67</sup> See new rules adopted for obtaining deadline extensions in Section V.B.5., *infra*.

<sup>68</sup> See provisions for a phased transition in Section V.B.7, *infra*.

<sup>69</sup> Some stations have filed Petitions for Reconsideration of the *Seventh Report and Order* requesting adjustments to Appendix B, and therefore are not included in this group, while others may choose to make adjustments at the application stage.

<sup>70</sup> See Appendix D, *infra*.

<sup>71</sup> Approximately 32 stations that received extensions in May have constructed and filed their license applications; 46 stations that received waivers in May constructed and filed their license applications.

<sup>72</sup> We also grant any requests for use-or-lose waivers by these stations that are pending as of the date this Report and Order is adopted. See list in Appendix F, *infra*.

Appendix B facilities) also include those that have a construction permit that has not yet expired, but based on the fact that most stations in this group have succeeded in timely building their permitted post-transition facilities, we expect that these stations will be able to meet their existing CP deadlines and will not need the additional time.

49. Stations With an Unbuilt CP<sup>73</sup> that Does Not Match Facilities in DTV Table Appendix B. We establish August 18, 2008 as the construction deadline for stations in this category (*i.e.*, stations whose post-transition channel is the same as their pre-transition DTV channel) that have an unbuilt construction permit for facilities that for some reason do not match those specified for them in the post-transition DTV Table Appendix B. There are roughly 60 stations with a CP they have not built and whose CP does not closely match facilities in the DTV Table Appendix B. These stations would therefore need either to modify either their CP to match Appendix B or request that we revise the facility listed for them on Appendix B. Similar to the previous group (*i.e.*, stations with a construction permit that matches their DTV Table Appendix B facilities), these stations include (1) those that received an extension of time until November 18, 2007, in either the *Construction Deadline Extension Order* or the *Use-or-Lose Order*, and that have an extension request of that deadline pending as of the date this Report and Order is adopted; and (2) those that have a construction permit that expired after adoption of the *Construction Deadline Extension Order* (*i.e.*, May 17, 2007) and that have an extension request of that deadline pending as of the date this Report and Order is adopted. By adopting August 18, 2008 as the construction deadline for these stations, we are hereby granting the relief sought in the pending extension requests of these stations and will afford them an extension until that date.<sup>74</sup> We expect that these stations will finally be able to complete construction of their digital facilities and warn these stations that future requests for an extension of the deadline will be reviewed under the stricter standard adopted below. The stations in this group (*i.e.*, stations with an unbuilt construction permit that for some reason does not match the facilities specified for them in the post-transition DTV Table Appendix B) also include those that have a construction permit that has not yet expired, but we expect that these stations will be able to meet their existing CP deadlines and will not presume that these stations will need the additional time. We recognize that some stations in this group (*i.e.*, stations with an unbuilt construction permit that for some reason does not match those facilities specified for them in the post-transition DTV Table Appendix B) may also include stations that intend to build their CP and not their DTV Table Appendix B facilities. These stations should file their applications now to indicate their intent to do this.

50. We find that the stations in this group (*i.e.*, stations with an unbuilt construction permit that for some reason do not match those facilities specified for them in the post-transition DTV Table Appendix B) warrant additional construction time than that afforded to the stations in the previous group<sup>75</sup> because these stations need to file an application for a new or modified construction permit to conform their existing construction permit to those facilities specified for them in the post-transition DTV Table Appendix B.<sup>76</sup> We expect, however, that the actual

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<sup>73</sup> This includes stations with an unbuilt CP that may be operating a reduced digital facility pursuant to STA.

<sup>74</sup> We also grant any requests for use-or-lose waivers by these stations that are pending as of the date this Report and Order is adopted. See list in Appendix F, *infra*.

<sup>75</sup> That is, stations with a construction permit that matches their DTV Table Appendix B facilities.

<sup>76</sup> In the *Third DTV Periodic Review NPRM*, we recognized that stations that needed to apply for a new or modified CP because that CP did not match the facilities specified for them in the post-transition DTV Table Appendix B may need more time to construct. See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 71.

construction of the different DTV Table Appendix B facilities should not otherwise cause delay, particularly because these stations never built their existing construction permit. Moreover, we note that these stations should have filed applications for such conforming facilities soon after the new post-transition DTV Table became effective on October 26, 2007, and should do so immediately if they have not done so already.<sup>77</sup> We also note that changes made to these stations' construction permits since they made their certifications (via FCC Form 381) in 2004<sup>78</sup> were made pursuant to these stations' specific requests.

51. We recognize that some stations in this group cannot commence operations at their final DTV Table Appendix B facilities because doing so would cause impermissible interference to other current television operations. These stations must build and operate their currently authorized digital facilities reflected in their existing CP by the August 18, 2008 deadline and may seek an extension of time to February 17, 2009, at which time they could file their modification application to conform to those facilities specified in the post-transition DTV Table Appendix B. We expect, however, that these stations will apply now to modify their facilities to match the post-transition DTV Table Appendix B and will begin operations at full, authorized facilities as soon as the impermissible pre-transition interference concerns are resolved (*e.g.*, the affected pre-transition station moves to its post-transition channel).

52. Stations With a License that Does Not Match Facilities in DTV Table Appendix B. We establish August 18, 2008 as the construction deadline for stations in this category (*i.e.*, stations whose post-transition channel is the same as their pre-transition DTV channel) that have a license for facilities that for some reason do not match those specified for them in the post-transition DTV Table Appendix B. There are more than 300 stations with a licensed pre-transition facility that does not match facilities in DTV Table Appendix B, and therefore would need to apply for a CP for facilities that do match Appendix B or request that we revise the facility listed for them on Appendix B. We find that these stations generally should be treated like those stations with an unbuilt construction permit that for some reason does not match the post-transition DTV Table Appendix B facilities because they, too, need to file an application for a new or modified construction permit to conform their license to those facilities specified for them in the post-transition DTV Table Appendix B. We note, however, that unlike those stations with an unbuilt construction permit, these stations built a digital facility and met their previous DTV construction deadline. We will take this factor into consideration to the extent that such stations may request additional time to meet their post-transition facility deadline. For example, while we expect that these stations will not need to make significant modifications to conform their licensed facilities, we will consider granting requests from these stations if they can demonstrate that the modifications to conform their licensed facilities are, indeed, significant. We recognize that some stations in this group (*i.e.*, stations with licensed facilities that for some reason do not match those specified for them in the post-transition DTV Table Appendix B) may have constructed their intended facilities and do not intend to build their DTV Table Appendix B facilities. These stations should file their applications now to indicate their intent to do this.

### 3. Stations Facing Unique Technical Challenges

53. We adopt our proposal in *Third DTV Periodic Review NPRM*<sup>79</sup> to establish February 17, 2009 as the deadline for stations facing "unique technical challenges" (as defined in the

<sup>77</sup> 47 C.F.R. § 73.622(i). See also 72 Fed. Reg. 54720 (September 26, 2007).

<sup>78</sup> See *Second DTV Periodic Report and Order*, 22 FCC Rcd at 18281, ¶ 2.

<sup>79</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506-07, ¶ 74.

*Construction Deadline Extension Order* and the *Use or Lose Order*) preventing them from completing construction of their final, post-transition facilities.<sup>80</sup> This category is limited to the types of situations described for stations facing “unique technical challenges” in the *Construction Deadline Extension Order* and the *Use or Lose Order*.<sup>81</sup> Most of the stations are in this group because they need to reposition a top-mounted analog antenna with a side-mounted digital antenna.<sup>82</sup> There may also be other stations in this group that met their previous DTV construction requirements but now face unique technical challenges in meeting their deadline to construct post-transition (DTV Table Appendix B) facilities.<sup>83</sup> Such challenges include stations that have a side-mounted digital antenna and top-mounted analog antenna and will need to install a top-mounted antenna for post-transition digital use, but cannot do so before the end of the transition because the tower cannot support the additional weight of third antenna,<sup>84</sup> or face other circumstances in which the operation of a station’s analog service prevents the completion of construction of the station’s full, authorized post-transition facility, including stations whose local power company cannot provide sufficient electrical capacity to the tower site to power both analog and full power digital operations, and stations that do not have space at their antenna site for both analog and digital equipment. Stations must document their status as a station facing a “unique technical challenge” and, thereby, obtain February 17, 2009 as their new construction deadline, by specifying such status in their application for post-transition facilities (Forms 301 or 340), if applicable, or by filing a notification electronically through the Commission’s Consolidated Database System (“CDBS”) using the Informal Application filing form.<sup>85</sup> Stations must also specify their status in their Transition Status Reports (Form 387).<sup>86</sup> Although commenters did not support setting any firm deadline for these stations before the transition date, they did generally support our approach to provide these stations with more time to complete construction of their final DTV facilities than those stations without such unique technical challenges.<sup>87</sup> We appreciate that these stations may need more time to complete construction of their final DTV facilities than other stations due to the challenge of configuring their station’s post-transition facilities. Commenters have argued that stations with existing top-mounted

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<sup>80</sup> *Id.* February 17, 2009 was originally established as the deadline for these stations in the *Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1 and 9764-9769, Section III.C. (¶¶ 79-115); and *Construction Deadline Extension Order*, 22 FCC Rcd 9789 at ¶ 1 and 9805-9806, Section III.C.(¶¶ 82-87).

<sup>81</sup> *Id.*

<sup>82</sup> Forty-five stations received a use-or-lose waiver and four stations received an extension in this category. See *Construction Deadline Extension Order*, 22 FCC Rcd at 9789-9790, ¶ 1; *Use or Lose Order*, 22 FCC Rcd at 9750, ¶ 1.

<sup>83</sup> For example, a station may have built a DTV facility that met its use-or-lose requirement to serve at least 80 percent of the number of viewers served by the 1997 facility on which its replication coverage was based, but now must build a DTV facility that matches those specified for it in the post-transition DTV Table Appendix B.

<sup>84</sup> Most of these stations proposed to install their DTV antenna on the top of the tower where their existing analog antenna currently is housed. In order to top-mount the DTV antenna, these stations would have to relocate the analog antenna to another position on the existing tower or to another location altogether, necessitating the purchase of a new analog antenna that would be usable for only a very short period of time.

<sup>85</sup> For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq_informal.htm).

<sup>86</sup> Stations must check the appropriate box on Question (v)(3) in Section III (Next Steps) of the form, and must also detail their plans for repositioning their top-mounted/side-mounted antennas in Section V (DTV Transition Plan) of the form. See new FCC Form 387 in Appendix C, *infra*.

<sup>87</sup> Tribune Comments at 16-20; Allbritton Comments at 2; Anderson Comments at 3.

analog and side-mounted digital antennas may face problems if they are forced to complete their final DTV facilities before the statutory analog shutdown.<sup>88</sup> For example, a station with a side-mounted DTV antenna, a top-mounted analog antenna and a top-mount DTV allotment risks significant analog service losses if it attempts to build-out its post-transition allotment before the analog shutdown.<sup>89</sup> We, thus, conclude that imposing an earlier deadline for stations with unique technical challenges could create technical problems or the needless incurrence of extra engineering expenses. Therefore, we will continue to permit these stations the maximum amount of time – until the end of the transition – to complete the construction of their final DTV facilities.

54. However, as discussed above, we cannot give stations blanket authority for more construction time beyond the transition date without risking the availability of post-transition television service to viewers. We do agree with commenters, however, that our rules and policies must be flexible to enable stations with unique technical challenges to make a smooth transition.<sup>90</sup> In particular, we expect that stations facing unique technical challenges will benefit from our provisions for a “phased transition.”<sup>91</sup> For example, Allbritton has requested that the Commission permit a station with a top-mounted analog antenna to delay the start of construction of top-mounted, post transition DTV facilities until after the analog shut-down, provided that station’s existing DTV facility provides service to 100 percent of its replication area.<sup>92</sup> We find that the “phased transition” alternative build-out policy that we adopt below will provide an avenue for the relief requested by Allbritton.

#### 4. Other Situations

55. We adopt our proposals concerning the treatment of stations granted a waiver of the August 4, 2005 “checklist” deadline<sup>93</sup> and stations denied an extension of time to construct a pre-transition DTV facility or a “use or lose” waiver request.

56. Checklist Waiver Stations. We adopt our proposal in *Third DTV Periodic Review NPRM*<sup>94</sup> to set a construction deadline for the 10 stations granted a “checklist” waiver that is based upon whether their pre-transition DTV channel is the same as, or different from, their post-transition channel. We received no comments on this issue. We find that our original proposal is an appropriate method for setting the construction deadline for these stations. Accordingly, the six stations granted “checklist” waivers whose pre-transition DTV channel is different from their post-transition channel,<sup>95</sup> may forego construction of their pre-transition DTV facility and must complete construction of their post-transition facility by February 17, 2009.<sup>96</sup> The four stations granted “checklist” waivers whose pre-transition DTV channel is the same as their post-

<sup>88</sup> See, e.g., Tribune Comments at 16-20.

<sup>89</sup> See, e.g., Allbritton Comments at 2. Allbritton argues that requiring these stations to remove their top-mounted analog antenna before the analog cut-off is “a very bad idea” because stations will likely suffer severe analog coverage losses and could require significant tower work.

<sup>90</sup> See, e.g., Tribune Comments at 16-20.

<sup>91</sup> See Section V.B.7, *infra*. We note that not all of the stations granted a use or lose waiver in this category have the type of situation that is likely to warrant further time to complete construction after the transition date. See, e.g., *Use or Lose Order*, 22 FCC Rcd at 9768-9769, ¶¶ 109-113.

<sup>92</sup> Allbritton Comments at 2.

<sup>93</sup> These stations sought a waiver of the August 4, 2005 deadline established for all television stations to construct and operate a “checklist” DTV facility. See *Use or Lose Order*, 22 FCC Rcd at 9753, ¶¶ 8-9.

<sup>94</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9507-08, ¶¶ 75-76.

transition channel,<sup>97</sup> must complete their full, final post-transition facility by the deadline established for other stations whose pre-transition DTV channel is the same as their post-transition channel.<sup>98</sup>

57. Stations Denied an Extension of Time to Construct.<sup>99</sup> Five stations were denied extensions in the *Construction Deadline Extension Order*.<sup>100</sup> Three of these stations were admonished and made subject to remedial measures.<sup>101</sup> One admonished station, whose pre-transition DTV channel is the same as its post-transition channel, was afforded six months from the release date of the Order to comply with the DTV construction rule. The other two admonished stations, whose pre-transition DTV channel is different from their post-transition channel, were afforded until 30 days after the effective date of the amendments to Section 73.624(d) of the rules to be adopted in the Report and Order in this Third DTV Periodic Review proceeding. All three admonished stations were also made subject to the remedial measures for DTV construction adopted by the Commission.<sup>102</sup> For the three admonished stations, we proposed in the *Third DTV Periodic Review NPRM* to not consider any future requests for extension of time to construct pre-transition facilities.<sup>103</sup> As we stated in the *Third DTV Periodic Review NPRM*, we believe that admonished stations that have been denied an extension of their construction deadline and have been required to follow remedial procedures should be treated more strictly than stations that have been granted an extension of the construction deadline.<sup>104</sup> We received no comments on this issue and will adopt our proposal.

58. Of the three stations that were denied an extension and admonished, only one station—WTVA-DT, channel 8, Tupelo, Mississippi<sup>105</sup>—has still not built its pre-transition facility.<sup>106</sup>

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<sup>95</sup> See *Use or Lose Order*, 22 FCC Rcd at 9771, ¶ 127. This number will change from six to seven if our proposed channel change for station WPCW-DT, Jeannette, PA (from its DTV channel 49 to new channel 11) is adopted, giving the station a construction deadline of February 17, 2009. See *Eighth Further Notice of Proposed Rulemaking*, 22 FCC Rcd 15640-43, ¶¶ 149-154.

<sup>96</sup> These stations will be treated like any other stations whose pre-transition DTV channel is different than their post-transition channel. See *supra*, Section V.B.1..

<sup>97</sup> See *Use or Lose Order*, 22 FCC Rcd at 9771, ¶ 128. This number will change from four to three for the reasons discussed in note 184, *supra*.

<sup>98</sup> Station WSMH-DT, Flint, MI is the only one of these stations that has yet to apply for and build its post-transition DTV Table Appendix B facilities and, accordingly, has a construction deadline of August 18, 2008. See Section V.B.2., *supra*.

<sup>99</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9508-09, ¶ 77.

<sup>100</sup> See *Construction Deadline Extension Order*, 22 FCC Rcd at 9806-09, ¶¶ 88-99.

<sup>101</sup> *Id.* at 9807-9809, Section III.E. (¶¶ 92-99).

<sup>102</sup> *Id.* See also *Remedial Measures For Failure to Comply with Digital Television Construction Schedule*, Report and Order, 18 FCC Rcd 7174 (2003) (“*Remedial DTV R&O*”).

<sup>103</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9508-09, ¶ 77.

<sup>104</sup> *Id.*

<sup>105</sup> The licensee of this station is WTVA, Inc.

<sup>106</sup> See *Construction Deadline Extension Order*, 22 FCC Rcd at 9807-09, ¶¶ 92, 94, 96, 99. We note that the two other stations that were denied extensions and admonished have since reported the completion of their final DTV facility and, therefore, do not require further consideration. These stations are KJUD-DT, Juneau, Alaska and KECY-DT, El Centro, California. KECY-DT sought reconsideration of the Commission’s admonishment of its failure to complete construction in a timely manner. That reconsideration will be addressed in a separate

WTVA-DT has a post-transition channel that is different from its pre-transition DTV channel. We stated in the *Third DTV Periodic Review NPRM* that requiring such stations, even if denied an extension and admonished, to build their pre-transition channel would be inconsistent with our policy to shift our focus to construction of post-transition facilities.<sup>107</sup> Accordingly, we proposed that we would not require these stations to construct their pre-transition facilities, but that these stations would remain admonished and would remain on a remedial program with respect to construction of their post-transition facilities.<sup>108</sup> In light of the Commission's consideration of the issues raised in the *Third DTV Periodic Review NPRM*, the Commission decided in the *Construction Deadline Extension Order* to temporarily stay its reporting and progress requirements for admonished stations in the case of WTVA-DT.<sup>109</sup> As WTVA-DT has a post-transition channel that is different from its pre-transition DTV channel, consistent with our decision in this Report and Order<sup>110</sup> and as we proposed in the *Third DTV Periodic Review NPRM*, we hereby determine that this station will not be required to construct its pre-transition facility and will remain admonished and on a remedial program with respect to the construction of its post-transition facility.<sup>111</sup> Station WTVA-DT must construct its post-transition facility no later than February 17, 2009, the deadline we have established in this Report and Order for all stations in this category.<sup>112</sup> In addition, in accordance with our remedial program, WTVA-DT must report on its construction progress every 60 days following release of this Report and Order. If station WTVA-DT fails to make progress, it will be subject to additional remedial measures and sanctions.<sup>113</sup> These actions modify our prior remedial measures/admonishment order for WTVA-DT.<sup>114</sup>

59. Stations Denied Waiver of the Use or Lose Deadline. For stations that were denied use or lose waivers in the *Use or Lose Order*, seven stations were denied use or lose waivers in the *Use or Lose Order* and, consequently, lost interference protection to the unused portion of the associated coverage area and lost the ability to "carry over" their interference protection to their unserved DTV service area on their post-transition channel.<sup>115</sup> In the *Third DTV Periodic Review NPRM*, we invited comment on whether we should reevaluate the loss of interference

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proceeding.

<sup>107</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9508-09, ¶ 77.

<sup>108</sup> *Id.*

<sup>109</sup> See *Construction Deadline Extension Order*, 22 FCC Rcd at 9808-09, ¶ 99.

<sup>110</sup> See Section V.B.1, *supra*.

<sup>111</sup> See *Construction Deadline Extension Order*, 22 FCC Rcd at 9808-09, ¶ 99.

<sup>112</sup> See Section V.B.1., *supra*.

<sup>113</sup> See Section V.B.6, *supra* (discussing sanctions for failure to meet deadlines).

<sup>114</sup> See *Construction Deadline Extension Order*, 22 FCC Rcd at 9806-09, Section III.E. (¶¶ 88-99).

<sup>115</sup> See *Use or Lose Order*, 22 FCC Rcd at 9770 ¶ 124. These stations were unable to show that good cause existed to allow them additional time to meet their applicable "use or lose" deadline. See *Use or Lose Order*, *supra* at 9751, ¶ 1, and at Section III.D (¶¶ 116-126). Two of the seven stations denied "use-or-lose" waiver requests, KAME and WCOV, are remaining on their current DTV channel for post-transition use. Neither of these stations filed petitions for reconsideration and their denial is final. They must file applications to modify their construction permit to specify their reduced DTV facilities and, upon grant of the construction permit, they must file a license application to cover this modification reflecting their now completed facility. See *Use or Lose Order*, 22 FCC Rcd at 9769 Section III.D. (¶¶ 116-126).

protection for these stations with respect to their post-transition channel.<sup>116</sup> We received no comments on this issue. We decline to change our decision in that order to remove interference protection for the parts of their service area that were not built by the deadline and for which these stations were unable to justify a waiver.

60. There is no reason to distinguish between stations that failed to complete construction of their pre-transition facility by the use-or-lose deadline based on whether or not the facility would also be used for post-transition operation. In this case, the required build-out was specifically to provide pre-transition service and the failure to provide that service without a valid justification cannot be excused. Accordingly, we will not reevaluate here our decision to remove interference protection for these stations. These stations will not lose their license and must comply with the relevant deadline for operation of their post-transition facility if it differs from their pre-transition facility.<sup>117</sup> We note that four of these stations have sought reconsideration of the denial of their use or lose waivers.<sup>118</sup> We will address these petitions for reconsiderations in a separate proceeding.

### 5. Extension/Waiver of DTV Construction Deadlines

61. In this section, we adopt our proposed revisions to Section 73.624(d)(3) of the rules to tighten the standard for extension of DTV construction deadlines. However, we also clarify that we will consider, on a case by case basis in very limited circumstances, requests for an extension that do not meet our stricter criteria adopted herein where the station can show extraordinary circumstances that warrant providing additional time to complete construction. We also conclude that there will no longer be a separate treatment of “use-or-lose” deadlines, rather all requests for more time to complete construction of full authorized facilities will be dealt with as requests for CP extensions. In addition, we will require stations seeking an extension under Section 73.624(d)(3) to comply with a viewer notification requirement (detailed below).<sup>119</sup> Finally, as we proposed in the *Third DTV Periodic Review NPRM*, for all requests for additional time to construct DTV facilities for construction deadlines occurring on February 18, 2009 or later, we will consider such requests under the tolling standard set forth in Section 73.3598(b) of our rules.<sup>120</sup>

62. Specifically, we take the following steps with respect to requests for additional time to construct post-transition facilities:

<sup>116</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9509-9510, ¶ 78.

<sup>117</sup> The five stations whose pre-transition channel is not the same as their post-transition channel are required to complete construction of their post-transition facility by February 17, 2009, but have lost interference protection to that part of their service area that they failed to serve by the use-or-lose deadline. One of these stations, KUAM, did not file a petition for reconsideration and their denial is final. When KUAM applies for its construction permit, its application should reflect this modification.

<sup>118</sup> Stations KBDI-DT, Denver-Broomfield, Colorado, WDHS-DT, Iron Mountain, Michigan, WDTV-DT, Weston, WV, and WTXS-DT, Waterbury, Connecticut, all filed such petitions for reconsideration. If their petitions are denied, their applications for CP to construct their post-transition facilities must include the necessary modification to reflect the service area lost.

<sup>119</sup> See ¶ 80, *infra*.

<sup>120</sup> See 47 C.F.R. § 73.3598(b). Section 73.3598(b) provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (e.g., floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review (i.e., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal), or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (i.e., zoning or environmental requirements).

- (1) Absent extraordinary circumstances we will no longer consider lack of equipment in the evaluation of whether to grant a request for extension of time to construct a DTV facility.
- (2) We continue to consider circumstances beyond the licensee's control in evaluating requests for extension of time, including delays related to zoning issues or international coordination.
- (3) We eliminate the existing four-part test for an extension of time on the grounds of financial hardship. Under the new test adopted herein, absent extraordinary circumstances, to obtain an extension on the grounds of financial hardship we will require that the station show that it is (a) the subject of a bankruptcy or receivership proceeding, or (b) experiencing severe financial hardship, as defined by negative cash flow for the past three years.
- (4) Requests for extension must be received at least 60 days prior to the deadline for which the extension is requested to ensure review prior to the deadline.
- (5) Beginning at least 30 days prior to the station's termination of analog service, stations must notify their viewers about any delays in completing construction that will prevent the station from providing post-transition digital service to all viewers.<sup>121</sup>
- (6) For all requests for additional time to construct DTV facilities for construction deadlines occurring on February 18, 2009 or later, we will consider such requests under the tolling standard set forth in Section 73.3598(b)<sup>122</sup> of the rules. This rule provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.*, floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review, or construction is delayed by a cause of action pending in court related to requirements for construction or operation of the station (*i.e.*, zoning or environmental requirements).<sup>123</sup>

63. Stations that cannot finalize construction of their final DTV facilities by the February 17, 2009 deadline have several options. First, they may apply for an extension of time to construct pursuant to the stricter extension criteria adopted herein. Alternatively, as discussed below in the phased transition section,<sup>124</sup> stations that cannot finalize construction of their full, authorized post-transition facilities by the transition deadline and that do not meet the revised extension criteria adopted herein may request that they be permitted to stay on their pre-transition DTV channel for a period of time past the February 17, 2009 deadline to permit them to finalize construction provided they serve their existing viewers. As another option, also discussed in the phased transition section below,<sup>125</sup> a station that cannot finalize its full, authorized post-transition facilities by February 17, 2009 and that cannot meet the revised extension criteria may also request that it be permitted to operate with less than full, authorized facilities for a period of time after the transition deadline provided it serves its existing viewers. Stations that cannot build post-transition facilities that serve their existing viewers by February

<sup>121</sup> The station must air such notifications on its analog channel. See ¶ 80, *infra*.

<sup>122</sup> *Id.*

<sup>123</sup> *Id.*

<sup>124</sup> See Section V.B.7., *infra*.

<sup>125</sup> See *id.*

17, 2009 will not be eligible to take advantage of these phased transition options. Requests for more time to construct for any deadline of February 18, 2009 or later will be subject to the tolling standard, as discussed more fully below.

64. The stations that face the most significant amount of construction to finalize their post-transition facilities are those that are moving to a different channel for post-transition operation. It is important to note that in this Report and Order we provide these stations the maximum amount of time – *e.g.*, until February 17, 2009 – to complete construction of these post-transition facilities.<sup>126</sup> As analog transmissions must cease by February 17, 2009, any extension of time to construct final DTV facilities granted beyond this date will result in the loss of service to over-the-air viewers.<sup>127</sup> Consequently, as discussed further below, we will provide extensions of time to construct final DTV facilities only in the most serious of situations.

65. Stations that have an earlier deadline to construct post-transition facilities generally do not have a significant amount of construction remaining to complete their final DTV facility.<sup>128</sup> In some cases, however, these stations do face genuine obstacles to completing construction, such as zoning issues or weather-related damages to facilities. For these stations, the revised standard we adopt herein will continue to consider these kinds of issues in evaluating extension requests. For stations moving to a new channel post-transition and that are subject to either the May 18, 2008 or August 18, 2008 construction deadline, those that need an extension and can satisfy the new criteria adopted herein will be granted an extension until February 18, 2009.

66. In general, at this stage in the transition it would be a disservice to the public to permit stations to continue to obtain extensions of time to construct due to equipment shortages associated with poor planning or a reluctance to commit financial resources to construction of full digital facilities. While most of the commenters that addressed our proposals to tighten the standards for grant of additional time to construct DTV facilities disagreed with our proposals,<sup>129</sup> we believe it is necessary that these standards be tightened to ensure continued, necessary progress by stations toward completion of their post-transition facilities. Because we are close to the end of the transition – the ultimate deadline – we can no longer allow extensions except in the most serious, extraordinary, or truly unavoidable circumstances, such as bankruptcy or zoning or other impediments beyond the station's control. Stations that cannot satisfy these criteria and yet do not complete construction of their post-transition facility will be admonished, placed in remedial programs, subjected to forfeitures, will lose interference protection to their unbuilt service areas, and/or will not be permitted to apply for expanded facilities. These stations will also be required to notify their viewers that the station will not be serving some or all of these viewers beginning February 18, 2009.

67. We have determined that there is no further need for separate “use or lose” and construction deadlines at this point in the transition. Our “use or lose” deadlines were an effort to ensure that stations were operating full power pre-transition DTV facilities during the course of the DTV transition. As we are nearing the end of the DTV transition, stations must complete

<sup>126</sup> See Section V.B.1., *supra*. We also permit stations that are moving to a new channel post-transition and whose pre-transition facility is unbuilt or nonoperational to cease efforts to construct the pre-transition facility and focus their efforts on constructing the final, post-transition facility. *Id.*

<sup>127</sup> Some stations may be permitted to continue to serve current viewers on their pre-transition DTV channel past the transition deadline. See Section V.B.7.a., *infra*.

<sup>128</sup> Stations whose pre- and post-transition channels are the same have until May 18, 2008 to finalize construction of the post-transition facility. See Section V.B.2., *supra*.

<sup>129</sup> See *e.g.*, MSTV/NAB Comments at 20-24; APTS/PBS Comments at 19-20.

their final, post-transition facilities, and the less than full facilities that were permitted by the use-or-lose deadlines will no longer be sufficient. Therefore, from this point on, we will enforce only construction deadlines for all stations. Any station whose DTV facility is either unbuilt or built but operating at less than full power may submit an application for extension if it wants to retain protection to the authorized service area<sup>130</sup> and would meet the new extension criteria.<sup>131</sup>

68. Background. In the *Third DTV Periodic Review NPRM*, we tentatively concluded that we would revise Section 73.624(d)(3) of the rules, which sets forth the standard for extension of DTV construction deadlines, to make that provision substantially stricter.<sup>132</sup> We noted that the initial construction deadlines for DTV facilities passed several years ago and that the deadline for completion of the transition is rapidly approaching. It is critical at this stage in the transition that stations finalize their construction plans and implement them.

69. Under the current rules, the Media Bureau may grant a six-month extension of time to construct a DTV station if the licensee or permittee can show that the “failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee’s control where the licensee has taken all reasonable steps to resolve the problem expeditiously.”<sup>133</sup> The rules state: “[s]uch circumstances shall include, but are not limited to (A) [i]nability to construct and place in operation a facility ... because of delays in obtaining zoning or FAA approvals, or similar constraints; (B) the lack of equipment necessary to obtain a digital television signal; or (C) where the cost of meeting the minimum build-out requirements exceeds the station’s financial resources.”<sup>134</sup> These rules apply to stations granted a paired license for analog and digital operation during the transition.<sup>135</sup> The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests must be referred to the Commission.<sup>136</sup>

70. In the *Third DTV Periodic Review NPRM*, we proposed to eliminate Section 73.624(d)(3)(ii)(B), which permits consideration of lack of equipment in the evaluation of whether to grant a request for extension of time to construct. Most stations have had ample time to order the equipment required to provide digital service. In addition, given the relatively short time remaining in the transition, we find that it is not appropriate to grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. We also proposed to eliminate the existing four-part test for financial hardship, which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station’s financial

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<sup>130</sup> We also note that stations that do not intend to build out to their full authorized facility should apply for a license to cover the facility they have built. See also Section V.B.7., *infra*.

<sup>131</sup> See ¶¶ 62, 79 (referencing new extension criteria and continued use of FCC Form 337).

<sup>132</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9510-9512, ¶¶ 81-83

<sup>133</sup> See 47 C.F.R. § 73.624(d)(3).

<sup>134</sup> See 47 C.F.R. § 73.624(d)(3)(ii). To qualify under the financial resources standard, the applicant must provide (1) an itemized estimate of the cost of meeting the minimum build-out requirements; (2) a detailed statement explaining why its financial condition precludes such an expenditure; (3) a detailed accounting of the applicant’s good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation why those efforts were unsuccessful; and (4) an indication when the applicant reasonably expects to complete construction. See *First DTV Periodic MO&O*, 16 FCC Rcd at 20610-20612, ¶46 (“four-part test”).

<sup>135</sup> DTV singleton stations are already subject to the tolling provisions in 47 C.F.R. § 73.3598(b). We did not propose, and do not make, any changes to our rules regarding DTV singletons.

<sup>136</sup> See 47 C.F.R. § 73.624(d)(3)(iii).

resources, and replace it with a new test. Specifically, in seeking a DTV extension for financial reasons, we proposed that the licensee/permittee of a station may show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years.<sup>137</sup>

71. Equipment shortages. Consistent with our proposal in the *Third DTV Periodic Review NPRM*, we eliminate Section 73.624(d)(3)(ii)(B) of our rules, which permits consideration of circumstances related to “the lack of equipment necessary to obtain a digital television signal” in the evaluation of whether to grant a request for extension of time to construct.<sup>138</sup> Going forward, absent extraordinary circumstances, we will no longer consider lack of equipment a valid ground for granting a request for extension of time to construct. Although the commenters that addressed this issue generally opposed our proposal to eliminate the equipment shortage justification for an extension,<sup>139</sup> we find that at this relatively late stage in the transition it is no longer appropriate to signal to stations that they can obtain more time to construct their final DTV stations by citing general difficulties related to obtaining equipment. Stations must at this stage in the transition be submitting their equipment orders and arranging for delivery and installation in order to ensure that they meet the DTV construction deadlines established in this Report and Order.<sup>140</sup>

72. While requests for an extension of time on the grounds of a lack of equipment will no longer generally be granted, we recognize that for some stations difficulties beyond their control in obtaining or installing equipment may still pose unavoidable delays in completing construction, either because of real equipment shortages, the lack of sufficient tower crews, or because of a delay in scheduling equipment installation due to weather. Therefore, while we adopt our proposal to eliminate the equipment shortage justification as a general ground for grant

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<sup>137</sup> Our proposed showing of three years of negative cash flow is similar to the showing considered in determining whether a station is a “failed station” for purposes of a waiver of our local TV ownership rules. See, e.g., 2002 *Biennial Regulatory Review – Review of the Commission’s Broadcast Ownership rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket 02-277, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket 01-235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, MM Docket 01-317, *Definition of Radio Markets*, MM Docket 00-244, *Definition of Radio Markets for Areas Not Located in An Arbitron Survey Area*, MB Docket 03-130, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13706 ¶ 221 (2003). However, we made clear in the *Third DTV Periodic Review NPRM* that we do not intend to use the failed station standard in its entirety as applied in the context of local TV ownership in determining whether a station should be granted an extension of time to construct under our revised extension standard. See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9511, ¶ 81, n. 155. As proposed in the *Third DTV Periodic Review NPRM*, we will require that a station seeking a DTV extension for financial reasons to demonstrate that it is either in bankruptcy or receivership or has had negative cash flow for the past three years.

<sup>138</sup> 47 C.F.R. § 73.624(d)(3)(ii)(B).

<sup>139</sup> See, e.g., MSTV/NAB Comments at 21 n.41; APTS/PBS Comments at 23.

<sup>140</sup> While we recognize that some stations are still awaiting authorization of their final DTV facilities, the vast majority of stations have been assigned a channel and facility and have no legitimate cause for reluctance to order equipment. Moreover, most of the stations that have requested a change in their previously certified facilities in petitions for reconsideration of the *Seventh Report and Order* in the DTV table proceeding assert that their requested changes are needed to facilitate construction using existing antennas or other equipment. Therefore, these stations should not have need of additional time to construct based on equipment shortages. While stations may be eager to order equipment that will permit them to expand their facilities at a later date when such expansion may be permitted, stations cannot use this excuse to delay ordering now equipment that will permit them to finalize their current authorized facilities.

of an extension of time, and amend the rule accordingly,<sup>141</sup> we will consider, on a case by case basis, requests for an extension where a station can demonstrate that, despite timely orders, there is a delay in delivery of equipment due to a shortage of supply or that there is a delay in installing equipment on hand or in completing tower construction due to a shortage of qualified tower crews. Only stations that can demonstrate that they placed their equipment orders and requested tower crews well in advance will be considered eligible for an extension on these grounds. In addition, we will also consider requests for an extension where the station can demonstrate that tower construction cannot be completed because of weather conditions or that equipment is on hand but that weather conditions have delayed installation. In each case, we will require the station to provide specific, detailed information and supporting documentation to demonstrate that grant of an extension of time to construct is warranted because of a genuine, specific, verifiable delay due to equipment or manpower shortages or weather. Such documentation could include, for example, proof that equipment was timely ordered together with a letter from the equipment supplier confirming a delay in filling orders and an estimated date by when the equipment will be delivered, or proof that equipment is on hand together with a letter from the equipment installer confirming a delay in scheduling installation and an estimated date for installation. With respect to delays due to weather, we will consider proof that the equipment is on hand or that tower construction has commenced or is ready to commence together with information confirming unsuitable weather conditions and an estimated date for finalizing tower construction and/or equipment installation. Stations must also note on FCC Form 387 the status of the station's transition and any delays related to delivery or installation of equipment and must update the form to keep the Commission apprised of changes or continuing delays.<sup>142</sup>

73. This approach responds to the concerns raised by MSTV and NAB who specifically opposed our proposal to eliminate the equipment shortage justification for an extension of time. MSTV and NAB argued that eliminating the equipment shortage justification was inappropriate given the enormous anticipated demand for equipment and the relatively small number of manufacturers and installers, which could lead to very real shortages.<sup>143</sup> We agree that there are instances in which stations may face legitimate delays in obtaining or installing equipment because of high demand or weather considerations and we will consider extensions in these extraordinary circumstances. Apart from such extraordinary circumstances, however, we will no longer generally consider lack of equipment as grounds for an extension of time.

74. Financial hardship. We also hereby adopt our proposal to eliminate the existing four-part test for financial hardship, which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources, and replace it with a new test. To obtain an extension on the grounds of financial hardship we will require that the station show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. Stations seeking an extension based upon financial considerations must either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations must also submit a schedule of when they expect to complete construction.

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<sup>141</sup> See revised rule 47 C.F.R. § 73.624(d)(1)(v)-(vii) in Appendix B, *infra*.

<sup>142</sup> See Section V.A.1, *supra*.

<sup>143</sup> See MSTV/NAB Comments at 21, n. 41.

75. Our goal in adopting this stricter financial hardship standard is to limit extensions to situations where stations clearly are unable to make the financial commitment necessary to complete construction of their post-transition DTV facilities. While we recognize that a number of stations face financial obstacles to completing construction, at this relatively late stage in the transition it is imperative that stations devise and implement a plan to complete their final DTV facilities. Analog broadcasts must cease at midnight on February 17, 2009. In order to ensure that viewers continue to receive television service after the transition, stations must complete their post-transition facilities now. It is difficult to imagine a more compelling use of funds than to ensure continued service to the viewing public. Thus, only stations that can demonstrate no available funds or source of funding to complete construction may be granted an extension on this ground.

76. While we adopt our proposal to tighten our financial hardship standard, and amend the rule accordingly,<sup>144</sup> we recognize that some stations, including some noncommercial educational stations and some smaller stations, face extraordinary financial circumstances that do not fit within the new financial hardship criteria but that nonetheless may warrant an extension of time to finalize construction. Therefore, we will consider, on a case by case basis, requests for an extension that do not meet our revised financial hardship criteria where a station can demonstrate extraordinary circumstances. In this regard, we will consider situations where the station can demonstrate, for example, that it is awaiting expected funding in the form of a station grant or similar funding together with a date by when such funding is expected to be received. We will also consider situations in which the station can show that it has a detailed, step-by-step plan for constructing its post-transition facilities by February 17, 2009 and that it is making and will continue to make timely progress in implementing this plan. We caution stations that extensions on the grounds of extraordinary circumstances will not be routinely granted.

77. We will require that all stations requesting an extension submit proof of the circumstances that warrant an extension of time, and provide a firm estimate of when construction will be completed. Stations will also be required to provide information on FCC Form 387 regarding the status of the station's transition and to update this information on a regular basis.<sup>145</sup>

78. Circumstances beyond the station's control. As we proposed, we will continue to consider requests for extension of time where the station is awaiting action by the Commission or a court on a pending application or appeal or where action on an application is being delayed for other reasons beyond the station's control.<sup>146</sup> We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the control of the station, such as where the failure to obtain coordination will not permit the station to construct facilities sufficient to replicate its analog coverage area. A station seeking to maximize that cannot obtain international coordination for such facilities may be required to construct facilities with a smaller coverage area. As we stated in the *Third DTV Periodic Review NPRM*, we will also continue to consider circumstances related to an act of God or terrorism in evaluating requests for an extension of time to construct.<sup>147</sup>

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<sup>144</sup> See revised rule 47 C.F.R. § 73.624(d)(1)(v)-(vii) in Appendix B, *infra*.

<sup>145</sup> See *supra*, Section V.A.1.

<sup>146</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9511-12, ¶ 83.

<sup>147</sup> *Id.* See revised rule 47 C.F.R. § 73.3598(b) in Appendix B, *infra*.

79. Application of revised extension standard. Our stricter standard for grant of an extension of time to construct DTV facilities adopted herein will be applied to all pending and future requests for extension of construction deadlines occurring on or before February 17, 2009. While we proposed in the *Third DTV Periodic Review NPRM* to apply our stricter extension standard to construction deadlines occurring before – but not on – February 17, 2009, and to apply our proposed tolling standard to deadlines on or after that date,<sup>148</sup> we now find it is appropriate to apply the revised, stricter extension standard to construction deadlines on or before February 17, 2009. While our revised extension standard is stricter than the current standard, it provides more flexibility to stations than the tolling standard. Thus, applying the revised extension standard rather than tolling to stations with a February 17, 2009 construction deadline will provide some relief to these stations that may face legitimate obstacles to completing their post-transition facilities. All requests for extension of time pursuant to Section 73.624(d), as amended,<sup>149</sup> must be filed electronically using the revised FCC Form 337.<sup>150</sup> We remind parties that applications for extension must be filed “no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.”<sup>151</sup> To ensure sufficient time for review of any such extension requests, the Bureau is instructed to apply this requirement strictly and to accept extension requests filed fewer than 60 days before the applicable construction deadline only if the party affirmatively and persuasively demonstrates that the extension is necessary due to an unforeseen development or event occurring within the 60 day timeframe.<sup>152</sup>

80. Viewer Notification. Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 must notify viewers on their analog channel about the station’s planned delay in construction and operation of post-transition (DTV) service.<sup>153</sup> Therefore, stations seeking an extension of time to construct post-transition facilities under revised Section 73.624(d)(3) must notify viewers on their analog channel about their post-transition service limitations. Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-days prior to the station’s termination of full, authorized analog service. These notifications must include: (1) the station’s call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service; (3) information about the nature, scope, and anticipated duration of the station’s post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station’s digital signal

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<sup>148</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9511-12, ¶¶ 83-86.

<sup>149</sup> See revised rules 47 C.F.R. § 73.624(d)(1)(v)-(vii) Appendix B, *infra*.

<sup>150</sup> See form changes to FCC Form 337 in Appendix C. Requests for extraordinary relief in the circumstances described herein should also be filed electronically using FCC Form 337. Such requests should indicate clearly the circumstances that the station claims warrants additional time to construct.

<sup>151</sup> 47 C.F.R. § 73.624(d)(3)(iv).

<sup>152</sup> We note that because any extensions would apply to the new deadlines adopted by this Report and Order, the Media Bureau has delegated authority to grant or deny extensions for up to six months. See 47 C.F.R. § 73.624(d)(3)(i), (iii).

<sup>153</sup> Population to be served should be based on the population the station is authorized to serve both before and after the transition. Population not previously served and population that will no longer be served by the station’s authorized post-transition facility need not be counted. This applies to all calculations of population herein. See Section V.B.7., *infra*.

can be received;<sup>154</sup> and (5) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our *DTV Consumer Education Initiative*.<sup>155</sup>

81. Tolling. As we proposed in the *Third DTV Periodic Review NPRM*, post-transition we will return to the existing standard for analog facilities in considering requests for additional time to construct DTV facilities. For all requests for additional time to construct DTV facilities for construction deadlines occurring February 18, 2009 or later, we will consider such requests under the tolling standard set forth in Section 73.3598(b) of the rules,<sup>156</sup> which currently applies to DTV singletons and analog TV stations, as well as AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, and LPFM stations. Section 73.3598(a) applies to construction permits for “new TV” stations or to make changes in existing stations, and we hereby clarify that this reference includes construction permits for new DTV stations, as well as to existing DTV stations, and that we will apply Section 73.3598 to such stations beginning February 18, 2009. We also will require that notifications pursuant to Section 73.3598 be filed electronically through the Commission’s Consolidated Database System (“CDBS”) using the Informal Application filing form.<sup>157</sup>

82. While the commenters that addressed the tolling issue generally opposed implementation of this approach,<sup>158</sup> we find that once the transition to an all-digital broadcast service has occurred, it is appropriate to apply a stricter “tolling” approach to construction deadlines. Once DTV is the sole broadcast service, we find requests for additional time to construct should be treated as we now treat such requests for all analog stations and DTV singletons.<sup>159</sup> Once the transition deadline has passed, stations will no longer be required to operate dual facilities and the demand for scarce resources by industry will level off. In the *Third DTV Periodic Review NPRM*, we proposed to apply tolling to construction deadlines occurring on February 17, 2009 or later.<sup>160</sup> However, as noted above,<sup>161</sup> we will instead apply the revised extension criteria to deadlines on or before February 17, 2009 and will apply tolling to deadlines occurring February 18, 2009 or later. This approach will provide some additional flexibility to stations by delaying implementation of the stricter tolling standard.

83. Section 73.3598 provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (*e.g.*, floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review, or construction is delayed by a cause of action pending in court related to requirements

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<sup>154</sup> Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>155</sup> See generally *DTV Consumer Education Initiative*, *supra*, note 84.

<sup>156</sup> See 47 C.F.R. § 73.3598(b).

<sup>157</sup> For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq_informal.htm).

<sup>158</sup> See CBS Comments at 5; Broadcast Company of Sarasota at 2-3.

<sup>159</sup> See 47 C.F.R. § 73.3598(b).

<sup>160</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9512, ¶ 86.

<sup>161</sup> See *supra* ¶ 62.

for construction or operation of the station (*i.e.*, zoning or environmental requirements).<sup>162</sup> Beginning February 18, 2009, we will require that DTV permittees notify the Commission of any event covered under our tolling provision and provide supporting documentation in order to toll the construction deadline.<sup>163</sup> Permittees will also be required to notify the Commission when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God automatically ceases six months from the date of the notification to the Commission unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction and describing construction progress and the steps the permittee has taken and proposes to take to resolve any remaining impediments.<sup>164</sup> Any construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.<sup>165</sup>

84. As proposed in the *Third DTV Periodic Review NPRM*, delays due to international coordination will not generally be grounds for tolling of a DTV construction permit with two exceptions. First, the Commission will toll a construction permit for a DTV station where the station demonstrates that a request for international coordination has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received. Second, the Commission will toll a DTV construction permit where the station can demonstrate that the DTV facility approved by Canada or Mexico would not permit the station to serve the viewers currently served by the station's analog facility that would also be served by the station's digital facility approved by the Commission domestically. The tolling rule is amended accordingly.<sup>166</sup>

## 6. Sanctions for Failure to Meet Construction Deadlines

85. We remind stations that they will be subject to sanctions if they fail to meet their deadline for the construction of their final, post-transition DTV facilities, fail to justify an extension of their deadline pursuant to the revised procedures and policies, or are otherwise unable to qualify for the "phased transition" provisions. For example, a station failing to meet its construction deadline may be subject to license revocation procedures,<sup>167</sup> the issuance of forfeitures,<sup>168</sup> loss of interference protection to unserved DTV service area,<sup>169</sup> or other remedial

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<sup>162</sup> *Id.* Under the tolling standard, the filing of an application for modification of a construction permit does not serve as grounds for tolling of the construction deadline.

<sup>163</sup> *See id.* *See also* 47 C.F.R. § 73.3598(c).

<sup>164</sup> *See* Section V.B.5, *supra*. *See also* 47 C.F.R. § 73.3598(d).

<sup>165</sup> *See id.* *See also* 47 C.F.R. § 73.3598(e). The Commission has noted that there may be rare and exceptional circumstances, other than those delineated in its rules or decisions adopting the rules, that would warrant the tolling of construction time, *i.e.*, other circumstances in which a permittee is prevented from completing construction within the time specified on its original construction permit for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under 47 U.S.C. § 319(b). In these very limited circumstances, the Commission noted that it would entertain requests for waiver of its strict tolling provisions. *See 1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes, MM Docket No. 98-43, Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, MM Docket No. 94-149, 14 FCC Rcd 17525, 17541, ¶ 42 (1999) ("Streamlining MO&O")*.

<sup>166</sup> *See* revised rule 47 C.F.R. § 73.3598(b) in Appendix B, *infra*.

<sup>167</sup> *See* 47 U.S.C. § 312.

<sup>168</sup> *See* 47 U.S.C. § 503(b).

measures, such as admonishment and the imposition of periodic reporting requirements.<sup>170</sup> We also remind licensees that “if a broadcasting station fails to transmit broadcast signals for any consecutive 12-month period, then the station license granted for the operation of that broadcast station expires at the end of that period, notwithstanding any provision, term, or condition of the license to the contrary.”<sup>171</sup>

86. We find that these sanctions continue to be the appropriate methods to encourage stations to meet their DTV construction deadlines and to ensure that all stations are constructed and operating with their full, authorized post-transition DTV facilities at the end of the DTV transition. We note that approximately 100 stations have been placed in the DTV remedial program since its adoption in 2003. All but one station completed construction and began operating their DTV facilities within six months of enrollment in the program, thus eliminating the need for further sanctions. Therefore, with one slight modification, we find that continued use of the DTV construction remedial program will ensure that non-complying stations are able to quickly bring their stations into compliance with their DTV construction obligations.

87. Currently, stations placed in the remedial program are initially admonished and are provided with a six-month period to complete construction of their DTV facilities in order to avoid further sanctions such as the imposition of forfeiture.<sup>172</sup> As we are nearing the completion of the DTV transition, we find that it is appropriate to accelerate our remedial procedures and require stations to complete construction of their DTV facilities in a shorter period of time in order to avoid further sanctions. Therefore, we modify the first stage in our remedial program and provide stations with three months to complete construction of their DTV facilities in order to avoid the imposition of further sanctions. By requiring compliance in a three-month period, we seek to ensure that non-compliant stations will come into compliance with our DTV construction rule and be ready for the final DTV transition.

## 7. Phased Transition Provisions for Regulatory Relief

88. We adopt two provisions for a “phased transition” in an effort to offer broadcasters regulatory flexibility in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition date.<sup>173</sup> First, we will permit qualifying stations to temporarily remain on their pre-transition DTV channel; and, second, we will permit qualifying stations to build less than their full, authorized facilities by their construction deadline. To qualify for these provisions, stations must meet a service requirement to minimize the loss of service after the transition date and also must not cause impermissible interference to

<sup>169</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18281, ¶ 4.

<sup>170</sup> See *Remedial Measures For Failure to Comply with Digital Television Construction Schedule*, Report and Order, 18 FCC Rcd 7174, 7176-7 (2003) (“*Remedial DTV R&O*”).

<sup>171</sup> 47 U.S.C. § 312(g). In addition, stations discontinuing operations must also be mindful of the Commission’s rules. See, e.g., 47 C.F.R. §§ 73.1615 (operation during modification of facilities), 73.1690 (modification of transmission systems), 73.1740 (minimum operating schedule) and 73.1750 (discontinuance of operation).

<sup>172</sup> See *Remedial DTV R&O*, 18 FCC Rcd at 7176-7.

<sup>173</sup> As discussed above, stations whose post-transition channel is different from their pre-transition DTV channel must build their full, authorized post-transition (digital) facilities no later than February 17, 2009. Stations whose post-transition channel is the same as their pre-transition DTV channel must build their full, authorized facilities no later than the expiration date of their current construction permit, which date was extended until November 18, 2007 for stations whose applications for extensions of time to construct DTV facilities and/or “use or lose” waivers were addressed in either the *Construction Deadline Extension Order*, 22 FCC Rcd 9789 or *Use or Lose Order*, 22 FCC Rcd 9750.

other stations. Stations that are permitted to use one of the provisions for a phased transition, even though they will not serve at least the same population that receives their current analog TV and DTV service, must also comply with a viewer notification requirement (described below). Stations can seek relief under these provisions if they cannot satisfy the strict requirement for obtaining an extension of time to construct their full, authorized facilities.<sup>174</sup> Because the service requirement protects consumers, we find that we can offer this relief, subject only to an engineering analysis (*i.e.*, the population and interference criteria).

89. We adopt these measures, which were discussed in the *Third DTV Periodic Review NPRM*,<sup>175</sup> in response to the many comments by broadcasters advocating for regulatory flexibility to build less than their full, authorized facilities by their post-transition construction deadlines.<sup>176</sup> As noted above, most commenters asked us to be as flexible as possible when establishing construction deadlines.<sup>177</sup> These commenters noted that the February 17, 2009 statutory deadline was only for the termination of analog service and not expressly for completion of stations' final (*i.e.*, full, authorized) digital facilities. Accordingly, these commenters asked that stations be allowed to operate at less than full, authorized facilities for some specified time after the transition.<sup>178</sup>

90. Because qualification for the regulatory relief offered by these provisions will require stations to serve all or most of the same population that receives their current television (analog and digital) service, we find that these provisions strike the right balance of offering regulatory flexibility to broadcasters while not undermining viewers' over-the-air reception expectations after the transition date.<sup>179</sup> MSTV/NAB proposed that stations only be required to provide digital service to their communities of license as of the February 17, 2009 transition date, and that they should be allowed to operate at less than full, authorized facilities for one year after the transition date.<sup>180</sup> MSTV/NAB would rely on broadcasters' market incentive to "maximize their digital service" to viewers.<sup>181</sup> We disagree, however, that a coverage requirement limited to stations' communities of license would satisfy consumer expectations after the transition date. Instead,

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<sup>174</sup> See Section V.B.5., *supra*.

<sup>175</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9514-16, ¶¶ 89-90.

<sup>176</sup> See, *e.g.*, Allbritton Comments at 3; APTS/PBS Comments at 16-18; Bahakel Comments at 4; Central Michigan University Comments at 6; Disney Comments at 5-6; Hawaii PTV Foundation Comments at 5; MSTV/NAB Comments at 22-26; Nebraska PTV Licensees Comments at 4; PBNP Comments at 5; Quincy Comments at 5; Rocky Mountain Comments at 8; Scripps-Howard Broadcasting Comments at 3-4; Sistema Universitario Ana G. Mendez, Inc. Comments at 6; South Carolina Educational Television Commission Comments at 1; St Louis PTV Comments at 4; University of Michigan Comments at 3.

<sup>177</sup> See, Section V.B.5., *supra* (discussing post-transition construction deadlines).

<sup>178</sup> See, *e.g.*, AFCCE Comments at 4-6; Allbritton Comments at 8-9; APTS/PBS Comments at 11-12; Hubbard Comments at 6; Montecito of Wichita Comments at 1-2; MSTV/NAB Comments at 24; Sky Comments at 6; Tribune Comments at 13; University of Alaska Comments at 2-3; United Comments at 6; University of Houston Comments at 4; Univision Comments at 22; West Virginia Media Holdings Comments at 5; WQED Reply at 2.

<sup>179</sup> The noise limited service contour for DTV stations covers an area that is larger than the station's community of license. Thus, a significant number of a station's viewers may reside outside of the station's community of license and outside the community of license coverage contour, but within its noise limited service area. See 47 C.F.R. 73.622(e) for the definition of the DTV service areas and 47 C.F.R. 73.625(a) for the community of license coverage requirement.

<sup>180</sup> MSTV/NAB Comments at 24.

<sup>181</sup> *Id.*

we limit these special measures for regulatory relief to stations that can serve all or most of their existing viewers. Stations that cannot build post-transition facilities that serve their existing viewers must obtain Commission approval for an extension of time to complete their facilities.<sup>182</sup> We reject MSTV/NAB's argument that this service requirement is too restrictive "in light of equipment shortages and other technical issues" and that a community of license coverage requirement would be sufficient.<sup>183</sup> We take seriously the goal of ensuring that consumers who have prepared for the transition by obtaining the necessary DTV receiver equipment are able to, at a minimum, continue to watch their current television programming after the transition date. To that end, we have taken steps to require, wherever possible, that stations complete their final, post-transition facilities by the transition date. We recognize, however, that in some situations it may be preferable for some viewers to lose television service for a limited time after the transition date if that would prevent many viewers from losing analog TV service for a significant time before the transition date.

91. Viewer Notification. We will require stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 to notify viewers on their analog channel about the station's planned delay in construction and operation of post-transition (DTV) service.<sup>184</sup> Therefore, stations seeking STA approval to use one of the provisions for a phased transition must notify viewers on their analog channel about their post-transition service limitations. Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station must delay the construction and operation of its post-transition (DTV) service; (3) information about the nature, scope, and anticipated duration of the station's post-transition service limitations; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;<sup>185</sup> and (5) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.<sup>186</sup>

**a. Temporary Use of In-core Pre-Transition DTV Channels**

92. To provide flexibility to the post-transition construction deadlines established above,<sup>187</sup> we adopt our proposal in the *Third DTV Periodic Review NPRM*<sup>188</sup> to allow stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided:

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<sup>182</sup> See Sections V.B.5. (discussing extensions of time to construct final DTV facilities).

<sup>183</sup> MSTV/NAB Comments at 24.

<sup>184</sup> See note 240.

<sup>185</sup> Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>186</sup> See *DTV Consumer Education Initiative*, *supra* note 84.

<sup>187</sup> See Section V.B.5., *supra*.

<sup>188</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9515, ¶ 90.

- (1) They serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service;<sup>189</sup>
- (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. We adopt our tentative conclusion<sup>190</sup> that the 0.5 percent interference standard established for post-transition operations (in section F, below) would apply because such operations would occur after the transition deadline.<sup>191</sup>

The record clearly supports adoption of the temporary use of in-core pre-transition channels.<sup>192</sup> We agree with commenters that some stations that are returning to their analog channel or moving to a new channel for post-transition operations may be able to temporarily remain on their in-core pre-transition DTV channel and provide adequate service after the transition date without causing impermissible interference to other stations or preventing other stations from making their transition. Moreover, we expect that this provision for regulatory relief will advance the transition by freeing scarce transition resources for those stations that cannot utilize the opportunities afforded for a phased transition.

93. Stations' authority to operate on a pre-transition channel, including their digital channel, ends on February 17, 2009.<sup>193</sup> Therefore, stations must request STA approval for authority to remain on their pre-transition channel in accordance with our existing filing procedures.<sup>194</sup> Stations must apply for such approval no later than August 17, 2008 so that their request can receive the appropriate engineering analysis. Stations that remain on their pre-transition digital channel may not apply for expanded post-transition facilities, until they complete construction and commence operation on their post-transition channels. Stations approved for this relief may remain on their pre-transition digital channel for no longer than one year after the transition date and will receive an extension of time to construct their full,

<sup>189</sup> As noted *supra* in note 240, we recognize that after the transition there will be some changes in population served based on the service area authorized for post-transition operation consistent with the station's application, channel election, or other modifications, such as change of antenna site. To qualify for this flexibility, the station is not required to continue serving population that it will not be required to serve with its authorized facility after the transition. Stations must ensure that viewers within the station's authorized service area who have television equipment with a digital receiver, including those who obtain a digital-to-analog converter box through the NTIA program, will be capable of receiving DTV signals over-the-air post-transition. Stations that cannot satisfy this presumption, may still request Commission approval on a case-by-case basis for continued interim operations upon demonstration that they would provide digital service to a greater population than would their incomplete post-transition facility. These stations, however, must obtain Commission approval under the stricter standard for an extension of time to construct their post-transition facilities.

<sup>190</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9515, ¶ 90.

<sup>191</sup> We also agree with MSTV/NAB that the 0.5 percent interference standard would apply when evaluating two interim stations that temporarily continue to operate on their pre-transition DTV channels after the transition date. MSTV/NAB Comments at 23, n.45.

<sup>192</sup> See, e.g. Sky Comments at 4; Tribune Comments at 13-17; Twin Cities Comments at 9-10;

<sup>193</sup> The post-transition DTV Table, which was adopted in the *Seventh Report and Order*, became effective October 26, 2007. See *Seventh Report and Order*, 72 FR 54720 (Sept. 26, 2007), 22 FCC Rcd 15581 at apps. A and B. See also 47 C.F.R. § 73.622(i). The current DTV Table, which is contained in 47 C.F.R. § 73.622(b), will become obsolete at the end of all authorized pre-transition DTV operations. The current NTSC Table, which is contained in 47 C.F.R. § 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease.

<sup>194</sup> Requests for STA, pursuant to section 73.1635 of the rules, 47 C.F.R. § 73.1635, may be submitted by informal letter or email. Stations may file requests electronically through CDBS or send an email to [dtvrequests@fcc.gov](mailto:dtvrequests@fcc.gov).

authorized post-transition facilities for the time that they remain on their pre-transition digital channel. Accordingly, these stations must begin operations on their full, authorized final, post-transition (digital) channels no later than February 18, 2010.<sup>195</sup> We find that this relief offered to in-core stations is consistent with the statutory transition deadline for full power stations to end analog service and to broadcast only on in-core channels.<sup>196</sup>

**b. Alternative Buildout to Maintain Existing Service**

94. As an additional approach to provide flexibility to the post-transition construction deadlines established above, we will consider stations' requests for STA to operate their post-transition facilities on post-transition channels at less than their full, authorized facilities (as defined by the DTV Table Appendix B). We will authorize STAs for this purpose, provided stations can demonstrate:

- (1) A unique technical challenge (as defined in Section V.B.5., above)<sup>197</sup> and they can serve at least 85 percent of the same population that receives their current analog TV and DTV service;<sup>198</sup> or
- (2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein and they serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service.<sup>199</sup>

Furthermore, in either case, stations must also demonstrate that the STA facility they request will not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations or prevent other stations from making their transition. Finally, stations that cannot serve at least 100 percent of the same population that receives their current analog TV and DTV service must comply with a viewer notification requirement (described above).<sup>200</sup>

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<sup>195</sup> This one year period is consistent with MSTV/NAB's request for a one-year "digital ramp-up" period. MSTV/NAB Comments at 22.

<sup>196</sup> See 47 U.S.C. § 309(j)(14). Because the statute prohibits full-power stations from remaining on out-of-core channels after the transition deadline, this flexibility cannot apply to DTV stations operating out-of-core (*i.e.*, TV channels 52-69). *Id.*

<sup>197</sup> See Section V.B.3., *supra*. For example, stations with side-mounted antenna-related issues, particularly those with towers in northern climates or at higher altitudes, face unique technical challenges that would warrant this relief. See, *e.g.*, Allbritton Comments at 3-4; Broadcast Company of Sarasota Comments at 4-5; Bahakel Comments at 3; Tribune Comments at 16-20; Montecito of Wichita Comments at 2; Quincy Comments at 3-4 (discussing the side-mount problem of station WXOW). In addition, stations returning to their analog channels and that intend to retune their existing analog equipment may also face unique technical challenges that would warrant this relief. See, *e.g.*, Quincy Comments at 4-5.

<sup>198</sup> As noted *supra* in note 240, population should be calculated on the basis of the population the station is authorized to serve both before and after the transition. Population not previously served and population that will no longer be served by the station's authorized post-transition facility should not be counted towards the 85 percent.

<sup>199</sup> As noted *supra* in note 276, stations must ensure that consumers served pre-transition that obtain a D-to-A converter box through the NTIA program or who otherwise purchase DTV receiver equipment will be capable of receiving off-the-air DTV signals post-transition.

<sup>200</sup> See *supra* ¶ 91.

95. We sought comment on this issue in the *Third DTV Periodic Review NPRM*<sup>201</sup> and we adopt this approach in response to the many comments advocating for such relief.<sup>202</sup> We differentiate stations that have a significant technical impediment to construction of their full, authorized post transition facility but that can, nevertheless, continue to serve all of their current viewers. In these circumstances, because viewers will not lose service after the transition, we will grant STAs for six months even though the station would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein.<sup>203</sup> However, commenters have demonstrated that for some stations facing the type of unique technical challenge defined in Section V.B.5., above, service to all current viewers may not be possible. For example, stations with a side-mounted digital antenna that can demonstrate that because of weather or another valid reason they would have to reduce or terminate their analog service well before the transition date (*e.g.*, Summer 2008) in order to complete construction of their final, post-transition facility may qualify for this post-transition relief for up to six months. While it is critical that we minimize the loss of television service after the transition date as much as possible, we recognize that, in such a special situation, it may be preferable to accept a limited loss of DTV service for a limited time after the transition date to prevent a significant loss of analog service many months before the transition date. Stations must demonstrate both the need for this flexibility and for the timing that they request. For example, a station could show that the weather where its tower is located generally remains dangerously cold through May.

96. Stations must request STA approval for this relief in accordance with our existing filing procedures.<sup>204</sup> We recognize, however, that stations will need a decision on such requests in time to make alternate transition plans should their request be denied. Therefore, stations should apply for this relief well in advance of the transition date, perhaps as early as Spring 2008, to allow sufficient time for Commission review and action. Stations must construct such intermediate facilities that would meet the service requirement by the transition date. Stations approved for this relief may remain at such intermediate facilities for no longer than six months after the transition date and will receive an extension of time to construct their full, authorized post-transition facilities for this period of time. Accordingly, these stations must begin operations on their full, authorized, final, post-transition (digital) channels no later than August 18, 2009. Stations that seek relief under this provision may only apply for expanded post-transition facilities if they will complete construction and commence operation on those facilities no later than August 18, 2009. In addition to this relief afforded stations that can serve at least 85 percent of their viewers, we will consider on a case-by-case basis affording stations STA approval for some relief even if they cannot meet the 85 percent service requirement, provided they demonstrate that their circumstances warrant this additional flexibility. Such stations, however, would be allowed to remain at such intermediate facilities for no longer than necessary,

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<sup>201</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9514-15, ¶ 89.

<sup>202</sup> See, *e.g.*, AFCCE Comments at 4-6; Allbritton Comments at 8-9; APTS/PBS Comments at 11-12; Hubbard Comments at 6; Montecito of Wichita Comments at 1-2; MSTV/NAB Comments at 24; Sky Comments at 6; Tribune Comments at 13; University of Alaska Comments at 2-3; United Comments at 6; University of Houston Comments at 4; Univision Comments at 22; West Virginia Media Holdings Comments at 5; WQED Reply at 2.

<sup>203</sup> See revised rule 47 C.F.R. § 73.624 by adding paragraphs (d)(1)(v)-(vii) in Appendix B, *infra*.

<sup>204</sup> Requests for STA, pursuant to section 73.1635 of the rules, 47 C.F.R. § 73.1635, may be submitted by informal letter or email. Stations may file requests electronically through CDBS or email courtesy copies of their STA requests to [dtvrequests@fcc.gov](mailto:dtvrequests@fcc.gov).

which we expect in most cases would be no more than three to four months after the transition date.

97. Special Relief for NCE and Small Market Stations. To provide additional regulatory relief for noncommercial educational (“NCE”) and Small Market Stations (*i.e.*, stations which are not a top-four network in markets 1-100),<sup>205</sup> we will consider on case-by-case basis allowing these stations a reduced service requirement if their circumstances warrant this additional flexibility. We have provided these stations more flexibility throughout the transition. For example, they received a later use-or-lose deadline in the *Second DTV Periodic Report and Order* and we noted in the *Fifth Report and Order* the unique financial difficulties faced by NCE stations and reiterated our view that these stations will need, and warrant, special relief to assist them in the transition to DTV.<sup>206</sup> NCE stations and small broadcasters urged the Commission to be sensitive to the problems of stations serving small markets, especially in light of our proposal to impose stricter financial hardship criteria for construction deadline extensions.<sup>207</sup>

### C. Service Disruptions Necessitated by Construction of Post-Transition Facilities

98. In this section we provide stations with the flexibility to reduce or terminate existing analog or pre-transition digital service prior to the February 17, 2009 transition date where necessary to permit stations to finalize construction of their post-transition facilities. Commenters discussed a wide range of possible circumstances in which stations may need to reduce or terminate such existing service either temporarily or permanently in order to complete construction of final DTV facilities. For example, some stations may need to remove a top-mounted analog antenna on a tower in order to replace it with a permanent digital antenna at the top position.<sup>208</sup> In other cases, a new antenna may need to be added to an existing tower, or an existing analog antenna may need to be altered for digital use.<sup>209</sup> Some towers may be able to support the weight of additional antennas, while others may need to be strengthened before another antenna is installed or an existing antenna may have to be removed to make room for a new antenna. Some stations may be the only occupants of the tower on which the antenna is located, while other stations may share the tower with other television and radio stations and will need to coordinate tower work with these other stations. In some cases, stations may need to reduce service to allow construction to proceed, while in other cases service may need to be halted altogether for some period of time.<sup>210</sup> Some of the service disruptions required to permit construction of final DTV facilities may be only temporary, while in other cases stations may need or prefer to cease analog or pre-transition digital service permanently for the remainder of the transition in order to finalize their post-transition facilities.

99. In general, commenters argued that, at this stage in the transition, the Commission should provide the maximum possible flexibility to stations to permit them to finalize

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<sup>205</sup> By small market stations we mean stations that are not affiliated with a top-four network (*i.e.*, ABC, CBS, Fox and NBC) in markets 1-100. We have previously recognized that such stations may warrant additional flexibility in meeting their construction deadlines. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319, ¶¶ 80-87.

<sup>206</sup> *Fifth Report and Order*, 12 FCC at 12852, ¶ 104.

<sup>207</sup> CFB Comments at 3; Sunbelt Comments at 2; Agape Comments at 1; Thunder Bay Comments at 1.

<sup>208</sup> See, *e.g.*, MSTV/NAB Comments at 8; Disney Comments at 2-3.

<sup>209</sup> See, *e.g.*, Disney Comments at 3.

<sup>210</sup> See, *e.g.*, Capitol Comments *passim*; APTS/PBS Comments at 17.

construction of their post-transition facilities in a manner that best suits the station's particular circumstances. Our goal in this section is to provide stations with this flexibility, while still ensuring that viewers are not deprived of existing service except where necessary or clearly beneficial to permit the maximum number of stations to accomplish the transition by February 17, 2009. We discuss below four kinds of service disruptions that may take place to facilitate construction of final DTV facilities:

- (1) Temporary service disruptions (generally no more than 30 days);
- (2) Permanent or extended (*i.e.*, more than 30 days) service reduction or termination of analog service before the transition date;
- (3) Permanent or extended (*i.e.*, more than 30 days) service reduction or termination of pre-transition digital service before the transition date; and
- (4) Permanent service reduction or termination of analog or pre-transition digital service 90 days before the transition date.

### 1. Temporary Service Disruptions

100. Under Section 73.1615 of the Commission's rules,<sup>211</sup> stations may reduce or cease service temporarily without prior Commission approval in order to modify existing facilities. We clarify that stations may use this existing provision to temporarily reduce or cease existing analog or pre-transition digital service where necessary to facilitate construction of final post-transition facilities. Because this provision does not require prior Commission authorization, and does not require licensees to justify the need for the service disruption, this provision gives stations substantial flexibility to temporarily reduce or cease analog or digital service pre-transition.

101. Section 73.1615 provides that, where the licensee of an existing television station is in the process of modifying facilities as authorized by a construction permit, the licensee may discontinue operation or operate with temporary facilities, upon notification to the Commission, for a period of 30 days, in order to continue to provide program service.<sup>212</sup> Where the station

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<sup>211</sup> See 47 C.F.R. § 73.1615(a) and (c).

<sup>212</sup> See 47 C.F.R. § 73.1615(a) and (c):

When the licensee of an existing AM, FM, TV or Class A TV station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service, the following procedures apply:

(a) Licensees holding a construction permit for modification of directional or nondirectional FM, TV or Class A TV or nondirectional AM station facilities may, without specific FCC authority, for a period not exceeding 30 days:

- (1) Discontinue operation, or
- (2) Operate with temporary facilities to maintain, as nearly as possible, but not exceed, the size of the presently licensed coverage area.

\* \* \*

(c) Such operation or discontinuance of operation in accordance with the provisions of paragraph (a) or (b) of this section may begin upon notification to the FCC in Washington, DC.

(1) Should it be necessary to continue the procedures in either paragraph (a) or (b) of this section beyond 30 days, an informal letter request signed by the licensee or the licensee's representative must be sent to the FCC in Washington, D.C. prior to the 30<sup>th</sup> day.

operates temporary facilities, including reduced facilities, such facilities should maintain as nearly as possible, but not exceed, the size of the presently licensed coverage area.<sup>213</sup>

102. Stations must notify the Commission before commencing the temporary reduction or cessation of service, but do not need prior Commission approval.<sup>214</sup> We will require that such notifications pursuant to Section 73.1615, when made for purposes of facilitating the conversion to DTV, be filed electronically through the CDBS<sup>215</sup> and using the Informal Application filing form.<sup>216</sup> The notifications should indicate clearly that they are being filed pursuant to Section 73.1615, and should indicate whether the request is to temporarily reduce or cease analog or digital service.

103. The flexibility accorded by Section 73.1615 is intended for service disruptions of 30 days or less. Some stations may use this provision to reduce or cease their analog or pre-transition digital service for 30 days or less, and then return to full service on the pre-transition channel for the remainder of the transition. Other stations may choose to permanently reduce or cease pre-transition service in the 30 days immediately preceding the transition date, in order to accomplish the transition, and then commence operation on the post-transition channel on the transition date. In both cases, the stations may use the flexibility provided by Section 73.1615; however, for stations in the latter situation (*i.e.*, those permanently reducing or ceasing service in the 30 days immediately preceding the transition date) we will require that they comply with a viewer notification requirement (described below).<sup>217</sup> Stations that seek to permanently discontinue operation or permanently operate with reduced facilities more than 30 days before the transition date may not use Section 73.1615, but should instead apply under the procedures outlined below for permanent pre-transition analog or digital service reductions or terminations. In addition, stations that anticipate at the outset that the service reduction or termination will extend for more than 30 days should use the procedures outlined below for permanent service reductions and terminations.

104. Where a licensee has filed a notification pursuant to Section 73.1615 and, subsequently, determines that the reduction or termination of service must continue for a short period beyond 30 days, the licensee may make an additional informal letter request to the Commission prior to the 30<sup>th</sup> day.<sup>218</sup> This second notification filed pursuant to Section 73.1615

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(2) The license of a broadcasting station that fails to transmit broadcast signals for any consecutive 12-month period expires as a matter of law at the end of that period, notwithstanding any provision, term, or condition of the license or construction permit to the contrary.

We note that, although the rule refers to “licensees,” permittees may also use the flexibility offered under this rule to temporarily reduce or cease television broadcast operation.

<sup>213</sup> See 47 C.F.R. § 73.1615 (a)(2).

<sup>214</sup> See 47 C.F.R. § 73.1615(a), (c).

<sup>215</sup> All temporary service disruption notifications pursuant to Sections 73.1615 must be filed electronically using the Informal Filings Menu of CDBS. For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbs/forms/prod/faq_informal.htm). To speed processing, stations should also email a courtesy copy of their temporary service disruption notifications to [dtvnotifications@fcc.gov](mailto:dtvnotifications@fcc.gov).

<sup>216</sup> This is the form traditionally used for requests for Special Temporary Operating Authority. We emphasize that this form, when used in connection with service disruptions related to the DTV transition, must be filed electronically. Paper copies will not be accepted. There will be no fee for filing this form.

<sup>217</sup> See, *infra*, ¶ 106.

<sup>218</sup> 47 C.F.R. § 73.1615(c)(1).

must be filed in the same manner as the initial temporary service disruption notification<sup>219</sup> and must explain why the service disruption should not be considered to be a long term or permanent service disruption requiring prior Commission approval.<sup>220</sup>

105. Once an informal letter request is made pursuant to Section 73.1615(c)(1), the licensee may then continue the service reduction or termination until notified otherwise by the Commission. In general, we anticipate that stations will use Section 73.1615(c)(1) to extend a temporary service reduction or cessation under Section 73.1615 only when unexpected circumstances require a somewhat longer service disruption than initially anticipated. Stations will not be permitted to utilize the procedures set forth in Section 73.1615 for service reductions or cessations that extend for a lengthy period beyond 30 days. If the service disruption continues substantially beyond 30 days, we may require the station to reapply under the procedures outlined below for permanent analog or digital service reduction or termination.<sup>221</sup>

106. Viewer Notification. We will require that stations filing a notification pursuant to Section 73.1615 to permanently discontinue operation or permanently operate with reduced facilities within 30 days of the transition date must notify their viewers on their pre-transition channel(s) (both analog and digital) about the planned permanent service reduction or termination and inform them about how they can continue to receive the station. Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the planned permanent service reduction or termination.<sup>222</sup> These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;<sup>223</sup> (5) information about the availability of digital- to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.<sup>224</sup>

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<sup>219</sup> See *infra* ¶ 106 and see also *supra* note 302.

<sup>220</sup> See discussion of long term (significantly more than 30 days) or permanent analog TV or DTV service reduction or termination in Section V.C.2-3., *infra*.

<sup>221</sup> We note that Section 73.1740(a)(4) of the rules (47 C.F.R. § 73.1740(c)(4)) provides flexibility to commercial broadcast television stations when, due to causes beyond the control of a licensee, the licensee cannot adhere to the station's operating schedule. This provision applies to service disruptions beyond the control of the licensee, while Section 73.1615 involves planned engineering modifications requiring disruption of service. Stations reconfiguring their analog and DTV equipment that encounter an unexpected equipment failure or some other unanticipated problem that temporarily forces them to discontinue operations may do so without prior authority pursuant to Section 73.1740. Stations are required to notify the Commission not later than the 10<sup>th</sup> day of limited or discontinued operations. 47 C.F.R. § 73.1740(a)(4).

<sup>222</sup> Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations. See, *supra*, Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

<sup>223</sup> Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>224</sup> See *DTV Consumer Education Initiative*, *supra*, note 84.

## 2. Analog Service Reduction and Termination

107. For stations needing long term or permanent reduction or termination (significantly more than 30 days), we adopt streamlined procedures to provide stations with the flexibility to permanently reduce or terminate their analog service before the transition date if necessary to achieve their transition.<sup>225</sup> Specifically, we will permit a station to reduce or terminate its analog service before the transition date, provided the station satisfies the following two requirements:

- (1) The station demonstrates that its analog service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and
- (2) The station notifies viewers on its analog channel about the planned service reduction or termination and informs them about how they can continue to receive the station, as detailed below.

Stations must obtain prior Commission approval in order to reduce or terminate their analog service before the transition date. To allow the Media Bureau sufficient time to process these requests, and to afford viewers adequate time to obtain digital reception equipment, stations should file these requests for STA approval at least 90 days in advance of their planned service reduction or termination. Stations must file these requests electronically through the CDBS using the Informal Application filing form.<sup>226</sup>

108. In light of the fast-approaching hard date for analog turn-off, the significant public interest in ensuring that stations meet the transition deadline now weighs in favor of permitting early reduction or termination of analog service where necessary to facilitate the transition. The procedures we adopt herein will provide stations with clear guidelines for how and when they may reduce and/or terminate their analog service early. At the same time, these procedures will ensure that viewers are informed about when they may lose analog service and what they can do to continue to view the station.

109. The record strongly favors affording stations the flexibility to permanently reduce and/or terminate their analog service before the statutory deadline if the station's technical facilities and the conditions in its market warrant such reduction or termination to complete their transition.<sup>227</sup> We agree with commenters that, at this point in the DTV transition, some stations must be allowed to "wind-down" their analog service in order to meet the transition deadline.<sup>228</sup> To be clear, we note that we are not requiring stations to reduce or terminate analog service early and expect that stations will not do so unless absolutely necessary to complete their transition.

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<sup>225</sup> We will consider a reduction or termination of analog service to be "permanent" if the station seeks to discontinue operation on that channel for more than 30 days. *See, supra*, ¶ 99.

<sup>226</sup> *See* ¶ 117 and note 335, *infra*.

<sup>227</sup> *See, e.g.*, MSTV/NAB Comments at 14-17; Broadcast Company of Sarasota Comments at 3; Bakahel Comments at 3; Montecito of Wichita Comments at 2; Tribune Comments at 24; Quincy Comments at 2; Granite Comments at 3; Harris Comments at 4; Greater Dayton Comments at 7; Hawaii PTV Foundation Comments at 6; Disney Comments at 2; APTS/PBS Comments at 16.

<sup>228</sup> *See* MSTV/NAB Comments at 14-17; Tribune Comments at 24; Quincy Comments at 2; Granite Comments at 3; Harris Comments at 4; Greater Dayton Comments at 7; Hawaii PTV Foundation Comments at 6; Disney Comments at 2; APTS/PBS Comments at 16; *See also Third DTV Periodic Review NPRM* at 9495, ¶ 37.

110. **Background.** The Commission's rules require stations to continue operating their existing licensed analog facilities until the statutory analog turn-off date.<sup>229</sup> Moreover, the Commission generally has not favored reductions in television service.<sup>230</sup> The Commission, however, has recognized that losses in service may be justified to facilitate a station's transition to DTV.<sup>231</sup> For example, the Commission permits the early return of out-of-core (*i.e.*, TV channels 52-69) analog channels under certain circumstances in order to facilitate the DTV transition.<sup>232</sup> In the *Third DTV Periodic Review NPRM*, the Commission recognized that stations may have a legitimate need to reduce or terminate their analog operations (even on in-core channels) before the transition date because such operations may impede construction and

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<sup>229</sup> 47 U.S.C. § 312; *See also* 47 C.F.R. §§ 73.1615, 73.1690, 73.1740, 73.1745 and 73.1750. Moreover, the public has a legitimate expectation that existing broadcast services will be maintained. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14230 ¶ 34 (2006); *See also* 47 U.S.C. § 307(b).

<sup>230</sup> Proposals that would result in a loss in television service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits. *See West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc. v. FCC*, 460 F. 2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964) (finding that "once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public generally will be benefited"); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); and *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

<sup>231</sup> The Commission has placed a very high priority on accelerating the television industry's transition to DTV. *See, e.g., Fifth Report and Order*, 12 FCC Rcd at 12842-45 (1997). *See also Applications of KRCA License Corp., KSLs, Inc., Golden Orange Broadcasting Co. Inc.*, 15 FCC Rcd 1794 (1999) (allowing stations to collocate their NTSC and DTV facilities as a means to speed DTV conversion).

<sup>232</sup> The Commission established its policies on voluntary band-clearing for TV Channels 59-69 in a series of orders. The Commission initially stated that it would "consider specific regulatory requests needed to implement voluntary agreements" between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476 (2000). Next, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. *See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, 20870-71 ¶ 61 (2000). These policies were further extended to "three-way" band clearing arrangements, in which non-Channel 59-69 broadcasters were also potential parties. *See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules*, WT Docket No. 99-168, *Carriage of the Transmissions of Digital Broadcast Stations*, CS Docket No. 98-120, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Third Report and Order, 16 FCC Rcd 2703, 2718 ¶ 36 (2001). Finally, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements. *See Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001) ("Third R&O Recon"). The Commission established its policies on voluntary band-clearing for TV Channels 52-58 in a 2001 Report and Order. *See Lower 700 MHz Report and Order*, 17 FCC Rcd at 1095-96 ¶ 184. *See also* Johnson Broadcasting of Dallas, Inc. (KLDT, Lake Dallas- Fort Worth, TX), 21 FCC Rcd 13459 (2006) (returning NTSC Channel 55); Associated Christian Television System (WACX, Leesburg, FL), 20 FCC Rcd 12425 (MB 2005) (returning NTSC Channel 55); Puget Sound Educational TV (KWDC, Tacoma, WA), 20 FCC Rcd 12423 (MB 2005) (returning NTSC Channel 56); WLNY-TV, Inc. (WLNY, Riverhead, NY), 20 FCC Rcd 14765 (MB 2005) (returning NTSC Channel 55); WRNN TV Associates LP (WRNN, Kingston, NY), 19 FCC Rcd 12343 (MB 2004) (returning NTSC Channel 62); Commonwealth Public Broadcasting Corp. (WNVTV, Goldvein, VA), 18 FCC Rcd 18517 (MB 2003) (returning NTSC Channel 53); and Lenfest Broadcasting, LLC (WWAC, Atlantic City,

operation of post-transition (digital) facilities.<sup>233</sup> We stated in the *Third DTV Periodic Review NPRM* that such circumstances may include (but are not limited to): (1) stations that need to reposition their digital and analog antennas before the end of the transition; (2) stations that need to add a third antenna to their tower but cannot do so without reducing or terminating analog service because the tower cannot support the weight of the additional transmission facilities; and (3) stations that are terminating analog service early as part of a voluntary band-clearing arrangement.<sup>234</sup> The Commission, therefore, proposed to provide stations with the flexibility to permanently reduce and/or terminate their analog service if they satisfied certain criteria, *i.e.*, a six-factor public interest test.<sup>235</sup>

111. Comments responding to the *Third DTV Periodic Review NPRM* discussed certain situations in which stations require the flexibility to reduce or terminate analog service early in order to complete their transition.<sup>236</sup> For example, there are 49 stations with a documented side-mounted antenna problem.<sup>237</sup> In order for the station to operate its top-mounted post-transition DTV facilities and accomplish its final transition, the station will have to relocate its analog antenna to another location on its tower and operate with reduced analog facilities.<sup>238</sup> Other stations may have a tower at capacity preventing the installation of a third antenna on the tower. Therefore, the station will have to terminate its analog operations prior to the end of the transition in order to mount its post-transition DTV antenna.<sup>239</sup> Some stations may be collocated on a shared tower and reduction or termination of analog operations may be necessary as the collocated stations coordinate the configuration of their final, post-transition facilities.<sup>240</sup> Still other stations have equipment currently in use with their analog operations that they plan to use with their digital operations. This will necessitate the termination of their analog facilities prior to the transition so that the equipment can be reconfigured for use in their final, post-transition facilities. In addition, there may be other legitimate technical challenges, not anticipated at this time, which may warrant the flexibility of early analog service reduction or termination. We are

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NJ), 17 FCC Rcd 19148 (MB 2002) (returning NTSC Channel 53). In each of these cases, the Commission granted authority to stations to (i) cease analog broadcasting on their NTSC channel and surrender their license for that channel prior to the end of the DTV transition period and (ii) thereafter operate as a single channel, digital-only television station.

<sup>233</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9493, ¶ 37.

<sup>234</sup> *Id.*

<sup>235</sup> *See id.* at 9496, ¶ 44. The Commission proposed to establish a presumption that any reduction in a station's analog television service would be in the public interest if six factors were met: (1) the proposed reduction is directly related to the construction and operation of post-transition facilities and would ensure that the station or another station can meet the deadline; (2) the proposed reduction in analog service is less than five percent of either the station's service area or its population served; (3) the proposed reduction does not cause the loss of an area's only top-four network or NCE TV service; (4) the proposed reduction does not result in an unreasonable reduction in the number of services available in that area; (5) the broadcast station proposing the reduction is able to deliver its signal to cable and satellite providers so that the reduced analog signal does not prevent cable and satellite carriage; and (6) the broadcast station proposing the reduction commits to on-air consumer education about the station's transition and how to continue viewing the station.

<sup>236</sup> *See, e.g.*, Broadcast Company of Sarasota Comments at 4-5; Bakahel Comments at 3; Montecito of Wichita Comments at 2. *See also* MSTV/NAB Comments at 8.

<sup>237</sup> *See* Section V.B.3., *supra*.

<sup>238</sup> *See, e.g.*, Montecito of Wichita Comments at 2.

<sup>239</sup> *See, e.g.*, Broadcast Company of Sarasota Comments at 4-5.

<sup>240</sup> *See, e.g.*, Capitol Broadcasting *Ex Parte* at 1.

persuaded by these real-world station examples of the necessity to afford stations regulatory flexibility in those types of circumstances.

112. While most commenters support giving stations the flexibility to reduce or terminate analog service before the transition date, they favor a “bright-line” test and streamlined approval or notification process, instead of the proposed six-factor public interest analysis.<sup>241</sup> Commenters proposed a variety of different standards to permit flexible analog service reduction or termination. In their joint comments, MSTV and NAB assert that stations should be allowed to reduce analog service starting one year prior to the transition date (*i.e.*, February 17, 2008) and stations should be allowed to terminate analog service starting six months prior to the transition date (*i.e.*, August 17, 2008), provided stations notify the Commission within 15 days.<sup>242</sup> Similarly, Tribune proposed allowing stations to reduce analog power temporarily by as much as 50 percent in the year leading up to February 17, 2009.<sup>243</sup> LeSEA agreed with Tribune’s approach provided the station is not a network affiliate.<sup>244</sup> Disney proposes that the Commission presume that short term, reduced power operations are in the public interest. In other words, Disney urges the Commission to apply a rebuttable presumption to the request of any station returning to its analog channel whose proposed reduction/termination is directly related to the construction and operation of post-transition facilities and is necessary to ensure that the station can meet the transition deadline.<sup>245</sup> Hoak and Granite suggest that the Commission employ two criteria: whether the termination/reduction (1) is directly related to the station’s ability to complete construction of post-transition DTV facilities in a timely manner and (2) is as limited in nature and duration as reasonably necessary to accomplish the transition.<sup>246</sup>

113. We are persuaded that our proposed six-factor test should be adjusted to provide additional flexibility at this stage in the transition. However, we disagree with the suggestion of MSTV/NAB and Tribune that we should permit all stations to elect to terminate or reduce analog service early, starting on dates suggested by these commenters, without justification. We find that stations should be granted broad flexibility to reduce or terminate analog service as needed to further a station’s transition, but should not be granted blanket authority to reduce or terminate analog service without providing a legitimate reason why the action is necessary. We have an important responsibility as guardians of the public interest to ensure that stations show a legitimate need for an early analog reduction or termination. In addition, we must ensure that viewers are informed about any permanent loss of analog service. Accordingly, as discussed more fully below, we steer a middle course by adopting a procedure that provides certainty to broadcasters regarding when pre-transition analog reduction and termination will be permitted. We find that our reduced showing requirement will reduce the administrative burden on stations

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<sup>241</sup> See, *e.g.*, Quincy Comments at 2; Granite Comments at 3; Harris Comments at 4; Greater Dayton Comments at 7; Hawaii PTV Foundation Comments at 6. These commenters agree that a bright-line rule will be in the public interest because it will be more efficient and will rely on marketplace forces to provide needed services. Quincy Comments at 2; Granite Comments at 3; Harris Comments at 4; Greater Dayton Comments at 7; Disney Comments at 2; Christian Network Comments at 6.

<sup>242</sup> MSTV/NAB Comments at 5.

<sup>243</sup> Tribune Comments at 24.

<sup>244</sup> LeSEA Comments at 7.

<sup>245</sup> Disney Comments at 3-4. Disney appears most concerned with relatively short term reductions and terminations (*e.g.* 30 days or less). However, these short term actions fall under the category of temporary disruptions that, as noted above, are permitted under Section 73.1615 of our existing rules. See Section V.C. 1., *supra*.

<sup>246</sup> Hoak Comments at 3; Granite Comments at 4.

and eliminate the delays that can occur with a more detailed approval process during this critical time in the DTV transition.<sup>247</sup>

114. Commission Approval Process. Stations must obtain prior Commission approval in order to reduce or terminate their analog service before the transition date. Stations must file requests for such approval as a request for STA through the CDBS using the Informal Application filing form,<sup>248</sup> and must indicate whether the request is either a service reduction or termination. Consistent with the handling of STA requests,<sup>249</sup> stations will be notified of actions taken on their requests by Public Notice.<sup>250</sup> We recognize that analog viewers must have adequate time to obtain digital equipment in advance of a station's early reduction or termination. We also must allow sufficient time for Commission review before stations commence notification to viewers. We believe that NTIA will process requests for coupons to subsidize the purchase of digital-to-analog converters in three weeks or less. Accordingly, stations must file requests for approval of analog reduction or termination at least 90 days in advance of their planned service reduction or termination to ensure that they can obtain timely Commission approval for their proposed actions. As discussed below, viewer notification must commence no fewer than 60 days prior to reduction or termination of the analog signal. We caution stations that some requests may require additional processing time. In these situations, we will work with the station involved to discuss the options available to that station.

115. Showing Required. We will permit stations to reduce or terminate their analog service before the transition date, provided: (1) They demonstrate that the analog service reduction or termination is directly related to the construction and operation of post-transition facilities, by either the station itself or by another station, and would ensure that the station, or another station, can meet the transition deadline; and (2) They notify viewers of the upcoming analog service loss (as discussed in detail below).<sup>251</sup> Stations may not be permitted to reduce or cease analog service, where, among other possible reasons, the provision of public health and safety information is seriously affected or there are other public interest considerations that require that a station provide analog service. In addition, the showing should include all relevant information, including the station location, network affiliation if any, the circumstances requiring early reduction or termination of pre-transition digital service, and the number of viewers affected. This information will enable us to properly consider the impact of the service reduction or termination on the station's viewers, including the number of current viewers that will lose digital service, satellite and cable penetration, and the number and kind (network, independent, etc.) of other digital channels available to affected viewers.

116. The following are examples of situations where the service reduction or termination would be considered to be "directly related" to the construction and operation of post-transition facilities: (1) Stations that need to reposition their digital and analog antennas

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<sup>247</sup> MSTV/NAB further argue that the Commission need not impose "unnecessarily stringent levels of oversight." MSTV/NAB Comments at 4-5.

<sup>248</sup> Like other requests for STA, these requests to permanently reduce or terminate analog TV service before the transition date must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate Public Notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbS/forms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbS/forms/prod/faq_informal.htm). To speed processing, stations should also email courtesy copies of their STA requests to [analogrequests@fcc.gov](mailto:analogrequests@fcc.gov).

<sup>249</sup> See 47 C.F.R. § 73.1635.

<sup>250</sup> As Bureau actions are recorded, CDBS will automatically generate Public Notice of the actions taken.

<sup>251</sup> See ¶ 117, *infra*.

before the end of the transition; (2) Stations that need to add a third antenna to their tower but cannot do so without reducing or terminating analog service because the tower cannot support the weight of the additional transmission facilities; (3) Stations on a collocated tower that must coordinate a reduction or termination with other stations in order to configure their final, post-transition facilities; (4) Stations with equipment currently in use with their analog operations that they plan to use with their digital operations; and (5) Stations that must terminate operation on their analog channel in order to permit another station to construct its post-transition DTV facilities on that channel. We recognize, however, that there may be other legitimate situations where stations may be able to demonstrate that their planned service reduction or termination is directly related to the construction and operation of post-transition facilities and we will also consider these requests on a case-by-case basis.

117. **Viewer Notification.** With respect to the required notification to stations' viewers, such notifications must occur every day on-air at least four times a day including at least once in primetime for the 60-day period prior to the planned service reduction or termination.<sup>252</sup> These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;<sup>253</sup> (5) information about the availability of digital- to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.<sup>254</sup>

### 3. Pre-Transition Digital Service Reduction and Termination

118. In addition to the temporary disruption rules and the long term or permanent analog reduction or termination, we will also provide stations that will be returning to their analog channel or moving to a new channel for post-transition operations with the flexibility to reduce or terminate existing digital service on their pre-transition DTV channels prior to the transition date.<sup>255</sup> We are hopeful that the vast majority of stations currently providing digital service to the public on pre-transition DTV channels will continue to do so, until they convert to operations on their post-transition channel. However, we recognize that, in some instances, these stations may have to reduce or terminate their pre-transition digital service in order to complete the station's post-transition facilities. Thus, we provide flexibility to stations to reduce or terminate pre-transition digital service where a station can demonstrate that doing so is necessary to complete construction of, and commence operations on, its new post-transition channel. As discussed above, a station whose pre-transition digital channel is unbuilt and/or non-operational

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<sup>252</sup> Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations. See *supra* Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

<sup>253</sup> Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>254</sup> See *DTV Consumer Education Initiative*, *supra* note 84.

<sup>255</sup> Stations that will be using their same digital channel for post-transition operations may not use the procedures outlined in this section.

may choose to return the construction permit for that channel to the Commission and focus its efforts on construction of its post-transition channel.<sup>256</sup>

119. The following options are available for stations that need to reduce or cease operation on their pre-transition DTV channel prior to the transition date:

- (1) As explained above, a station may, pursuant to Section 73.1615,<sup>257</sup> temporarily reduce or cease service a period of 30 days or less, upon notification to the Commission and without prior approval, when necessary to complete construction of its post-transition facility;<sup>258</sup>
- (2) A station may choose to transition early to its post-transition channel by terminating operation on its pre-transition DTV channel and commencing service on its post-transition channel prior to the transition date;<sup>259</sup> or
- (3) A station may permanently reduce or terminate their pre-transition digital service before the transition date, provided it satisfies the following two requirements:
  - a. First, the station must demonstrate that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and
  - b. Second, the station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station.

120. In general, our goal is to ensure the continuation of digital service that is now being provided to viewers. However, a substantial number of commenters responding to the *Third DTV Periodic Review NPRM* stated that the Commission should provide the maximum possible flexibility to stations to permit them to accomplish the transition in the manner that best suits the station's particular circumstances.<sup>260</sup> We agree with MSTV/NAB that stations generally will be reluctant to terminate their new digital services at a time when they are trying to establish a digital audience,<sup>261</sup> and, therefore, stations will only take advantage of this option where necessary to finalize post-transition facilities.<sup>262</sup> While we are concerned about reducing digital service to the public pre-transition, we recognize that doing so may be the best, or only, possible approach to achieving a successful and timely transition.

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<sup>256</sup> See, *supra*, ¶ 45.

<sup>257</sup> 47 C.F.R. § 73.1615(a) and (c).

<sup>258</sup> See, *supra*, Section V.C.1.

<sup>259</sup> See, *infra*, Section V.C.3.a.

<sup>260</sup> See, *e.g.*, Nebraska PTV Licensees Comments at 4; Quincy Comments at 1; Rocky Mountain Comments at 1.

<sup>261</sup> See MSTV/NAB Comments at 19. MSTV/NAB note that there may be situations where, due to tower weight issues or lack of space for a new transmitter, a station will have no option but to terminate its digital service in order to complete construction on its final digital channel. *Id.*

<sup>262</sup> See MSTV/NAB Comments at 19.

**a. Termination of Digital Service on Pre-Transition Channel When Associated with Early Digital Operation on Post-Transition Channel**

121. We adopt our proposal in the *Third DTV Periodic Review NPRM*<sup>263</sup> to allow stations that will use a different DTV channel for post-transition operations to cease operations on their pre-transition DTV channels and begin operating on their new channels before the transition date. Specifically, a station will be permitted to transition early if the following requirements are met:

- (1) The early transitioning station must not cause impermissible interference to another station; and
- (2) The early transitioning station must continue to serve its existing viewers for the remainder of the transition and commence its full, authorized post-transition operations on February 18, 2009.

The record supports the allowance of early post-transition operations, although (as previously discussed above<sup>264</sup>) some commenters oppose any accompanying restrictions on stations' ability to reduce or terminate pre-transition television service.<sup>265</sup> We agree that early transitions will advance and facilitate the transition by freeing engineering and construction resources for those stations building later.<sup>266</sup> For example, MSTV/NAB states that early post-transition operations may advance the transition by setting in motion "daisy-chains" of early transitions, *i.e.*, as channels are vacated by the departing station they will be freed-up for the incoming stations.<sup>267</sup> Stations interested in commencing early post-transition operations should indicate their intent to do so in their construction permit or modification applications for post-transition facilities.<sup>268</sup>

122. We will permit early transitioning stations to operate at facilities that are less than their full, authorized facilities until the date of their construction deadline, at which date these stations must commence their full, authorized post-transition operations. MSTV/NAB suggest that we require early transitioning stations to serve only their respective communities of license during the transition period.<sup>269</sup> We disagree with MSTV/NAB that market factors alone will protect against viewer disenfranchisement and find that, absent a showing of good cause, stations must maintain current digital service to consumers, who have prepared for the transition and will expect to continue to receive such service. Broadcasters seeking to commence early post-

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<sup>263</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9514, ¶ 88.

<sup>264</sup> See ¶ 114, *supra*. (discussing commenters' opposition to restrictions on analog service reduction and termination) This discussion focuses solely on a station's ability to use its post-transition channel before the transition date.

<sup>265</sup> For example, MSTV/NAB and APTS/PBS argue that a station should be permitted to transition early subject only to interference concerns. NAB/MSTV comments at 14-16; APTS/PBS Comments at 20-21. For additional support for allowing early post-transition operations, See *also, e.g.*, Disney Comments at 2-5; Harris Comments at 4; Quincy Comments at 1.

<sup>266</sup> See, *e.g.*, Harris Comments at 4.

<sup>267</sup> NAB/MSTV Comments at 15.

<sup>268</sup> Stations must follow the post-transition applications procedures in Section V.D., *infra*. We are proposing to revise FCC Forms 301 and 340 to allow stations to simultaneously apply for both pre- and post-transition facilities. See form changes in Appendix C.

<sup>269</sup> MSTV/NAB Comments at 16 (arguing that market factors will protect against viewer disenfranchisement).

transition operations must indicate in their applications for post-transition facilities whether such operations will result in a loss of their own analog or digital service.<sup>270</sup>

123. **Interference Criteria.** We adopt our proposal in the *Third DTV Periodic Review NPRM*<sup>271</sup> to require that early transitioning stations comply with both the current interference standard<sup>272</sup> and the interference standard we adopt here for post-transition operations.<sup>273</sup> Accordingly, early transitioning stations must not cause more than 2.0 percent interference to any authorized analog or pre-transition DTV station (with a 10 percent limit on cumulative interference) and must meet the post-transition protection standard (0.5 percent additional interference to Appendix B facilities for all stations).

**b. Termination of Digital Service on Pre-Transition Channel When Associated with Flash-cut**

124. For stations needing long term or permanent reduction or termination (significantly more than 30 days), we adopt streamlined procedures to provide stations with the flexibility to permanently reduce or terminate their pre-transition digital service before the transition date if necessary to complete their transition.<sup>274</sup> The Commission has previously granted general approval for satellite stations and most stations with an out-of-core DTV channel to terminate pre-transition digital service and transition directly from their analog to their post-transition digital channel (*i.e.*, “flash cut” approval).<sup>275</sup> We will continue to permit these stations to seek flash cut approval under those existing standards. For all other stations seeking Commission approval for reduction or termination of pre-transition digital service, we will permit a station to reduce or terminate its pre-transition digital service before the transition date in the same manner adopted for approving an analog service reduction or termination.<sup>276</sup> Accordingly, we will permit a station to permanently reduce or terminate their pre-transition digital service before the transition date, provided the station satisfies the following two requirements:

- (1) The station demonstrates that its pre-transition digital service reduction or termination is directly related to the construction and operation of its, or another station’s, post-transition facility; and
- (2) The station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station.

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<sup>270</sup> See Section V.C.2., *supra*.

<sup>271</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9514, ¶ 88.

<sup>272</sup> See 47 C.F.R. § 73.623.

<sup>273</sup> See Section V.F., *infra* (discussing the post-transition interference standard).

<sup>274</sup> We will consider a reduction or termination of pre-transition digital service to be “permanent” if the station seeks to discontinue operation on that channel for more than 30 days. See, *supra*, ¶ 99. If the station intends to discontinue operation on that channel for the remainder of the transition, the station must return the pre-transition channel to the Commission and flash cut directly from operation on their analog channel to operation on their post-transition (digital) channel on or before the transition date.

<sup>275</sup> *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18322, ¶ 95. See *DTV Transition – Approval of “Flash Cut” Requests*, 22 FCC Rcd 7581 (2007) (“Flash Cut PN”).

<sup>276</sup> See Section V.C.2., *supra*.

Stations must obtain prior Commission approval in order to reduce or terminate their pre-transition digital service before the transition date. To allow the Media Bureau sufficient time to process these requests, stations should file these requests for STA approval at least 60 days in advance of their planned service reduction or termination. Stations must file these requests electronically through the CDBS using the Informal Application filing form.<sup>277</sup> We expect that stations that will reduce or terminate their pre-transition digital service will commence early post-transition operations if possible.

125. Background. The *Second DTV Periodic Report and Order* permitted stations in certain situations to surrender their pre-transition DTV channel, operate in analog on their analog channel, and then flash cut to digital by the end of the transition on their post-transition channel.<sup>278</sup> As the Commission noted, the potential public interest benefits of allowing stations to flash cut include freeing the station to focus its efforts on completion of its post-transition channel and the creation of opportunities for the provision of public safety and other wireless services on the pre-transition DTV channel.<sup>279</sup> In the *Second DTV Periodic Report and Order*, the Commission permitted satellite stations to flash cut because of their unique status and circumstances and provided for these stations to notify the Commission of their decision to flash cut by their initial channel election deadline.<sup>280</sup> The Commission stated that satellite stations opting to flash cut would retain their interference protection (defined in the proposed new DTV Table Appendix B) as if they had met the applicable replication/maximization build-out requirements.<sup>281</sup> The Commission also permitted stations with out-of-core DTV channels to flash-cut under certain conditions and required notification of their decision to flash cut by their initial channel election deadline.<sup>282</sup> The Commission presumed that granting such requests would be in the public interest if the station demonstrated that (1) it was assigned an out-of-core DTV channel,<sup>283</sup> and (2) grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox).<sup>284</sup> In the

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<sup>277</sup> See ¶ 132 and see also note 390, *infra*.

<sup>278</sup> In April 2007, the Media Bureau approved by Public Notice the flash cut requests of 32 stations based on the criteria established in the *Second DTV Periodic Report and Order*. See *Flash Cut PN*, 22 FCC Rcd at 7581. These stations were approved to turn off or discontinue construction of their pre-transition DTV channel. In addition, the Public Notice invited any other station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order*.

<sup>279</sup> *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18323, ¶ 96.

<sup>280</sup> *Id.* at 18325, ¶ 102. TV satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is typically commonly owned. *Id.* at 18323, ¶ 98. Unlike full-service stations, satellite stations have chosen to forego or relinquish full-service status and instead retransmit the programming of a parent station because full-service operation of the satellite facility is not economically viable. Eligible satellite stations were assigned a paired DTV channel in the current DTV Table. The *Second DTV Periodic Report and Order* recognized that most satellite stations operate in small or sparsely populated areas that have an insufficient economic base to support full-service operations. *Id.* at 18324 ¶ 100.

<sup>281</sup> *Id.* at 18325, ¶ 104.

<sup>282</sup> *Id.* at 18322 ¶ 95.

<sup>283</sup> *Id.* The Commission noted the "greater potential for wasted expenditures in DTV facilities built in the 700 MHz band (since there will not be an opportunity to remain in that band after the transition)" and "the potential for earlier use of this spectrum by public safety and other 700 MHz licensees." *Id.*

<sup>284</sup> The Commission has "relied on affiliates of the four largest national television networks to achieve the necessary milestones throughout the DTV transition." *Id.* The Commission also noted that the presumption is neither

case of requests that did not meet these criteria, the Commission stated that it would consider all the relevant public interest factors in deciding whether to approve the request. These factors include the advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service. Like satellite stations, full-service out-of-core stations that are permitted to flash cut would retain their interference protection (defined in the new DTV Table Appendix B, as adopted) as if they had met the applicable replication/maximization build-out requirements.<sup>285</sup> In April 2007, the Media Bureau released the *Flash Cut PN* inviting any station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order*.<sup>286</sup>

126. In the *Third DTV Periodic Review NPRM*, the Commission invited comment on whether we should expand the range of circumstances in which we would accept new requests by stations to return their pre-transition DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and “flash cut” at or before the transition deadline from their current analog channel to their post-transition channel. Specifically, we sought comment on whether the following factors should be considered in evaluating flash cut requests: (1) whether the DTV station is operating on TV channels 52-69; (2) whether the station is affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox); (3) whether the station’s pre-transition DTV channel is allotted to another station for post-transition use and the station’s return of the channel will facilitate the other station’s construction of its post-transition digital facility; and (4) the station’s financial hardship.

127. Commenters responding to the *Third DTV Periodic Review NPRM* generally argued that, at this point in the transition, we should provide flexibility to stations that want to return their pre-transition DTV channel and flash-cut directly from analog to digital operation on the post-transition channel.<sup>287</sup> NAB/MSTV argued that the flash cut option should be made available to all stations during the last six months of the DTV transition, provided the station notifies the Commission within 15 days of terminating service.<sup>288</sup> NAB/MSTV also argued that the Commission should not establish a “complicated factor test” for approving flash cuts.<sup>289</sup> While we agree that the flash-cut option should be made available to more stations, as our approach adopted herein does, we disagree with NAB/MSTV that any station should be permitted to flash-cut six months prior to the transition deadline. A station that seeks to flash cut seeks to terminate its pre-transition digital service. While there may be situations where stations must cease service on a pre-transition channel in order to complete post-transition service, we are not prepared to permit stations (other than satellite or operating out-of-core) to terminate pre-transition digital service absent a compelling reason. As the transition deadline nears, viewers should - and will - become increasingly reliant on receiving digital service. Permitting stations to cease digital service as the transition nears, absent compelling circumstances, could undermine viewer expectations and the success of the transition itself.

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conclusive nor dispositive and that special circumstances raised by the resulting loss of digital broadcast service could rebut the presumption. *Id.* at 18323, ¶ 96.

<sup>285</sup> *See id.*

<sup>286</sup> *See Flash Cut PN*, 22 FCC Rcd 7581 (2007).

<sup>287</sup> *See APTS/PBS Comments* at 18-19.

<sup>288</sup> *See MSTV/NAB Comments* at 19-20.

<sup>289</sup> *Id.*

128. Existing Flash Cut Authority for Satellite Stations and Stations With An Out-of-Core DTV Channel. As we stated in the *Third DTV Periodic Review NPRM*, stations may continue to seek flash cut approval pursuant to the *Second DTV Periodic Report and Order* and *Flash Cut PN*.<sup>290</sup> Thus, satellite stations may still flash cut upon simple notification to the Commission.<sup>291</sup> Stations with an out-of-core DTV channel may either take advantage of our existing flash cut approval for these stations, as adopted in the *Second DTV Periodic Report and Order* and *Flash Cut PN*, or may seek approval under the new test described herein that applies to all non-satellite stations.<sup>292</sup>

129. In an effort to provide additional flexibility to out-of-core stations, we adopt our proposal<sup>293</sup> to extend the current band-clearing “rebuttable presumption” favoring band-clearing arrangements for stations on TV channels 59-69 to cover the requests of all out-of-core stations (*i.e.*, TV channels 52-69). The comments addressing this issue support adoption of our proposal.<sup>294</sup> The Commission established policies to facilitate voluntary “band-clearing” of the 700 MHz bands to allow for the introduction of new public safety and other wireless services and to promote the transition of out-of-core analog TV licensees to DTV service inside the core TV spectrum.<sup>295</sup> Generally speaking, these policies provide that the Commission will approve voluntary agreements between incumbent broadcasters and new licensees to clear the 700 MHz

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<sup>290</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd 9499, ¶ 51.

<sup>291</sup> Consistent with rules 47 C.F.R. §§73.1750, 73.3580 and 73.1750 (termination of service), 73.1690(b) (modification of license or authorization), stations may declare their intent to flash cut by sending a letter to the Video Division of the Media Bureau and an e-mail to [flashcut@fcc.gov](mailto:flashcut@fcc.gov). See *Flash Cut PN*, 22 FCC Rcd at 7583, n.16, 18.

<sup>292</sup> For stations with an out-of-core DTV channel, we will continue to presume that a flash cut request is in the public interest if the station is not affiliated with a top-four network. For out-of-core stations with a top four network affiliation that seek to flash cut, this expanded flash cut option offers additional flexibility for these stations.

<sup>293</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9495-96, ¶ 42.

<sup>294</sup> See MSTV/NAB Comments at 12. Although only MSTV/NAB expressly addressed and supported expansion of the band-clearing presumption, most commenters favored regulatory flexibility whenever possible. See, *e.g.*, AFCCE Comments at 4-6; Allbritton Comments at 8-9; APTS/PBS Comments at 11-12; Hubbard Comments at 6; Montecito of Wichita Comments at 1-2; MSTV/NAB Comments at 24; Quincy Comments at 2-3; Red River Comments at 6; Sky Comments at 6; Tribune Comments at 13; Twin Cities Comments at 4; University of Alaska Comments at 2-3; University of Houston System Comments at 4; Univision Comments at 22; West Virginia Media Holdings Comments at 5; WQED Reply at 2.

<sup>295</sup> The Commission established its policies on voluntary band-clearing for TV Channels 59-69 in a series of orders. The Commission initially stated that it would “consider specific regulatory requests needed to implement voluntary agreements” between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476 (2000). Next, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 20845, 20870-71 ¶ 61 (2000). These policies were further extended to “three-way” band clearing arrangements, in which non-Channel 59-69 broadcasters were also potential parties. See *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, Third Report and Order, 16 FCC Rcd 2703, 2718 ¶ 36 (2001). Finally, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements. See Order on Reconsideration of the Third Report and Order, 16 FCC Rcd 21633 (2001) (“*Third R&O Recon*”). The Commission established its policies on voluntary band-clearing for TV Channels 52-58 in a 2001 Report and Order. See *Lower 700 MHz Report and Order*, 17 FCC Rcd at 1095-96 ¶ 184.

band early if consistent with the public interest. The Commission has approved several such requests to return out-of-core channels in accordance with this band-clearing policy.<sup>296</sup> Previously, the Commission's 700 MHz band-clearing policies have differed somewhat depending on whether a station is located on TV channels 59-69, which might affect use of the upper portion of the band, or on TV channels 52-58, which would only affect use of the lower portion of the band.<sup>297</sup> We find that this disparate band-clearing treatment with respect to stations in the lower 700 MHz band (*i.e.*, TV channels 52-58) is no longer appropriate. We agree with MSTV/NAB that the presumptive standard currently applied to band clearing arrangements on channels 59-69 should be applied immediately to all band-clearing proposals.<sup>298</sup> The hard deadline applies equally to both portions of the 700 MHz band. In addition, Congress has mandated that the Commission begin the auction of recovered analog broadcast spectrum in the 700 MHz band no later than January 28, 2008.<sup>299</sup> We find that extension of the band-clearing policy is appropriate to facilitate the clearing of the 700 MHz band in anticipation of the Commission's upcoming auction of licenses for services in the 700 MHz band (698-806 MHz) scheduled to begin on January 24, 2008.<sup>300</sup> We will apply the same "rebuttable presumption" standard to voluntary agreements for clearing TV channels 52-58 as now applies to such agreements for clearing TV channels 59-69.<sup>301</sup> As requested by MSTV/NAB,<sup>302</sup> we clarify that, to the extent a station seeks to terminate analog service on its out-of-core channel in accordance with the procedures established above, the station will not also be required to make a showing regarding the "rebuttable presumption" applicable to band-clearing arrangements.

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<sup>296</sup> See, *e.g.*, *Johnson Broadcasting of Dallas, Inc.* (KLDT, Lake Dallas- Fort Worth, TX), 21 FCC Rcd 13459 (2006) (returning NTSC Channel 55); *Associated Christian Television System (WACX, Leesburg, FL)*, 20 FCC Rcd 12425 (MB 2005) (returning NTSC Channel 55); *Puget Sound Educational TV (KWDC, Tacoma, WA)*, 20 FCC Rcd 12423 (MB 2005) (returning NTSC Channel 56); *WLNY-TV, Inc. (WLNY, Riverhead, NY)*, 20 FCC Rcd 14765 (MB 2005) (returning NTSC Channel 55); *WRNN TV Associates LP (WRNN, Kingston, NY)*, 19 FCC Rcd 12343 (MB 2004) (returning NTSC Channel 62); *Commonwealth Public Broadcasting Corp. (WNVT, Goldvein, VA)*, 18 FCC Rcd 18517 (MB 2003) (returning NTSC Channel 53); and *Lenfest Broadcasting, LLC (WWAC, Atlantic City, NJ)*, 17 FCC Rcd 19148 (MB 2002) (returning NTSC Channel 53). In each of these cases, the Commission has granted authority to stations to (i) cease analog broadcasting on their NTSC channel and surrender their license for that channel prior to the end of the DTV transition period and (ii) thereafter operate as a single channel, digital-only television station.

<sup>297</sup> Envisioning the early recovery of TV channels 60-69, the Commission established a "rebuttable presumption" favoring requests for voluntary band-clearing involving channels 59-69. In contrast, the Commission did not anticipate recovery of TV channels 52-59 until after the DTV transition was complete and, as a result, decided to consider requests for voluntary band-clearing involving those channels on a case-by-case basis.

<sup>298</sup> MSTV/NAB Comments at 12.

<sup>299</sup> DTV Act § 3003 unified the timing of auctions for the assignment of remaining spectrum from TV Channels 52-69. The Communications Act now requires the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. 47 U.S.C. § 309(j)(15)(C)(v).

<sup>300</sup> See Public Notice, "Auction of 700 MHz Band Licenses Scheduled for January 24, 2008; Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments and Other and Other Procedures for Auctions 73 and 76," DA 07-4171 (WTB rel. Oct. 5, 2007) ("Auction Nos. 73 and 76 Procedures Public Notice"). The Commission is required to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. 47 U.S.C. § 309(j)(15)(C)(v).

<sup>301</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9494 ¶ 40 (discussing "rebuttable presumption" standard).

<sup>302</sup> MSTV/NAB Comments at 12.

130. Commission Approval Process. Stations must obtain prior Commission approval in order to reduce or terminate their pre-transition digital service before the transition date. Stations must file requests for such approval as a request for STA through the CDBS using the Informal Application filing form,<sup>303</sup> and must indicate whether the request is either a service reduction or termination. Consistent with the handling of STA requests,<sup>304</sup> stations will be notified of actions taken on their requests by Public Notice.<sup>305</sup> We encourage stations to file these requests at least 60 days in advance of their planned service reduction or termination to ensure that they can obtain timely Commission approval for their proposed actions. We caution stations that some requests may require more than 60 days of processing time. In these situations, we will work with the station involved to discuss the options available to that station.

131. Showing Required. For stations not otherwise eligible for flash-cut approval, we will permit stations to reduce or terminate their pre-transition digital service before the transition date, provided: (1) They demonstrate that the pre-transition digital reduction or termination is directly related to the construction and operation of post-transition facilities, by either the station itself or by another station, and would ensure that the station, or another station, can meet the transition deadline; and (2) They notify viewers of the upcoming pre-transition digital loss (as discussed in detail below).<sup>306</sup> Stations may not be permitted to reduce or terminate their pre-transition digital service, where, among other possible reasons, the provision of public health and safety information is seriously affected or there are other public interest considerations that require that a station provide analog service. In addition, the showing should include all relevant information, including the station location, network affiliation if any, the circumstances requiring early reduction or termination of pre-transition digital service, and the number of viewers affected. This information will enable us to properly consider the impact of the service reduction or termination on the station's viewers, including the number of current viewers that will lose digital service, satellite and cable penetration, and the number and kind (network, independent, etc.) of other digital channels available to affected viewers. In addition, stations must explain why they cannot commence digital operation early on their post-transition channel (early transition) in order to continue to provide digital service to viewers.

132. Viewer Notification. With respect to the required notification to stations' viewers, such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the planned service reduction or termination.<sup>307</sup> These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's post-

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<sup>303</sup> Like other requests for STA, these requests to permanently reduce or terminate pre-transition DTV service before the transition date must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate Public Notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq_informal.htm). To speed processing, stations should also email courtesy copies of their STA requests to [dtvrequests@fcc.gov](mailto:dtvrequests@fcc.gov).

<sup>304</sup> See 47 C.F.R. § 73.1635.

<sup>305</sup> As Bureau actions are recorded, CDBS will automatically generate Public Notice of the actions taken.

<sup>306</sup> See ¶ 132, *infra*.

<sup>307</sup> Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations. See *supra* Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

transition digital signal can be received;<sup>308</sup> and (5) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.<sup>309</sup>

#### 4. Service Reductions or Terminations 90 Days Before the Transition Date

133. As an exception to the approval process described above for permanent service reductions and terminations,<sup>310</sup> we instead adopt a streamlined notification procedure for stations planning a permanent service reduction or termination (analog or digital) within 90 days of the February 17, 2009, transition date (*i.e.*, beginning on or after November 19, 2008). We find that a more relaxed notification procedure is more appropriate than the approval process established above to provide stations with additional flexibility as we approach the transition date.<sup>311</sup> As discussed in detail above,<sup>312</sup> the record amply favors affording stations this additional flexibility so close to the end of the transition. Therefore, we will permit a station to reduce or terminate its analog or digital service within 90 days before the transition date by filing a notification with the Commission. The notification must be filed 30 days in advance of the planned service reduction or termination and must include a showing that the service reduction or termination is necessary for purposes of the transition. Although we will not require prior Commission approval, stations must notify their viewers on their pre-transition channel(s) (analog and digital) about the planned service reduction or termination and inform them about how they can continue to receive the station. Like the Section 73.1615 notifications, stations must file these notifications electronically through the CDBS using the Informal Application filing form.<sup>313</sup>

134. Viewer Notification. We will require stations filing a notification with the Commission regarding permanent reduction or termination within 90 days of the transition date to notify their viewers on their pre-transition channel(s) (both analog and digital) about the early service reduction or termination and inform them about how they can continue to receive the station.<sup>314</sup> Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the planned service reduction or termination. These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or pre-transition digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;<sup>315</sup> (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, email address (if

<sup>308</sup> Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>309</sup> See *DTV Consumer Education Initiative*, *supra* note 84.

<sup>310</sup> See, *supra*, Sections V.C.2.-3.

<sup>311</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 44.

<sup>312</sup> See, *supra*, Sections V.C.2.-3. See also *MSTV Ex Partes* (dated Dec. 18, 2007), *MSTV Ex Partes* (dated Nov. 26, 2007) and *MSTV Ex Partes* (dated Dec. 26, 2007).

<sup>313</sup> See ¶ 106 and see also note 302, *infra*.

<sup>314</sup> Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations. See *supra* Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.<sup>316</sup>

#### **D. Applications to Construct or Modify DTV Facilities**

135. As we stated in the *Third DTV Periodic Review NPRM*, stations that need to request authority to construct or modify their post-transition facilities must file construction permit (CP) or modification applications.<sup>317</sup> Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification<sup>318</sup> and submit the appropriate fee.<sup>319</sup> Noncommercial educational (NCE) stations must file FCC Form 340. We received no comments on our proposed revised FCC Forms 301 and 340, and we adopt those revised forms as proposed. These forms will be available following their approval by the Office of Management and Budget (OMB).

136. Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel. Stations whose pre- and post-transition DTV channels are different may begin filing their applications for a CP on the final DTV channel following the effective date of this Report and Order. As discussed below, these stations may qualify for expedited processing of their CP applications.

137. Stations Whose Post-Transition Channel is the Same as Their Pre-Transition DTV Channel. Stations whose pre- and post-transition DTV channels are the same fall into three categories. First, some of these stations may not have a licensed DTV facility or CP to construct a facility that matches the final DTV Table Appendix B and the station wants to construct the facility listed in Appendix B for that station's post-transition operation. Such stations must file an application to modify their authority on their current DTV channel, and we encourage these stations to file immediately.<sup>320</sup> As these stations already have a CP for their final post-transition channel, they do not need to wait for the effective date of this Report and Order or the rules

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<sup>315</sup> Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

<sup>316</sup> See *DTV Consumer Education Initiative*, *supra* note 84.

<sup>317</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd 9516, ¶ 92. See also 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538.

<sup>318</sup> Applications to construct or modify post-transition facilities specified in the final DTV Table Appendix B involve a minor change in facilities and we will process them accordingly. Section 73.3572(a)(1) of the Commission's rules defines a major change in a television station's facilities as any change in frequency or community of license. See 47 C.F.R. § 73.3572(a)(1). Several stations may be changing channels as a result of the channel election process; however, these stations will be applying for the frequency and community of license assigned to them in the new DTV Table that was adopted in the *Seventh Report and Order* in MB Docket No. 87-268, and accordingly we will treat their applications as not involving a change in frequency. We believe this treatment will speed processing. We also note that this is consistent with our implementation of the initial DTV Table in 1998.

<sup>319</sup> See 47 C.F.R. § 73.3533(a); See also 47 C.F.R. § 1.1104. As discussed above, this application and its associated fee will be for a minor change.

<sup>320</sup> Stations are reminded that applications filed at this time must not request an expansion of service area that would violate the filing freeze. See *August 2004 Filing Freeze PN*, *supra*, note 20. See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

adopted herein to file a modification application, and will get more rapid processing if we receive their applications before stations that are changing channels file their applications.<sup>321</sup>

138. Second, some stations whose pre- and post-transition DTV channels are the same may want to request changes to Appendix B as adopted in the *Seventh Report and Order* to match their existing facility. In such circumstances, we expect that these stations should have a petition for reconsideration of the *Seventh Report and Order* pending, which we will address in a separate proceeding.<sup>322</sup> If a station has completed construction of the facility it intends to operate after the transition, it does not need to file an application at this time.<sup>323</sup>

139. Third, there are some stations that already have a license to operate or a CP to construct their post-transition channel that matches the facility specified in the new DTV Table Appendix B for that station. These stations do not need to file any additional CP applications. These stations are building their post-transition facilities on the CPs granted for pre-transition operation. Once these stations have completed construction and have begun operating pursuant to program test authority, they must file an application for a license to cover (FCC Form 302).<sup>324</sup>

### 1. Expedited Processing

140. As we stated in the *Third DTV Periodic Review NPRM*, it is each station's responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009.<sup>325</sup> To ensure that they meet this deadline, stations should file their applications as soon as possible in order to have the maximum time to order equipment and build their facilities. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we hereby adopt our proposal to provide expedited processing for certain stations that timely apply for a construction permit to build their post-transition channel.<sup>326</sup> Specifically, we will provide expedited processing (generally within 10 days) to a station whose application demonstrates all three of the following requirements:

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<sup>321</sup> Following are examples of situations in which a station that is staying on the same DTV channel for post-transition operation may have to file an application for modification of its CP. A station that intends to operate its post-transition facility pursuant to an existing STA operation must file an application to modify its CP to match its STA facility. Also, some of these stations may need to apply to increase power or otherwise adjust their facilities because they are now operating under STA at reduced power and they are unable to construct their authorized CP facilities, but intend to operate with more than their current STA facilities (for example, they intend to raise their transmitting antenna to a higher height on their tower, but are unable to mount it at the authorized height). Other stations may need to apply to modify their licensed or CP facilities in order to match their DTV Table Appendix B coverage if such coverage was based on a certification that differs from their current license or CP.

<sup>322</sup> Approximately 123 Petitions for Reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle.

<sup>323</sup> If there are minor differences between the station's completed or CP facility and the facility described in Appendix B for that station, such station may continue operating its licensed facility or continue constructing its CP facilities. If major differences exist between a station's completed or CP facility and the facility specified in Appendix B for that station, and the stations has not filed a petition for reconsideration and fails to promptly seek changes to Appendix B according to the procedures set forth above in paragraph 9, the station may be subject to enforcement action.

<sup>324</sup> See 47 C.F.R. § 73.3536.

<sup>325</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9517, ¶ 94.

<sup>326</sup> *Id.*

- (1) The application does not seek to expand the station's facilities beyond its final post-transition DTV Table Appendix B facilities;<sup>327</sup>
- (2) The application specifies facilities that match or closely approximate the DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that are no more than five percent smaller than its facility specified in Appendix B facilities with respect to predicted population); and
- (3) The application is filed within 45 days of the effective date of this Report and Order, pending OMB approval.

141. In general, the commenters agreed that expedited processing of applications is important to ensure that stations can meet the transition deadline.<sup>328</sup> We find that setting an application filing deadline for expedited processing of 45 days after the effective date of this Report and Order will give stations time to prepare for these filings.<sup>329</sup> We anticipate that we will be able to process qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not necessarily mean that the application will be granted.<sup>330</sup> Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station.<sup>331</sup>

142. Some commenters proposed that we designate additional categories of stations that would be eligible for expedited processing. Specifically, APTS argues that we should provide expedited processing to stations with Congressionally-authorized funding that is contingent upon the receipt of a construction permit.<sup>332</sup> In addition, West Virginia Media Holdings suggests that we provide expedited processing to stations moving to a different post-transition channel.<sup>333</sup> We note that the criteria and procedures we adopt today encompass a broader group of stations than the categories identified by APTS and West Virginia Media

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<sup>327</sup> See Section V.E., *infra*. (permitting certain stations to expand up to five miles). Applications for such expanded facilities will be processed as quickly as possible after processing is completed for stations eligible for expedited processing.

<sup>328</sup> See, *e.g.*, Central Michigan University Comments at 6; Greater Dayton Comments at 6 (pledging to continue to use their best efforts, and devote all appropriate resources, to obtaining permission to construct their final DTV facilities, but maintaining that the Commission must do its part and expedite permits on "final" channels).

<sup>329</sup> We expect that the 45-day application deadline will coincide with final OMB approval for revised FCC Forms 301 and 340. The Media Bureau will issue a Public Notice announcing that the forms have been approved and are ready for use, as well as the date by which applications must be filed to take advantage of expedited processing.

<sup>330</sup> Stations that receive expedited processing are not guaranteed that their application will be granted; the application still must satisfy the criteria on Form 301 (or 340 for NCEs), as revised in this proceeding. Similarly, stations that do not qualify for expedited processing will not necessarily have their applications denied; rather, their applications simply will not be processed on an expedited basis.

<sup>331</sup> To be eligible for grant, the applicant must certify in the application that the proposed facility: (1) will not have a significant environmental impact; (2) will serve the principal community of license; (3) will provide necessary protection to radio astronomy installations and FCC monitoring stations; and (4) has had its tower approved by FAA, if necessary. See 47 C.F.R. § 73.622(f)(2) (checklist criteria). These criteria must be met by all applications on FCC Form 301 and 340, including both those eligible for expedited processing as well as those not eligible for expedited processing.

<sup>332</sup> APTS/PBS Comments at 5.

<sup>333</sup> West Virginia Media Holdings Comments at 3.

Holdings and will provide relief both to these stations as well as others that may need expedited application processing.

143. A number of stations proposed that we further streamline our procedures by adopting a one-step application process for certain stations. For example, MSTV/NAB propose that, where the proposed facilities conform to Appendix B, the Commission should not require a construction permit application but instead should only require an application for license.<sup>334</sup> MSTV/NAB maintain that this proposal would streamline the current “two-step” construction permit/license process and would minimize administrative burdens.<sup>335</sup> Norwell Television LLC also proposes a “one-step” licensing process for stations whose post-transition DTV facilities are identical (in channel, location, height, and power) to those specified in Appendix B.<sup>336</sup> APTS proposes a similar measure. APTS suggests that, for stations whose signal does not reach beyond the service contour specified in Appendix B, the station should not be required to file a modification application even if its facilities do not precisely match those in Appendix B.<sup>337</sup> APTS states that this procedure would permit the Commission to focus its efforts on the needs of stations changing channels and those that do not yet have construction permits or licenses, and would prevent stations from expending scarce resources to make unnecessary changes.<sup>338</sup>

144. Upon careful consideration, we find that the procedures suggested by MSTV/NAB, Norwell, and APTS pose more potential risk than might be warranted by the potential benefit. Under these suggested approaches, a station could make modifications to its final DTV facility and begin operating that facility without prior authorization from the Commission and then report the changes on its license application. We continue to believe that the best policy is for a station to first obtain approval of its modified facilities prior to initiating operation. Otherwise, a station could modify its facility, begin operating without prior approval, and cause harmful interference to existing broadcast stations, stations in other services such as mobile operations, and to medical devices.<sup>339</sup> Although, as MSTV/NAB reminds us,<sup>340</sup> Congress amended Section 319 to provide the Commission with the discretion to allow for one-step licensing, we have exercised this discretion and allowed this procedure only in cases where the potential for interference was much smaller.<sup>341</sup> For example, we permitted one-step licensing for FM stations that were proposing to reduce their power from a level previously authorized.<sup>342</sup> Similarly, we permitted one-step licensing in the Instructional Television Fixed Service where

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<sup>334</sup> MSTV/NAB Comments at 32.

<sup>335</sup> *Id.* MSTV/NAB claim that Section 319 of the Communications Act permits the Commission to waive the requirement of a construction permit application for minor changes. When construction is complete, stations could file a notice with the Commission to inform the Commission of this fact and to certify that construction has been completed in conformance with the license. *Id.*

<sup>336</sup> Norwell Comments at 5.

<sup>337</sup> APTS/PBS Comments at 18.

<sup>338</sup> *Id.*

<sup>339</sup> Certain very minor changes to television facilities may be reported on a license application but none of the more complicated changes proposed by MSTV/NAB. See *Amendments of Part 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC 12371 (1997) (allowing changes without a construction permit such as slight changes in height of antenna radiation center, main studio waivers, changes in noncommercial educational status).

<sup>340</sup> MSTV/NAB Comments at 32.

<sup>341</sup> MSTV/NAB Comments at 32 *citing* 47 U.S.C. § 319 (1996).

the power levels involved were much lower and the potential for interference much smaller.<sup>343</sup> We do not find such factors in this case. Furthermore, departing from our long-standing “two-step” process is not necessary in this case as it will not help to greatly expedite the final DTV transition. If a station completes its final DTV facilities pursuant to a previously-issued construction permit and finds that it needs to make last-minute changes, that station may avail itself of our expedited processing procedures and expect a quick evaluation of its application. We find that the procedures we adopt today will provide stations that need to make changes to their facilities more than enough time to complete their final DTV facilities even if last-minute corrective filings are necessary.

145. In response to the comments of Broadcasting Company of Sarasota,<sup>344</sup> we note that the Commission currently accepts electronically-filed requests for STA through our CDBS database and will continue to do so.<sup>345</sup> Generally, the Commission has notified stations of action on their STA requests by mail; however, to speed the process as suggested by Broadcast Company of Sarasota,<sup>346</sup> we may also contact stations by telephone or email, with confirmation of Commission action via entries in the station’s CDBS records.

146. Finally, a number of commenters suggested that the Commission expedite application processing by approving applications where the proposed service contour does not exceed the contour predicted by the Appendix B facility by more than a certain amount.<sup>347</sup> These proposals are discussed in Section V.E., *infra* (Expanding Facilities).

## 2. Program tests/License to Cover CP

147. As we stated in the *Third DTV Periodic Review NPRM*,<sup>348</sup> stations must not commence program tests on their post-transition channels until they are ready to begin post-transition operations under program test authority. Stations that want to conduct program tests on their post-transition facilities must comply with the Commission’s rules<sup>349</sup> and coordinate with any affected stations prior to the time of testing. Each station is responsible for determining

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<sup>342</sup> See 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, Report and Order, 14 FCC Rcd 5272 (2000).

<sup>343</sup> See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, 18 FCC Rcd 6722 (2003).

<sup>344</sup> Broadcast Company of Sarasota Comments at 5.

<sup>345</sup> Like other requests for STA, these requests must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate Public Notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: [http://fjallfoss.fcc.gov/prod/cdbbs/forms/prod/faq\\_informal.htm](http://fjallfoss.fcc.gov/prod/cdbbs/forms/prod/faq_informal.htm).

<sup>346</sup> *Id.*

<sup>347</sup> See, e.g., MSTV/NAB Comments at 33 (proposing that for stations returning to their analog channels that intend to use their analog antennas for post-transition operation, the station applications should be approved for these stations if the service contours do not exceed the contour predicted by the Appendix B facilities by more than 5 miles in any direction, provided a thorough interference analysis is performed within 18 months after the transition date); APTS/PBS Comments at 13-14 (proposing to permit stations to forego correcting minor discrepancies between their final facilities as constructed and their Appendix B facilities if the signal of their final facilities does not reach beyond the service contour specified in Appendix B).

<sup>348</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9518-9519, ¶ 96.

<sup>349</sup> 47 C.F.R. § 73.1620(a).

which other stations may be affected and coordinate accordingly. We expect that stations will work together cooperatively to facilitate testing. Upon completion of the construction of a television facility as authorized by a CP,<sup>350</sup> a station may commence program tests upon notification to the Commission, provided that an application for a license to cover the CP for the post-transition facility, on FCC Form 302, is filed within 10 days, along with the appropriate fee.<sup>351</sup>

### E. Expanding Facilities

148. We announce our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations' applications to build their post-transition facilities.<sup>352</sup> Until this date, we will maintain the freeze and will not accept maximization applications to expand facilities. We will, nevertheless, consider requests to waive the freeze before August 17, 2008 in certain specified situations to provide for minimally expanded facilities where necessary to ensure that stations can serve their existing television viewers with their post-transition facilities, thereby meeting viewers' over-the-air reception expectations after the transition date.

149. During the channel election process, stations defined their post-transition facilities, deciding whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility.<sup>353</sup> Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that provided by their allotted facilities or authorized by a license, CP or STA.<sup>354</sup> The filing freeze precluded such expansion to provide a stable database for developing the post-transition DTV Table.<sup>355</sup>

150. Maximization Applications. We adopt our tentative conclusion in the *Third DTV Periodic Review NPRM* to not accept maximization applications until we have processed all stations' post-transition applications, as authorized by the post-transition DTV Table.<sup>356</sup> We find

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<sup>350</sup> Stations must comply with the terms of their CP as well as the technical provisions of the application, or rules and regulations, and the applicable engineering standards.

<sup>351</sup> See 47 C.F.R. §§ 73.1620, 73.3536. We remind stations that will be using Channel 14 for post-transition operations that they must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities before commencing program testing. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees. 47 C.F.R. § 73.687(e)(3). A licensee on channel 14 may not commence program test authority without specific Commission approval. See 47 C.F.R. § 73.687(e)(4)(ii) (stating that such licensees must submit evidence that there will be no interference to land mobile stations before the station will be permitted to transmit programming on the new facilities).

<sup>352</sup> As discussed in note 20, on August 3, 2004, the Media Bureau imposed a freeze on requests for changing DTV channels within the DTV Table and on new DTV channels, as well as on the filing of modification applications by television and Class A television stations, in order to provide a stable database for conducting the channel election process and developing a new DTV Table. The freeze does not prevent the processing of pending applications. *August 2004 Filing Freeze PN, supra*, note 20. See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

<sup>353</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18296, ¶ 41. See also FCC Form 381.

<sup>354</sup> See *id.*

<sup>355</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18293 ¶ 35. *Seventh Report and Order*, 22 FCC Rcd at 15618-9 ¶ 90.

<sup>356</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9519, ¶ 97.

that we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date before considering new maximization applications. Several commenters have urged us to lift the freeze immediately and express concern about investing in equipment without knowing if and when they can maximize.<sup>357</sup> In addition, they say that retrofitting their equipment later to maximize could be prohibitively expensive, thereby potentially limiting service to the public, particularly by public stations if they cannot afford to maximize later.<sup>358</sup> We find, however, that processing maximization applications at this time would slow the resolution of stations' applications to construct final DTV facilities. For example, such applications could be mutually exclusive, which would result in a delay of several weeks or months. This delay would prevent us from resolving applications needed for stations to build their post-transition facilities. In addition, we find that allowing stations that are filing applications to construct post-transition facilities to propose expanded facilities would also be unfair to stations that have completed building their post-transition facilities and, therefore, are not filing applications now but might also want to expand their existing facilities. Therefore, before we consider maximization requests, which may cause interference to viewers accustomed to receiving service from particular stations, we conclude that we must first establish the initial DTV landscape and preserve existing service patterns to the extent possible.

151. Filing Freeze Waiver Policy. We adopt a waiver policy, based on a proposal by MSTV/NAB,<sup>359</sup> that will permit rapid approval of minor expansion applications filed by stations that are not using their pre-transition DTV channel for post-transition operation, provided the station demonstrates that such expansion:

- (1) Would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area;
- (2) Would be no more than five miles larger in any direction than their authorized service area, as defined by the post-transition DTV Table Appendix B; and
- (3) Would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations.<sup>360</sup>

Many commenters requested this relief, arguing that such relief was necessary to avoid a significant service loss to existing viewers.<sup>361</sup> We agree with MSTV/NAB that we should generally permit stations to expand up to five miles in any direction beyond their authorized service area. While we generally will not permit more than 0.5 percent new interference, we will consider on a case-by-case basis allowing stations to cause additional new interference if stations

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<sup>357</sup> See also, e.g., Tribune Comments at 6-8; Sinclair Comments at 1-3; South Carolina Educational Television Commission at 4, Nebraska PTV Licensees at 6, State of Wisconsin Board Comments at 6, Arkansas Educational Television Commission at 7-9, Multicultural at 8, LeSEA Comments at 3-4, Davis at 2-3, Bahakel Comments at 6-9.

<sup>358</sup> See MSTV/NAB Comments at 27-28.

<sup>359</sup> *Ex Parte* Comments of MSTV (dated November 26, 2007) ("MSTV *ex parte*"). MSTV proposed that the Commission allow stations returning to their analog channels to use their current antenna pattern, provided the pattern does not exceed DTV Table Appendix B coverage by 5 miles or cause more than 2.0 percent interference to surrounding stations. MSTV proposed for stations to have 12 months after February 17, 2009 to comply with the 0.5 percent interference standard above DTV Table Appendix B levels. *Id.*

<sup>360</sup> This interference standard is consistent with the new interference standard adopted in Section V.F., *infra*.

<sup>361</sup> See, e.g., CBS Comments at 8-9. Griffin Comments at 4-5, Hubbard Comments at 3-4, Twin Cities Comments at 5-7, Meredith Comments at 2-3; Univision at 5 n.7.

can demonstrate that they need this additional flexibility to serve their analog viewers.<sup>362</sup> Consistent with our existing rules,<sup>363</sup> we will also consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest.

152. We find that this waiver policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears. This waiver policy addresses the concerns of those stations returning to their analog channel that may face significantly reduced facilities if some minimal expansion is not permitted.<sup>364</sup> For example, Tribune and Allbritton argue that many stations returning to their analog channels for post-transition operation plan to use their analog antennas but face the prospect of significant service losses because the "unbuildable, theoretical pattern" in Appendix B does not match the analog antenna pattern.<sup>365</sup> As previously discussed, several stations that faced this problem filed comments in our DTV Table proceeding. In the *Seventh Report and Order*, we permitted these stations to change their 2004 certifications and, thus, revised these stations' post-transition DTV Table Appendix B facilities to reflect their constructed final DTV facilities.<sup>366</sup> Many more stations have since filed petitions for reconsideration of the *Seventh Report and Order* to obtain this same relief.<sup>367</sup> We expect that we can provide the same relief to most of these stations as well. For those stations that cannot be fully accommodated with a change to their post-transition DTV Table Appendix B facilities (e.g., stations that failed to request reconsideration of their post-transition DTV Table Appendix B facilities), we expect that this waiver policy should address their situations. In addition, this waiver policy should address many of the other concerns raised by commenters in seeking exemption from the freeze.<sup>368</sup> Applications filed to maximize facilities pursuant to this waiver policy will not receive expedited processing, but these applications will be processed before the freeze is lifted and new maximization applications are accepted.

153. Filing Freeze to be Lifted August 17, 2008. We adopt the proposal of MSTV/NAB and others to set a date certain that is before the end of the transition for when we will lift the filing freeze and begin accepting stations' applications to maximize post-transition facilities and serve more viewers.<sup>369</sup> Accordingly, we establish August 17, 2008 as that date.<sup>370</sup>

<sup>362</sup> *Ex Parte* Comments of MSTV (dated December 19, 2007) ("MSTV *ex parte* letter, 12/19/07").

<sup>363</sup> See 47 C.F.R. § 73.623(g).

<sup>364</sup> See, e.g., CBS Comments at 8-9; Tribune Comments at 8-10 Allbritton Comments at 2-5.

<sup>365</sup> Tribune Comments at 8-10 Allbritton Comments at 2-5.

<sup>366</sup> See *Seventh Report and Order*, 22 FCC Rcd at 15607-15609, ¶¶62-67.

<sup>367</sup> See MB Docket No. 87-268, Petitions for Reconsideration of the *Seventh Report and Order*.

<sup>368</sup> See, e.g. Long Comments at 2-4; Griffin Comments at 3; Hearst-Argyle Comments at 4-5.

<sup>369</sup> See MSTV/NAB Comments at 27-28. See also, e.g., APTS/PBS Reply at 6-7; Griffin Comments at 2-3; Hubbard Comments at 2-3.

<sup>370</sup> We recognize that we cannot predict with absolute certainty the date by which we will complete processing stations' initial applications to build facilities authorized by the post-transition DTV Table. While we believe this date represents a reasonable estimate concerning the time it should take us to process all the applications to permit stations to construct their final facilities, we may adjust this date, earlier or later, as we get closer to completing the processing of these applications. The Media Bureau will announce the exact date the freeze will be lifted and the associated terms and filing procedures.

By this date, we expect to have completed processing all stations' applications for post transition facilities and, therefore find that we could then provide this opportunity for stations to expand their facilities and serve more viewers, possibly before the transition date. We agree with MSTV/NAB that establishing a date certain for lifting the freeze will assist stations in their post-transition plans.<sup>371</sup> It is clear from the comments that many stations are eager to expand their facilities (beyond those specified in the post-transition DTV Table Appendix B) to serve more viewers.<sup>372</sup> Stations' new channel assignments present them with new opportunities to offer expanded DTV coverage, either because the stations may be moving to a new channel that does not have the same interference restrictions or because other stations on adjacent channels may be moving away, thus eliminating prior interference conflicts. We expect that lifting the freeze six months before the transition date will enable many stations to conserve resources by purchasing equipment that anticipates the maximization of their facilities.<sup>373</sup> Nevertheless, we will not accept future maximization as an excuse from stations not to file applications now nor to delay construction of their full, authorized facilities by their construction deadline. No commenter objected to the proposals to set a date to lift the freeze prior to the end of the transition.

154. Processing of Maximization Applications. Maximization applications will be processed in accordance with our existing rules.<sup>374</sup> While we will accept maximization applications after the freeze is lifted, such applications may not be processed in time for stations to build these new maximized facilities by their construction deadline. Stations with a pending maximization application on file are warned that such filing will not be considered a legitimate excuse for failing to build their full, authorized post-transition (DTV Table Appendix B) facilities by their construction deadline.

#### **F. Post-Transition Interference Standards and Analysis Methodology**

155. We are generally adopting the interference standards as proposed in the *Third DTV Periodic Review NPRM*, with adjustments based on the record. In brief, we adopt the following standards for evaluating post-transition interference:

- We will permit stations a limit of 0.5 percent new interference in addition to that in the DTV Table Appendix B. We will evaluate stations' applications to construct post-transition facilities using an engineering criteria based requirement (limiting the predicted interference that a station may cause to a protected station's service population) instead of using a geographic spacing requirement.
- We will discontinue the 10 percent cap on total interference.

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<sup>371</sup> See MSTV/NAB Comments at 27-28. See also, e.g., APTS/PBS Reply at 6-7; Griffin Comments at 2-3; Hubbard Comments at 2-3.

<sup>372</sup> See also, e.g., Tribune Comments at 6-8; Sinclair Comments at 1-3; South Carolina Educational Television Commission at 4, Nebraska PTV Licensees at 6, State of Wisconsin Board Comments at 6, Arkansas Educational Television Commission Comments at 7-9, Multicultural Comments at 8, LeSEA Comments at 3-4, Davis Comments at 2-3, Bahakel Comments at 6-9. Granite argues for expansions for satellite stations' service areas to bring service to underserved areas. Granite Comments at 6. University of Michigan would like to maximize coverage before LPTV stations are permitted to apply for facilities that could inhibit maximization by full power stations. University of Michigan Comments at 10. See also *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9519, ¶ 97.

<sup>373</sup> MSTV/NAB Comments at 27-28.

<sup>374</sup> 47 C.F.R. § 73.623. We remind stations that applications for maximization filed before the freeze is lifted will not be accepted for filing.

- We will continue to evaluate requests for new DTV allotments using the DTV-to-DTV geographic spacing requirements contained in Section 73.623(d).
- For approximately a year after lifting the filing freeze, we will protect all stations' DTV Table Appendix B facilities, after which we will protect each station's new DTV Table Appendix B facilities' coverage only until the station has a CP or license for its post-transition operation, at which time we will limit its interference protection to its authorized coverage area.
- We will revise the OET 69 interference analysis methodology to make the results more accurate and ensure consistent methodology. Specifically, we adopt the use of 2000 census data for use in all applications and we adopt a limited set of cell sizes, which include 2 km, 1 km, and 0.5 km.
- We will eliminate the 1 dB power reduction requirement for UHF stations that use more than 1 degree of antenna beamtilt.

156. Interference Criteria for Applications. Commenters generally agreed with our proposal to use engineering criteria instead of geographic spacing for cases involving applications; however there was widespread difference of opinion over how strict the criteria should be.<sup>375</sup> In the *Third DTV Periodic Review NPRM*, we proposed an absolute 0.5 percent interference standard for requests to modify post-transition facilities. In the proposal, stations whose Appendix B allotments are already predicted to cause more than 0.5 percent interference to another station would not be allowed to expand beyond the amount of interference that would be caused by their allotment.

157. A study by du Triel, Lundin & Rackley, Inc (dLR) found that 50 percent of all VHF allotments already cause more than 0.5 percent interference and 40 percent of all VHF allotments already cause more than 1.0 percent interference, so that an absolute 0.5 percent limit would prevent many stations from expanding at all.<sup>376</sup> MSTV/NAB noted that a number of commenters argue that the FCC should apply the proposed 0.5 percent standard by using the DTV Table Appendix B facilities as a baseline so that stations would be permitted to create no more than 0.5 percent additional interference beyond the level authorized in the DTV Table Appendix B.<sup>377</sup> MSTV/NAB support this approach on the grounds that it will ensure that stations have sufficient flexibility to expand or modify facilities, but will prevent substantial increases in interference between stations.<sup>378</sup> Several other commenters wrote that the proposed 0.5 percent interference standard may be too strict and proposed alternate standards. Upper Cumberland Broadcast Council (UCBC) would permit up to 2 percent interference.<sup>379</sup> Multicultural Television Broadcasting (MTB) supports a limit of 1 percent with no rounding and the masking of other stations taken into account and asks that we permit minor modifications where the increase in existing interference is less than or equal to 0.1 percent.<sup>380</sup> Khanna & Guill Inc.

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<sup>375</sup> Khanna 8/8/07 Comments at 4; Meredith Comments at 4-5.

<sup>376</sup> dLR Comments at 1.

<sup>377</sup> MSTV/NAB Reply at 16. See CBS Comments at 9-10, Allbritton Comments at 5-6, Tribune Comments at 4-6, Gray Comments at 8, Hammett and Edison Comments at 6-7, Davis Comments at 3-5, Cohen, Dippell & Everist Comments at 5-8, KSLs Comments, *passim*, WDEF Comments at 4, Disney Reply, *passim*.

<sup>378</sup> MSTV/NAB Reply at 17.

<sup>379</sup> UCBC Comments at 4.

<sup>380</sup> Multicultural Comments at 4.

proposed an alternative that would limit interference to small service areas to no more than 1,000 people and to large service areas to no more than 50,000 people.<sup>381</sup>

158. For purposes of the channel election process, the Commission generally applied the 0.1 percent interference standard to minimize as much as possible any interference as a result of a station moving to its analog channel for post-transition operation, rather than remaining on its pre-transition digital channel for post-transition service.<sup>382</sup> For stations that had to change channels for post-transition operation, *e.g.*, because their digital channel was out-of-core, we allowed up to 2.0 percent interference. We conclude that after the transition, the stringent 0.1 percent standard for interference protection used to facilitate the development of the post-transition DTV Table will no longer be needed. In the post-transition environment, all stations will have channels that will allow them to adequately serve their viewers. We also find that it is now reasonable and desirable to afford stations opportunities to modify their service areas to improve service to viewers. We further recognize that in order to provide such opportunities, stations will need the flexibility to cause a small amount of new interference to neighboring stations. The interference standard we proposed and are adopting in this Report and Order will allow stations to request modifications to improve their service areas that would cause a small amount of new interference to other stations. We find that the benefits of improving station service in such cases will outweigh the very small amount of additional interference that will be permitted under the 0.5 percent standard.

159. In addition, we agree with the majority of commenters that new interference under the 0.5 percent standard should be evaluated using the DTV Table Appendix B allotments as a baseline in interference calculations. In contrast, as indicated by the dLR study, an absolute interference limit would preclude many stations from having the flexibility to modify their facilities. Even increasing the absolute interference limit to 1.0 percent as suggested by UCBC would still preclude 40 percent of VHF stations from having such flexibility, and using a higher interference limit would potentially subject stations to large amounts of new interference. Therefore, to provide an opportunity for at least modest modifications, we will allow stations to cause up to 0.5 percent new interference, in addition to interference reflected in the DTV Table Appendix B. Applying 0.5 percent to this baseline of existing interference will provide the flexibility and expansion sought by commenters that suggested allowing higher interference levels. It would also effectively control the amount of new interference that could be experienced by any one station. We find this approach provides a reasonable balance between having sufficient flexibility to expand and modify facilities while preventing substantial disruption for viewers due to interference between stations. We therefore adopt the 0.5 percent interference standard and will apply it using the DTV Table Appendix B facilities as a baseline.<sup>383</sup>

160. We also proposed to discontinue the 10 percent cap on total interference to a station from all sources, and instead proposed to limit the total interference any station would receive from all sources by requiring that stations already predicted to cause more than 0.5

<sup>381</sup> Khanna 8/8/07 Comments at 2-3.

<sup>382</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302, ¶ 56.

<sup>383</sup> See revised rule 47 C.F.R. § 73.616 in Appendix B, *infra*. We will neither amend nor replace the existing interference rules in 47 C.F.R. §73.623, which will remain in effect to apply to any applications for pre-transition digital facilities. Petitions for rule making and applications for facilities that will operate after the end of the DTV transition must comply with section 73.616, with respect to post-transition operations, as well as with section 73.623, to the extent they will be in operation prior to the transition. We will consider whether to amend or eliminate the rule sections pertaining only to pre-transition digital facilities in a later proceeding.

percent interference to another station would not be allowed to increase the interference they are authorized to cause to that station.<sup>384</sup> MTB concurs with this proposal.<sup>385</sup> MSTV/NAB also submits that removing the cap would contribute to making the interference standard “simpler to administer than the 2 percent/10 percent rule (which requires consideration of the total amount of interference a station is receiving from all sources).”<sup>386</sup> Since we are adopting the 0.5 percent interference standard, which is significantly more protection than the previous 2.0 percent standard, we find that the amount of new interference that will be accumulated by any one station is minimal. Removing the cap would also help those few stations in situations that exceed the 10 percent interference level share the flexibility to expand or modify their facilities. Therefore, as proposed, we will discontinue the 10 percent cap on total interference.

161. Interference Criteria for New Allotments. As proposed, we will use geographic spacing requirements as the standards for determining the technical acceptability of channel use in evaluating rulemaking petitions seeking new DTV channel allotments.<sup>387</sup> While MSTV/NAB outlined in their comments that changes to the table should be analyzed under the 0.5 percent interference standard,<sup>388</sup> as we said in the *Third DTV Periodic Review NPRM*, information about actual transmitter site locations and facilities are generally not available in rulemaking proceedings. Without such information, valuations based on minimum acceptable allotment facilities and the methodology for the analysis of a petition using an engineering criteria standard would not reflect the operation of an actual station and therefore would generally not be meaningful. For these reasons we will continue to use the DTV-to-DTV geographic separation requirements contained in Section 73.623(d) of the rules. After a new DTV allotment has been approved, we will regulate the extent of interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications.<sup>389</sup>

162. Protection of DTV Table Appendix B facilities. As proposed in the *Third DTV Periodic Review NPRM*, we will only protect stations’ DTV Table Appendix B facilities until stations have their CP or license for their post-transition facility, at which time we will limit interference protection to stations’ authorized coverage area.<sup>390</sup> However, to avoid penalizing stations that apply for reduced facilities so as to not violate the freeze, we will continue to protect

<sup>384</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 107.

<sup>385</sup> Multicultural Comments at 5.

<sup>386</sup> MSTV/NAB Comments at 29.

<sup>387</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 111.

<sup>388</sup> MSTV/NAB Comments at 29.

<sup>389</sup> A new station would be allowed to create no more than 0.5 percent new interference to any station beyond the level of interference authorized by the allotment.

<sup>390</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 112. DTV Table Appendix B has been used to provide all stations with post-transition facilities. When a station applies for a CP to build the post-transition facility authorized by Appendix B, or applies for its license to cover the authorized post-transition facility it has already built, then it will no longer be necessary or appropriate to protect the Appendix B facility. As noted above in *supra* ¶¶ 7 and 149, for many stations, DTV Table Appendix B represents the hypothetical facility that produces its certified service area. See also *Seventh Report and Order*, 22 FCC Rcd at 15588-89, ¶¶ 17-18. When a station applies for the construction permit to build its facility, it may need to vary the parameters listed on Appendix B to construct the actual facility, for example to reflect an achievable directional antenna pattern or to locate the antenna at a height on the tower where mounting is possible. In addition, in some cases, we will allow stations to expand their facilities beyond Appendix B. See, *supra*, Section V.E. (¶¶ 148-154). Thus, over time, many stations’ facilities will no longer match the DTV Table Appendix B facility.

the DTV Table Appendix B facilities of stations until roughly one year after the date we intend to lift the filing freeze.<sup>391</sup> We received very few comments directly on this point, but MSTV/NAB mentioned that it is appropriate for the Commission to give stations one year to complete their final facilities, and that during that year we should provide protection to stations' allotted facilities.<sup>392</sup> New allotments as discussed in the previous paragraph will only be protected until a CP is granted for the new station. When applying the 0.5 percent new interference standard described above, we will continue to rely on the applicant's Appendix B or new allotment facility as a baseline for determining how much new interference the station may cause and avoiding cumulative applications of the 0.5 percent standard. When determining the amount of interference an applicant causes to other stations, we will use the protected stations' service areas based on their construction permits, licenses or new allotments as described in this paragraph.

163. Changes to Interference Analysis Methodology. We will adopt changes to our DTV interference analysis methodology to make the results more accurate and ensure consistent methodology. In the *Third DTV Periodic Review NPRM*,<sup>393</sup> we proposed to evaluate compliance with the interference standard using the Office of Engineering and Technology's OET Bulletin No. 69 ("OET 69") methodology, but using 2000 census data as was done during the channel election process. We sought comment on whether other changes to the OET 69 methodology were necessary.<sup>394</sup> As an example, we proposed allowing the use of specific "cell" sizes smaller than the 2 kilometers per side cell size specified as the default in OET 69. We also sought comment on a proposal to use variable desired-to-undesired ("D/U") interference ratios to better analyze situations where adjacent-channel transmitters are to be located inside a desired station's noise-limited service contour.<sup>395</sup> Commenters also raised questions about the use of real vertical antenna patterns and beamtilting.

164. As proposed, we adopt the use of 2000 census data for use in all applications.<sup>396</sup> Few commented on the issue, but those commenters that did were supportive of the proposal. This will result in more accurate modeling of the current population covered by DTV stations.

165. We also adopt use of specific smaller cell sizes for the Longley-Rice analysis as described in OET 69. Commenters were divided on the issue of the use of smaller cell sizes. As we explained in the *Third DTV Periodic Review NPRM*, we have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably more accurate. We understood that some applications had been based on evaluating many possible smaller cell sizes until the desired result was obtained. Such "shopping" for advantageous cell sizes does not improve the accuracy of the evaluation.<sup>397</sup> dLR, for example, would permit the use of any cell size. Others, like MSTV/NAB and Khanna, would allow the use of some smaller cell sizes, but

<sup>391</sup> The Media Bureau will issue a Public Notice establishing the exact date, which may be earlier if appropriate.

<sup>392</sup> MSTV/NAB Comments at 23, n. 43. University of North Carolina Comments at 3.

<sup>393</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 112.

<sup>394</sup> See OET Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," (Feb. 6, 2004) ("OET 69"), available at [http://www.fcc.gov/Bureaus/Engineering\\_Technology/Documents/bulletins/oet69/oet69.pdf](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf).

<sup>395</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9522-3, ¶ 110.

<sup>396</sup> *Id.* at ¶ 109.

<sup>397</sup> See also *id.* at note 211. For example, if an application would fail based on 1.0 km cells but passes based on 1.5 km cells, the applicant would request evaluation based on the 1.5 km cell size.

establish constraints as to what sizes are allowed. Khanna proposed a uniform use of 1 kilometer per side cells,<sup>398</sup> which would avoid disputes over differing methodology. Establishing a minimum cell size of 1 kilometer per side, according to MSTV/NAB, would “discourage shopping for advantageous cell sizes.”<sup>399</sup> While we recognize the concerns about shopping for advantageous cell size, we also would prefer to preserve the option to use alternative cell sizes that has been available over the course of the DTV transition. In this regard, our experience is that this option has generally not been abused. We do, however, find that it would simplify the process to specify a limited set of cell sizes; this would seem to better limit any size “shopping” that might occur. Therefore, we adopt a limited set of cell sizes: 2 km, 1 km, and 0.5 km. Adopting this method will allow for more accurate showings of DTV coverage based on smaller cell sizes, while discouraging the practice of “shopping” for cell sizes, which doesn’t contribute to improved accuracy.

166. Vertical Patterns. We will retain the existing OET 69 vertical antenna pattern and not make changes in the vertical patterns at this time. Vertical antenna radiation patterns are descriptions of antenna gain at various angles above and below the horizon. Several commenters asked us to modify the way in which vertical antenna patterns are considered. Currently, OET 69 specifies a standard vertical antenna pattern that is used for each station, regardless of the actual characteristics of the station’s antenna. Some commenters noted that allowing the use of actual vertical patterns would result in more accurate modeling of station coverage, and possibly more efficient use of the TV spectrum. Meredith Corporation notes that stations are required to submit vertical pattern information when applying for a CP, but that the data is not used when calculating the service area of the application. AFCCE recommends that actual vertical patterns and beamtilt be considered for modifications and new authorizations when calculating outgoing interference.<sup>400</sup> Changing the interference analysis at this time would demand time and resources when we must process and grant a large number of applications as quickly as possible. Therefore, we will continue to rely on the existing OET 69 standard vertical antenna pattern for applications filed now for post-transition facilities. We expect, however, to revisit this issue in the future.

167. Beamtilting Penalty. We are eliminating the 1 dB power reduction requirement for UHF stations that use more than 1 degree of antenna beamtilt.<sup>401</sup> This rule was introduced in February 1998, when we initially limited maximization requests by UHF stations to 200 kW ERP.<sup>402</sup> The rule allowed UHF stations to increase power up to a maximum of 1000 kW provided beamtilting techniques were employed so that the field strengths at the outer edge of the stations service area were no greater than would exist if the station were operating at its assigned DTV power. The rule also required that the field strengths at the edge of the service

<sup>398</sup> Khanna 8/8/07 Comments at 3.

<sup>399</sup> MSTV/NAB Comments at 29.

<sup>400</sup> AFCCE Comments at 9. Specifically, AFCCE proposed that if a vertical pattern is on file for a protected station, the pattern will be used. If no such pattern is on file, but is necessary for an applicant to establish non-interference, the applicant would request that the manufacturer’s standard vertical pattern for the specified antenna be substituted for the FCC vertical pattern.

<sup>401</sup> 47 C.F.R. § 73.622(f)(4) states that UHF DTV stations may request and increase in powers, up to a maximum of 1000 kW ERP ... through the use of antenna beamtilting in excess of 1 degree, as follows: ... (ii) where a station operates at higher power under the provisions of this paragraph, its field strengths at the edge of its service area are to be calculated assuming 1 dB of additional antenna gain over the antenna gain pattern specified by the manufacturer.

<sup>402</sup> See *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7426, ¶ 82.

area be calculated assuming 1 dB of additional antenna gain over the pattern specified by the manufacturer. Later that year, we ruled that all UHF stations could request an increase in power up to 1000 kW ERP provided they met the *de minimis* rules in Section 73.623(c)(2) of the rules, and did not require beamtilting be employed.<sup>403</sup> AFCCE suggested that the 1 dB penalty be rescinded to permit stations to employ large beamtilts and higher ERPs.<sup>404</sup> Tribune states that “once the 200 kW power cap was effectively eliminated ... there was no need for the 1 dB penalty to discourage stations from using the beamtilting exception to evade the 200 kW power cap.”<sup>405</sup> We agree and find that the rules under 73.622(f)(4) are outdated and should be amended. We note that stations may use section 73.622(f)(8) to increase their power above 200 kW. Sections 73.625(b)(2) and 73.625(c)(1) address how beamtilting can be used. Through the use of these rules, the effect of 73.622(f)(4) can be accomplished without the 1 dB penalty.<sup>406</sup> We will, therefore, amend section 73.622(f)(4).<sup>407</sup>

168. Variable D/U Ratios. In the *Third DTV Periodic Review NPRM*,<sup>408</sup> we sought comment on whether to adopt variable desired-to-undesired (D/U) interference ratios in situations where adjacent-channel transmitters are proposed to be located inside a desired station’s noise-limited service contour.<sup>409</sup> MSTV/NAB submitted that consideration of this issue would be best addressed in our DTS proceeding.<sup>410</sup> We find that the comments submitted in this record do not provide an adequate basis on which to make a decision to retain the current D/U ratios or to change them. We can address this topic in a future proceeding if parties submit data and arguments demonstrating a need for revising our current rules.

169. Channel 51. In *ex parte* comments, Cohen, Dippell and Everist, P.C. request the Commission to clarify the extent to which any Wireless Communications Services (“WCS”) that will operate in the spectrum currently designated as TV/DTV Channel 52 will offer interference protection to future DTV services offered on Channel 51.<sup>411</sup> In the *Second DTV Periodic Report*

<sup>403</sup> See *DTV Second Memorandum Opinion and Order*, 14 FCC Rcd at 1369, ¶¶ 48-49.

<sup>404</sup> AFCCE Comments at 10.

<sup>405</sup> Tribune Comments at 30.

<sup>406</sup> See *DTV Second Memorandum Opinion and Order*, 14 FCC Rcd at 1369, ¶¶ 48-49.

<sup>407</sup> See revised rule 47.C.F.R. § 73.622(f)(4) in Appendix B, *infra*.

<sup>408</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 110.

<sup>409</sup> We noted that such situations may become more prevalent if rules are adopted allowing distributed transmission systems (“DTS”). See *Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Clarification Order and Notice of Proposed Rulemaking, 20 FCC Rcd 17797 (2005). DTS employs multiple synchronized transmitters spread around a station’s service area, rather than the current single-transmitter approach. Each transmitter broadcasts the station’s DTV signal on the same channel. Due to the synchronization of the transmitted signals, DTV receivers treat the multiple signals as reflections or “ghosts” and use “adaptive equalizer” circuitry to cancel or combine them to produce a single signal. *Id.*

<sup>410</sup> See *id.* We note that we did receive some comments on this issue in the DTS proceeding, but find that the record on this issue remains insufficient. See, e.g., Comments of MSTV in MB Docket No. 05-312 at 7-8 (dated Feb. 6, 2006) and Reply Comments of Merrill Weiss Group, LLC in MB Docket No. 05-312 at 6-8 (dated Mar. 8, 2006).

<sup>411</sup> See *Ex Parte* Comments of Cohen, Dippell and Everist, P.C. (dated Sept. 27, 2007) (“*CDE Ex Parte*”). The commenters cited to 47 C.F.R. § 27.60 as the basis for their comment. This rule states that “transmitters in the 698-794 MHz and 776-794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to the public reception of the signals of existing TV and DTV broadcast stations transmitting on TV channels 51 through 68.” They point out that the “existing” language implies, or might lead any future WCS auction winner to expect, that a WCS would not have to protect any future channel 51 station that was

*and Order* we stated that wireless and other operators on channel 52 must provide the interference protection prescribed in the Lower 700 MHz Report and Order to all broadcasters on channel 51, including any that may commence operation after the auction of adjacent channels in the 52-58 band, and we further stated that use of channel 51 for broadcast purposes should not be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51.<sup>412</sup> We reiterate and emphasize that this policy has not changed, and we will ensure that expanded operations by current channel 51 licensees and new channel 51 allotments will remain protected.

### **G. Coordination with Cable Operators, Satellite Systems, and Other MVPD Providers**

170. We establish no new rules governing the coordination of broadcasters and MVPDs, but remind all parties of their existing obligations, and observe that some coordination issues must be resolved in other dockets. As we recognized in the *Third DTV Periodic Review NPRM*,<sup>413</sup> the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors (“MVPDs”).<sup>414</sup> No commenter disagreed, and indeed few commenters spoke to these coordination issues. Those who did generally assured the Commission that both coordination and the actual transition to digital signal reception are underway.<sup>415</sup> Therefore, as a general matter, Cox Broadcasting’s suggestion that the parties will coordinate independently is well taken.<sup>416</sup> There remain, however, a few coordination issues that we need to specifically address.

#### **1. Transition Status Filings**

171. As discussed above,<sup>417</sup> we adopt the requirement that broadcasters file a Transition Status Report (Form 387) with the Commission no later than February 18, 2008, and we will make the information from those forms publicly available. Broadcasters may also report their coordination efforts with MVPDs in their transition status reports. This information collection and availability is in line with that supported by a number of commenters, including NCTA.<sup>418</sup> NCTA argues that a wide range of information must be available to “provide adequate lead time for cable operators to make technical modifications at cable headends, conduct tests, and provide timely notice to customers of channel changes and any other changes in their service.”<sup>419</sup> These

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not “existing” as of the date of the DTV transition. We note that Section 27.60 applies to transitional operations, prior to the completion of the digital transition on February 18, 2009. This Section will be the subject of a rulemaking proceeding to update, inter alia, the reference to interference protections for “stations transmitting on TV Channels 51 through 68” post-transition. There will be no such television broadcast stations operational on Channels 52 through 68 after the transition. This rulemaking will also be an opportunity to harmonize the rule requirements with our conclusions in the *Second DTV Periodic Report and Order*.

<sup>412</sup> *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18333, ¶ 124.

<sup>413</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9528, ¶ 124.

<sup>414</sup> See 47 U.S.C. 522(13). MVPDs include cable operators and Direct Broadcast Satellite carriers. See also 47 C.F.R. §§ 76.5, 76.501 (SMATV).

<sup>415</sup> See, e.g., DIRECTV Comments at 3.

<sup>416</sup> Cox Comments at 8-9.

<sup>417</sup> See *supra* Section V.A.1.

<sup>418</sup> See, e.g., APTS/PBS Comments at 22; Capitol Comments at 9; NCTA Comments at 4-5.

<sup>419</sup> NCTA Comments at 5.

reports will provide a base of common information that broadcasters and MVPDs can look to in their voluntary coordination efforts, and will allow time for the resolution of those efforts. Reports filed with the Commission are, however, no substitute for direct communication between broadcasters and MVPDs and we strongly encourage active coordination between them.

172. Although NAB and MSTV propose that MVPDs themselves file Transition Status Reports similar to Form 387, they do not elaborate on this proposal.<sup>420</sup> We find insufficient support in the record for imposing this filing because it would provide information that is already generally available. NAB and MSTV also propose that MVPDs be required to register their headends and contact information, such that it will be available to broadcasters who wish to coordinate carriage issues.<sup>421</sup> As noted above, we strongly support active coordination between the parties, and urge broadcasters to directly contact the MVPDs that carry their stations if they require specific information from MVPDs to ensure a successful transition. We also remind cable operators in particular of their existing requirement to notify all stations carried pursuant to must carry at least 60 days prior to any change in the designation of their principal headend.<sup>422</sup> Furthermore, contact information for cable operators is already widely and publicly available through the FCC Cable Operations and Licensing System (“COALS”). Broadcasters can access this information online at any time.<sup>423</sup> We are unaware of any problem broadcasters have had in contacting MVPDs, and NAB and MSTV do not provide any such examples. Therefore, we decline to adopt an MVPD transition status report requirement at this time. We do urge broadcasters and MVPDs to report to the Media Bureau any specific difficulties with their coordination efforts, and we will take appropriate action against any party that consistently declines to actively coordinate on transition issues.

## 2. Cable Coordination

### a. Timing of Transition

173. The Commission’s primary concern in this process is to ensure that the entire viewing public, those who watch broadcast stations on cable as well as those who watch them over the air, is able to view these signals as easily on February 18, 2009 as they can today. We remind cable operators that they have an obligation to carry digital must-carry signals, and to have reception equipment operational to receive those digital signals that go on the air on February 18, 2009.<sup>424</sup> Furthermore, we remind them of their carriage obligations regarding

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<sup>420</sup> MSTV/NAB Comments at 31; Cox Comments at 8-9; *See generally*, University of North Carolina Comments and Norwell Comments. MSTV/NAB’s Comments were not echoed by any of the individual broadcasters who filed in this docket, and they were opposed by Cox.

<sup>421</sup> MSTV/NAB Comments at 31.

<sup>422</sup> *See* 47 C.F.R. § 76.1607.

<sup>423</sup> COALS is a publicly accessible online database that contains extensive information about cable operators. Cable operators are required to maintain updated contact information with the Commission. 47 C.F.R. § 76.1610. This information can be found online at: <http://www.fcc.gov/coals>. Contact information for a group of operators can be most easily accessed by selecting “Cable Search” from the bar on the left, choosing the relevant state from the “Community State” drop down box, and choosing “Community Registration” from the “Type of Filing” drop down box. The search can be narrowed by entering additional information, such as the name of the community in which the cable system is located or the name of the cable system.

<sup>424</sup> *See Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2990, ¶ 101 (1993) (“1993 Must Carry Order”); *clarified* in the Clarification Order, 8 FCC Rcd 4142, 4144, ¶ 11 (1993); *see also* 47 C.F.R. § 76.64(f)(4).

digital-only stations established in the *First DTV Must Carry Order*.<sup>425</sup> Stations that currently broadcast only a digital signal or that turn off their analog signal prior to February 17, 2009, in accordance with the policies and procedures adopted in this Report and Order are entitled to mandatory carriage on cable systems.<sup>426</sup> Similarly, we remind broadcasters that they are obliged to provide the cable operator with a good quality signal and, if they choose not to rely on over the air transmission, it is their obligation to contact the operator and resolve any issues necessary to provide the signal in an alternative manner.<sup>427</sup>

### b. Signal Quality Standard

174. The Commission has previously established that, for cable companies, a “good quality digital signal” is one that provides a signal strength at the headend equal to -61 dBm.<sup>428</sup> For purposes of clarity, we find that it is now advisable to adjust Section 76.55 of our rules to conform to these requirements established in 2001.<sup>429</sup> Two broadcast commenters expressed concerns that stations could lose carriage rights for a full election cycle because of a temporary reduction in signal strength or area during their digital build-out.<sup>430</sup> UNC proposes that the Commission impose an interim quality standard, presumably requiring lower signal strength to qualify.<sup>431</sup> Norwell suggests that, where the predicted digital signal strength is at least as high as the analog signal it is replacing, the MVPD be required to carry the digital signal.<sup>432</sup> We decline to adopt these proposals. When the Commission adopted the -61 dBm standard for cable carriage, analysis indicated that it was the strength “necessary to provide a good quality digital television signal at a cable system’s principal headend.”<sup>433</sup> Neither commenter provided evidence to refute that finding. If a broadcast signal is not delivered in good quality, it can not be carried in good quality, and carriage of a low quality signal mars the viewing experience, which in turn discourages viewership, and is thus harmful to the broadcaster by reducing advertising revenue. It may also be harmful to the MVPD by undermining subscribers’ perception of the quality of the programming offered by the operator and by increasing complaint calls and the likelihood that a customer will seek alternatives to their current MVPD. Broadcasters, MVPDs, and viewers, therefore, all benefit from delivery and carriage of clear, high quality signals. We also acknowledge the concerns of these broadcasters, and remind MVPDs that they are responsible for carriage as soon as a good quality signal is delivered.

### 3. DBS Coordination

175. We reiterate that MVPDs must work with broadcasters to ensure a smooth transition, and direct the parties to the DBS Carriage proceeding, MB Docket No. 00-96, where

<sup>425</sup> See *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules and Implementation of the Satellite Home Viewer Improvement Act of 1999*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2617, ¶ 29 (“*First DTV Must Carry Order*”); 47 C.F.R. § 76.64(f)(4).

<sup>426</sup> See 47 C.F.R. § 76.64.

<sup>427</sup> The signal may be provided in any manner chosen by the broadcaster, so long as its cost is borne by the broadcaster. See *1993 Must Carry Order*, 8 FCC Rcd at 2991, ¶ 104.

<sup>428</sup> *First DTV Must Carry Order*, 16 FCC Rcd at 2617, ¶ 46.

<sup>429</sup> See revised rule 47 C.F.R. § 76.55 in Appendix B, *infra*.

<sup>430</sup> University of North Carolina Comments at 9-10; Norwell Comments at 6-7.

<sup>431</sup> University of North Carolina Comments at 10.

<sup>432</sup> Norwell Comments at 6.

<sup>433</sup> *First DTV Must Carry Order*, 16 FCC Rcd at 2617, ¶ 46.

the final rules governing satellite carriage of digital broadcast signals will be adopted.<sup>434</sup> Both DIRECTV and EchoStar filed comments regarding the timing of the transition. DIRECTV states that it is already carrying a number of stations' digital signals, and offers to work with any broadcaster that is currently providing and will continue to provide a good quality digital signal to its local receive facility, even if that station is not currently being carried by DIRECTV.<sup>435</sup> We note that 95 percent of stations are currently on the air with a digital signal. Nevertheless, a number of stations may not provide their post-transition digital signal to headends and receive facilities until the conclusion of the transition.<sup>436</sup> We remind broadcasters of their obligation to provide a good quality signal,<sup>437</sup> and therefore their obligation to coordinate the delivery of that signal, for example by coordinating with DBS and other MVPD operators during program test periods prior to February 17, 2009. EchoStar proposes that, for any station that does not make its digital signal available prior to February, 2009, MVPDs be given additional time to incorporate that signal into their system.<sup>438</sup> We decline to adopt Echostar's proposal.

#### 4. Private Cable Operators and Master Antenna System Providers

176. In the *Third DTV Periodic Review NPRM*, we asked for comments from private cable operators ("PCOs") (also known as Satellite Master Antenna Television or "SMATV" providers) and master antenna system providers regarding steps they are taking to ensure that their subscribers and residents will continue to receive local broadcast stations after the termination of over-the-air analog broadcast signals from full power stations.<sup>439</sup> We received comments from the Independent Multi-Family Communications Council (IMCC), the PCO trade association, and agree with IMCC that it may be necessary for these operators to update their systems prior to the 2009 transition date.<sup>440</sup> We support IMCC's proposed efforts to educate PCOs nationwide, and appreciate their efforts to keep their membership fully informed on this important issue.<sup>441</sup> We note that viewers who rely on PCOs or master antenna systems will also need to be informed of the equipment they will need to continue viewing broadcast television after February 17, 2009.<sup>442</sup>

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<sup>434</sup> Although signal strength requirements for the delivery of digital signals to satellite receive facilities have not been finalized, we remind DBS providers of their obligation to carry local broadcast stations that provide a "good quality signal." 47 C.F.R. § 76.66(g).

<sup>435</sup> DirecTV Comments at 3.

<sup>436</sup> *Id.* at 3-4. See also NCTA Comments at 2-3. See also, e.g., Allbritton Comments at 3; APTS/PBS Comments at 16-18; Bahakel Comments at 4; Central Michigan University Comments at 6; Disney Comments at 5-6; Hawaii Public Television Foundation Comments at 5; MSTV/NAB Comments at 22-26; Nebraska PTV Licensees Comments at 4; PBNP Comments at 5; Quincy Comments at 5; Rocky Mountain Comments at 8; Scripps-Howard Broadcasting Comments at 3-4; Sistema Universitario Ana G. Mendez Comments at 6; South Carolina Educational Television Commission Comments at 1; St Louis PTV Comments at 4; University of Michigan Comments at 3.

<sup>437</sup> See 47 C.F.R. §§ 76.55(c)(3) and 76.66(g).

<sup>438</sup> EchoStar Reply at 3. See also DIRECTV Reply at 5 (offering a similar proposal that would be limited to DBS providers and stations that commence digital service on or after February 17, 2009).

<sup>439</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9528-9, ¶ 124.

<sup>440</sup> As discussed in ¶ 178, *infra*. See generally, Late-Filed Comments of the Independent Multi-Family Communications Council (IMCC). See also, IMCC Industry Issues Website, particularly "Conversion from Analog to Digital," available at <http://www.imcc-online.org/ISSUES/issues.htm>.

<sup>441</sup> See Late-Filed Comments of IMCC at 4.

<sup>442</sup> The Commission recently adopted an Order requiring that cable operators make digital signals "viewable" to all of their subscribers after the transition. *Cable Viewability Order*, *supra* note 78. PCOs and MATV providers,

177. PCOs provide cable service on private property, and do not cross public rights of way. Typically they serve multiple dwelling units (“MDUs”) and private residential communities, such as condominiums and homeowner associations. PCOs generally provide local TV broadcast signals to the residents/subscribers via one of four methods. The first alternative is to contract with a DBS provider that is providing local-into-local service, set up a DBS dish in a central location (*e.g.*, the roof), and then remodulate the digital satellite signal into analog for distribution to residents/subscribers. The second alternative is for PCOs to set up satellite receivers for each local broadcaster, with an analog RF modulator for each program, and then combine the modulator outputs into a single cable for residents/subscribers. The third alternative is to provide a local digital broadcast package to residents/subscribers via a digital headend signal processor. Finally, the PCO can set up one or more over-the-air receive antennas and either simply pass the signal along to residents/subscribers or, more commonly, run it through an analog processor to provide a constant signal strength for residents/subscribers. Operators of master antenna systems (*e.g.*, a landlord or condo association) provide one or more receive antennas and deliver local over-the-air television signals free of charge to residents, and generally also have an analog processor to ensure a constant signal strength.<sup>443</sup>

178. After the digital transition, PCOs who rely on the first or second alternatives will not need to make any changes. The satellite signal or signals will continue to be received in digital and can continue to be remodulated into analog for the residents/subscribers. If this alternative is used, however, there will be no digital signals, including high definition signals, available to the residents/subscribers, although they will all continue to receive television service without buying new equipment. PCOs under option three are already relying on an all-digital headend and distribution network, and will face no changes after the transition because all equipment on the system, including residents/subscribers’ television receivers, is already capable of receiving, conveying, and displaying digital signals. PCOs who rely on local receive antennas will have two options, the same as those confronting operators of master antenna systems. First, they could use a digital-to-analog converter on all over-the-air signals to convert the digital broadcast signal to analog before being retransmitted to residents/subscribers, who will therefore be able to continue to rely on their existing television equipment. This solution results in the same problem faced by DBS subscribers, however; all residents/subscribers will receive television programming, but none will receive a standard or high definition digital signal. The other alternative is to retransmit the signal in digital format. In this case, residents/subscribers have access to the full benefits of the digital transition, but only if they have digital equipment. We recognize that some residents/subscribers may think of themselves as “cable subscribers,” and therefore expect that the DTV transition will have no impact on their service, based on the Commission’s recent decision ensuring continued viewability of stations carried on cable.<sup>444</sup> This problem can be largely ameliorated by proper education efforts by PCOs and MATV operators. In addition the OTA digital signal provided by PCOs will be processed, but not remodulated; therefore, off-the-shelf digital-to-analog converters, including those that will be

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however, do not have “must carry” obligations under the Act, and are therefore not covered by this recent decision. 47 U.S.C. § 522 (7).

<sup>443</sup> See Blonder Tongue Laboratories, Inc., “Broadcast Television’s Analog to Digital Transition,” available at [http://www.imcc-online.org/ISSUES/RESOURCE%20Info/Analog%20to%20Digital/BT-broadcast\\_television-12-05.htm](http://www.imcc-online.org/ISSUES/RESOURCE%20Info/Analog%20to%20Digital/BT-broadcast_television-12-05.htm).

<sup>444</sup> See *Cable Viewability Order*, *supra*, note 78.

available as part of the NTIA converter box coupon program, can be used by residents/subscribers with analog equipment to view the signal.<sup>445</sup>

## H. Other Issues

### 1. DTV Transmission Standard (ATSC A/53)

179. We adopt our proposal in the *Third DTV Periodic Review NPRM*<sup>446</sup> to update Section 73.682(d) of the rules<sup>447</sup> to reflect the latest revisions to the ATSC DTV transmission standard, A/53, since the *Second DTV Periodic Report and Order*.<sup>448</sup> Accordingly, we will incorporate into Section 73.682(d) by reference the latest version of the DTV transmission standard A/53: ATSC Digital Television Standard, Part 1-6:2007 (“A/53:2007”).<sup>449</sup> We will continue to encourage further improvements to the DTV standards and conduct additional rulemakings, as appropriate, to incorporate future updates of the ATSC DTV transmission standard into our rules.

180. We find that it is desirable and appropriate to update Section 73.682(d) of the rules to specify the use of the latest version of this ATSC DTV transmission standard, A/53:2007. All commenters on this issue support the adoption of the latest version of the standard into our rules.<sup>450</sup> The ATSC notes that it has made further changes to its DTV transmission standard since the release of the *Third DTV Periodic Review NPRM*.<sup>451</sup> Specifically, ATSC partitioned the standard into six parts to facilitate future “changes and enhancements” and encourages the Commission to adopt the newest version into the rules.<sup>452</sup> We note that the A/53:2007 version of the standard does not differ from the A/53-E version that was mentioned in the *Third DTV Periodic Review NPRM*, other than these organizational changes.

181. The A/53:2007 version of the standard differs from the previously used standard, A/53-B,<sup>453</sup> in several respects. First, A/53:2007 includes the specifications for, but does not require, Enhanced 8-VSB (“E8-VSB”) for terrestrial broadcast.<sup>454</sup> E8-VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main

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<sup>445</sup> See Late-Filed Comments of IMCC at 4.

<sup>446</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9524-25, ¶ 114.

<sup>447</sup> 47 C.F.R. § 73.682(d) states: “Effective February 1, 2005, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: ‘ATSC Standard Digital Audio Compression (AC-3)’ (incorporated by reference, See § 73.8000), ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2: ‘ATSC Digital Television Standard,’ except for Section 5.1.2 (‘Compression format constraints’) of Annex A (‘Video Systems Characteristics’) and the phrase ‘See Table 3’ in Section 5.1.1. Table 2 and Section 5.1.2 Table 4 (incorporated by reference, See § 73.8000), and ATSC A/65B: ‘ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,’ (Revision B) 2003 (incorporated by reference, See § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, (October 4, 1995), and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002).”

<sup>448</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶ 145.

<sup>449</sup> See revised rule 47 C.F.R. § 73.682(d) in Appendix B, *infra*.

<sup>450</sup> See ATSC Comments at 2-3; Harris Comments at 4-5; LG Comments at 2; MSTV/NAB Comments at 29-30.

<sup>451</sup> ATSC Comments at 2-3.

<sup>452</sup> *Id.*

<sup>453</sup> See 47 C.F.R. § 73.682(d) (incorporating by reference ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2). See also *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶ 145.

Service data and Enhanced Services data.<sup>455</sup> Enhanced Services data is designed to have higher immunity to certain channel impairments than Main Service data, but Enhanced Services data is delivered at a reduced information rate selected by the broadcaster from the specified options.<sup>456</sup> A/53:2007 further describes the coding constraints that apply to the use of the MPEG-2 systems specification<sup>457</sup> in the DTV system, including mandatory main and optional enhanced services.<sup>458</sup> It also improves the Active Format Description (“AFD”) specifications by revising and clarifying the relevant standards.<sup>459</sup>

182. Given these advantages, we find that updating the rules with the latest version of the ATSC DTV transmission standard today will benefit both broadcasters and consumers by allowing broadcasters the flexibility to offer new technological services. We cannot, however, establish Harris’ proposed streamlined approach<sup>460</sup> to automatically update our rules when ATSC updates its standards.<sup>461</sup>

## 2. Active Format Description (AFD)

183. We will not require broadcasters to use AFD. Broadcasters that choose to use AFD, however, must adhere to the ATSC DTV transmission standard A/53:2007. Although the latest ATSC DTV transmission standard does not require the use of AFD,<sup>462</sup> we sought comment in the *Third DTV Periodic Review NPRM*<sup>463</sup> on whether to require AFD when the active video portion picture does not completely fill the coded picture. All commenters on this issue agree that AFD should remain voluntary.<sup>464</sup>

184. We agree with commenters that it would be premature to require mandatory broadcaster use of AFD, given that the standard is relatively new and has not yet been required

<sup>454</sup> A/53, Part 2:2007 at 6 (“The optional enhancements add additional forward error correction coding layers to the data before sending the data via a constrained version of 8-VSB called Enhanced 8-VSB (E8-VSB). Various coding rate options are defined, and the payload assignment between the Enhanced 8-VSB and the Main Mode data is selectable at discretely defined values.”).

<sup>455</sup> *Id.* at 19.

<sup>456</sup> *Id.* at 9.

<sup>457</sup> ISO/IEC IS 13818-1-2000 (E), International Standard, Information technology – Generic coding of moving pictures and associated audio information system.

<sup>458</sup> A/53 Part 3:2007 at 9.

<sup>459</sup> A/53 Part 4:2007 at 14.

<sup>460</sup> Harris Comments at 4-5.

<sup>461</sup> 5 U.S.C. § 553; *See Sprint Corp. v. Federal Communications Com’n*, 315 F.3d 369 (D.C. Cir. 2003) (changing the obligations of a party requires actual notice); *SBC Inc. v. Federal Communications Com’n*, 414 F.3d 486 (3d Cir. 2005) (a new rule is subject to notice and comment requirements if it would “impose new duties upon regulated parties” and could not be construed as “interpretative, clarifying and explaining [an] existing rule”). Furthermore, regulations prohibit incorporation of ATSC updates by reference. 1 C.F.R. 51.1 (disallowing “future amendments or revisions” to be incorporated by reference).

<sup>462</sup> A/53, Part 4:2007 at 14. *See also Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶ 145 (declining to mandate broadcasters’ use of AFD).

<sup>463</sup> *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9524, ¶ 116.

<sup>464</sup> MSTV/NAB Comments at 29-30; Cox Comments at 7 (citing lack of equipment and newness of the AFD and SMPTE standards). NCTA Reply at 10 (noting “it is still too early in the implementation and testing of AFD technology to determine whether it should be used ubiquitously by broadcasters or cable operators”); CEA Comments at 3.

through the ATSC standard.<sup>465</sup> We do, however, encourage television manufacturers to implement the SMPTE standard and CEA-CEB16 into their TV sets, which will better allow broadcasters to take advantage of tools such as AFD to ensure that viewers receive a signal that is optimized for their TV set. We find that these voluntary, industry driven efforts are sufficient and, thus, will not require broadcasters to use AFD until such time that AFD data can be consistently deployed by manufacturers and content providers, and received by the public. For example, we recognize that not all content providers now uniformly provide AFD data to broadcasters. Moreover, not all consumers are equipped to obtain the benefits of AFD.<sup>466</sup> We will monitor and may revisit it when more content providers provide AFD data to broadcasters and when more consumers obtain DTV receiving equipment that could pass through the AFD data to them.<sup>467</sup> We expect that broadcasters will have an incentive to use AFD to make their programming attractive to viewers when they are ready and able to do so. We note that we will address the issue raised in comments concerning requirements that certain MVPDs pass through AFD data to their subscribers.<sup>468</sup> This issue is raised in the *Third Further Notice of Proposed Rule Making* in the *DTV Must Carry* proceeding.<sup>469</sup>

### 3. Program System and Information Protocol (“PSIP”) Standard

185. We adopt our proposal in the *Third DTV Periodic Review NPRM*<sup>470</sup> to update Section 73.682(d) to reflect the latest revisions to the ATSC PSIP standard since the *Second DTV Periodic Report and Order*.<sup>471</sup> Accordingly, we will incorporate into Section 73.682(d) by reference the latest version of the ATSC PSIP standard A/65C into our rules.<sup>472</sup> The record supports updating our rules to reflect the latest version of the ATSC PSIP standard,<sup>473</sup> which includes additional benefits such as updated Event Information Tables (“EITs”). We find that the updated ATSC PSIP standard enhances consumers’ viewing experience by providing detailed information about digital channels and programs, such as how to find a program’s closed captions, multiple streams and V-chip information.<sup>474</sup> We agree with the commenters that the benefits of the updated ATSC PSIP standard to both broadcasters and consumers outweighs any

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<sup>465</sup> MSTV/NAB stated that at this time the Commission should refrain from requiring AFD because it would be premature to do so while the industry standard remains incomplete. MSTV/NAB Comments at 30. *See also* Cox Comments at 7-8 (noting that “the ink is barely dry on the ATSC and SMPTE standards”); NCTA Reply at 10.

<sup>466</sup> *See* Cox Comments at 7-8 (stating that it is not clear to Cox that equipment necessary for robust insertion and reception of AFD data is generally available.)

<sup>467</sup> In the *Second DTV Periodic Report and Order*, the Commission noted, “[A]s more consumers acquired widescreen aspect ratio sets, the problem of “postage stamp video” would become more prevalent if not addressed by broadcasters.” Moreover, the Commission found “that broadcasters would want to make their programming attractive to viewers as they began to adopt DTV.” *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶¶ 143, 145.

<sup>468</sup> *See* Tribune Comments at 23-26; NCTA Reply at 9-11.

<sup>469</sup> *See Cable Viewability Order, supra*, note 78.

<sup>470</sup> *See Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9527, ¶ 118.

<sup>471</sup> *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18345-46, ¶ 152.

<sup>472</sup> *See* revised rule 47 C.F.R. § 73.682(d) in Appendix B, *infra*.

<sup>473</sup> ATSC Comments at 3; MSTV/NAB Comments at 30; Tribune Comments at 23-4; LG Comments at 3; Harris Comments at 4. We did not receive comments related to the proposal’s impact on small broadcasters.

<sup>474</sup> *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18343-44, ¶ 149.

additional burden placed on broadcasters.<sup>475</sup> We recognize, however, that it may take time for broadcasters to implement the new ATSC PSIP standard. Therefore, in order to give broadcasters adequate time to come into compliance, this requirement will take effect 120 days after publication in the Federal Register.<sup>476</sup>

186. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast.<sup>477</sup> PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the "major" channel number), thereby making it easy for viewers to tune to the station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things.

187. The updated ATSC PSIP standard further enhances the PSIP standard and support for delivery of data. This latest revision requires broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available. Under the previous version of the standard, A/65-B, many broadcasters provide only general information in the EIT. For example, a network affiliate may provide nothing more informative than "network programming" as the descriptor for the majority of its program offerings.

188. We expect broadcasters to fully implement PSIP to the extent that ATSC A/65C requires, once the revised Section 73.682(d) becomes effective.<sup>478</sup> We remind broadcasters of the need to be consistent at all times and locations. For example, if a broadcaster transmits a program in standard definition, the PSIP information should state that the programming is being broadcast in standard definition, as opposed to High Definition. In addition, the Transport Stream Identifier ("TSID") information should be consistent in the Terrestrial Virtual Channel Table ("TVCT"), Program Association Table ("PAT"). Moreover, when a program goes overtime, the station should update the EIT. Proper implementation of the standard requires broadcasters to populate the required tables and descriptors with the correct information to help receivers assemble functioning guides. Adoption of this standard also mandates completing tables and descriptors that require one time setup to be set correctly, including TSID, Short

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<sup>475</sup> Notably, we received no comments to our inquiry about the potential burden that compliance with the updated PSIP standard would place on broadcasters, and in particular small broadcasters. See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9527, ¶ 118.

<sup>476</sup> See revised rule 47 C.F.R. § 73.682(d) in Appendix B, *infra*.

<sup>477</sup> See ATSC website, PSIP Informational Documents at [http://www.psip.org/psip\\_information.html](http://www.psip.org/psip_information.html). ("PSIP is a small collection of tables designed to operate within every Transport Stream (TS) for terrestrial broadcast of digital television. Its purpose is to describe the information at the system and event levels for all virtual channels carried in a particular TS. Additionally, information for analog channels as well as digital channels from other Transport Streams may be incorporated. There are two main categories of information in the ATSC PSIP Standard, system information and program data. System information allows navigation and access of the channels within the DTV transport stream, and the program data provides necessary information for efficient browsing and event selection. Some tables announce future events and some are used to locate the digital streams that make up an event. The PSIP data are carried via a collection of hierarchically arranged tables.")

<sup>478</sup> See *Ex Parte* Letter from Michael P. Fortkort, counsel to Wi-Lan V-Chip Corp. to Marlene Dortch, Secretary, FCC (dated Aug. 8, 2007) ("Wi-Lan *ex parte* letter").

Channel Names, Service Type, Modulation Mode Source ID and Service Location Descriptor. Also, broadcasters must accurately fill the contents of the fields and the descriptors of each event descriptor loop with the known information about each event at the time the event is created and shall update each field if more accurate information becomes available. The Commission will continue to monitor these issues and act accordingly.

189. Finally, a couple of comments noted, in response to our inquiry in the *Third DTV Periodic Review NPRM*,<sup>479</sup> that PSIP information may not be passed through to cable and satellite subscribers.<sup>480</sup> We will address such program-related PSIP issues in our *DTV Must Carry* proceeding.<sup>481</sup>

190. DTV Tuner Requirement. We take this opportunity to correct a ministerial error to our rules regarding the DTV Tuner requirements for television receivers and receiving devices. As noted above,<sup>482</sup> the Commission required in the 2005 DTV Tuner Order that “responsible parties equip television receivers with screens less than 13” that are imported into this country or shipped in interstate commerce on and after March 1, 2007, with the capability to receive broadcast digital television signals” because we concluded that “it would benefit consumers and the purposes of the broadcast television service and its transition to digital operation to require that receivers with screens less than 13” are able to receive digital signals on the same schedule as other TV receiver products.”<sup>483</sup> We adopted these requirements through the appropriate notice and comment procedures, and modified the relevant section of our Rules to show March 1, 2007, as the accelerated deadline,<sup>484</sup> but we inadvertently omitted to delete the exception created by Section 15.117(i)(2) for “units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, *i.e.*, the vertical measurement of a screen in the 4:3 aspect ratio that measures 13’ [sic] diagonally across the picture viewing area.”<sup>485</sup> Accordingly, we shall correct Section 15.117(i)(2) by striking the inappropriate language.<sup>486</sup>

191. V-Chip Requirements: We also take this opportunity to conform the V-Chip rule codified in the Code of Federal Regulations<sup>487</sup> to the modification of that rule adopted in the *Second DTV Periodic Report and Order*.<sup>488</sup> Section 15.120(b) of the Commission’s rules requires that all TV broadcast receivers with picture screens 13 inches or larger in diameter comply with the V-Chip requirements. The codified rule provides:<sup>489</sup>

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<sup>479</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9527, ¶ 119. Digital cable systems with activated channel capacity of 750 MHz or greater are required to include in-band PSIP when available from the provider. 47 C.F.R. § 76.640(b)(1)(iv).

<sup>480</sup> See, *e.g.*, COAT Comments at 5; Capitol Comments at 11 (saying some cable and satellite headends may not receive a clear off-the-air signal).

<sup>481</sup> See *Cable Viewability Order*, *supra*, note 78.

<sup>482</sup> See *supra* note 71.

<sup>483</sup> 2005 *DTV Tuner Order*, 20 FCC Rcd at 18616, ¶ 25.

<sup>484</sup> See 47 C.F.R. § 15.117(i)(1).

<sup>485</sup> 47 C.F.R. § 15.117 (i)(2).

<sup>486</sup> See revised rule 47 C.F.R. § 15.117(i)(2) in Appendix B, *infra*.

<sup>487</sup> See 47 C.F.R. § 15.120(b).

<sup>488</sup> 19 FCC Rcd 18279, 18348.

<sup>489</sup> 47 C.F.R. § 15.120(b).

15.120 Program blocking technology requirements for television receivers.

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(b) Effective January 1, 2000, all TV broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

192. In 2004, the *Second DTV Periodic Report and Order* extended the V-Chip requirements to DTV tuners which are sold without an associated display device, such as analog-to-digital converter boxes, DVD recorders, and other nondisplay devices with DTV tuners. In addition, the *Second DTV Periodic Report and Order* adopted measurement criteria associated with the 16:9 aspect ratio for devices that include a display. Specifically, the *Second DTV Periodic Report and Order* provided:

Additionally, we are adopting our proposal to apply v-chip rules to digital television receivers with displays in the 16:9 aspect ratio that are 7.8 inches or greater in height. Furthermore, we are requiring that v-chip technology be included in all digital television receivers with integrated 4:3 displays measuring at least 13 inches diagonally. *Similar to our requirements for closed caption capabilities in digital television receivers, the rules will also be applicable to DTV tuners which are sold without an associated display device.*<sup>490</sup>

193. The Commission, however, did not make the corresponding revisions to section 15.120(b) as codified in the CFR to reflect these changes. We now make this adjustment to the codified rule to reflect the revision adopted in 2004. We also correct the rule reference to “diameter,” which should have been “measured diagonally” in the rules to conform with the description adopted in the *V-Chip Order (Technical Requirements to Enable Blocking of Video Programming Based on Program Ratings*, 13 FCC Rcd 11248 (1998)).

194. These changes are permitted because they simply conform the codified rule to the rule amendment adopted by the Commission in the *Second DTV Periodic Report and Order* after notice and comment. Therefore, we find “good cause” under Section 553 of the APA for making this conforming change because additional notice and comment is unnecessary.<sup>491</sup>

#### **4. Fees for Ancillary and Supplementary Services**

195. We hereby revise Section 73.624(g) to include permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions that earn revenue from feeable ancillary and supplementary services.<sup>492</sup> As currently written, this rule refers to the payment of such fees only by “DTV licensees.” In the *Third DTV Periodic Review NPRM*, we sought comment on Section 73.624(g) of the Commission’s rules, which requires DTV licensees to report whether they have provided ancillary and supplementary services and, if so, pay a fee of five percent of gross revenues derived from certain of those services. We asked whether the

<sup>490</sup> 19 FCC Rcd 18279, 18348 (emphasis added).

<sup>491</sup> See 47 U.S.C. § 553(b). Cf., *Federal Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C.Cir. 2004) (agency was found to have satisfied the notice and comment requirements of the APA where it provided an opportunity to comment before adopting the final rule and requiring the agency to take further comments would serve no useful purpose).

<sup>492</sup> See revised rule 47 C.F.R. § 73.624(g) in Appendix B, *infra*.

Commission can and should revise its rules to require that all DTV broadcasters should be subject to the provisions of Section 73.624(g).<sup>493</sup> We did not receive any comments on this issue.

196. The Telecommunications Act of 1996 (“1996 Act”)<sup>494</sup> established the framework for licensing DTV spectrum to existing broadcasters and authorized the Commission to permit broadcasters the opportunity to offer ancillary or supplementary services consistent with the public interest.<sup>495</sup> The 1996 Act also required the Commission to establish a program to assess and collect fees for certain ancillary or supplementary services.<sup>496</sup> In 1999, the Commission adopted rules implementing this provision.<sup>497</sup> Section 73.624(g) of the Commission’s rules requires all “[c]ommercial and noncommercial DTV licensees” to remit annually to the Commission a fee of five percent of the gross revenues derived from feeable ancillary or supplementary services. The Commission created FCC Form 317 to be filed annually by DTV licensees to report whether they have provided ancillary or supplementary services in the previous year and whether any of the services provided were subject to a fee.<sup>498</sup>

<sup>493</sup> 47 C.F.R. 73.624(g).

<sup>494</sup> Pub. L. No. 104-104, 110 Stat. 56 § 201 (1996), *codified at* 47 U.S.C. § 336.

<sup>495</sup> 47 U.S.C. § 336(b)(3), (5).

<sup>496</sup> 47 U.S.C. § 336(e) provides, in pertinent part: FEES

(1) SERVICES TO WHICH FEES APPLY. If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency –

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

(2) COLLECTION OF FEES. The program required by paragraph (1) shall –

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act and the Commission’s regulations there under; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

<sup>497</sup> See *Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, MM Docket No. 97-247, Report and Order, 14 FCC Rcd 3259 (1998), *recon. denied*, 14 FCC Rcd 19931 (1999). Section 73.624(g) provides, in pertinent part: “Commercial and noncommercial DTV licensees must annually remit a fee of five percent of the gross revenues derived from all ancillary or supplementary services, as defined by paragraph (b) of this section, which are *feeable*, as defined in paragraphs (g) (2)(i) through (ii) of this section.” 47 C.F.R. § 73.624(g) (emphasis in original).

<sup>498</sup> If a licensee has provided feeable services during the 12 month period ending on September 30, the licensee is required to remit the fee for such services by December 1 of that year on FCC Form 159. 47 C.F.R. § 73.624(g)(2) (ii).

197. The Commission has allowed some DTV stations to provide DTV service pursuant to an STA.<sup>499</sup> Because the Commission's rules apply the fee requirement to "licensees," however, stations operating pursuant to an STA have not been filing Form 317 or paying fees on any feeable services they might be providing.

198. Section 336(e)<sup>500</sup> of the Act uses the term "licensees" in directing the Commission to collect fees for ancillary or supplementary use of a frequency. However, neither the statute nor the legislative history suggest that the use of the term "licensee" was intended to create a limited identifiable class of DTV broadcasters that would be subject to the fee provisions of Section 336(e). In addition, we note that a primary goal of the legislation is: "(i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource."<sup>501</sup> The statute is silent on the precise issue at hand, i.e., whether DTV broadcasters that are operating pursuant to STA or other FCC authorization should similarly be required to pay fees on revenues received in connection with feeable ancillary or supplementary services. However, we conclude that the current system, by excluding some broadcasters, limits the public's recovery and thus unfairly advantages those who fall outside the scope of the current rule. Accordingly, we will widen the class of broadcasters included in Section 73.624(g) to better carry out our obligation under Section 336(e) to ensure that the public recovers a portion of the value of the public spectrum resource made available for commercial use and avoid unjust enrichment of broadcasters that use that resource.<sup>502</sup>

## 5. Station Identification

199. We revise our rules regarding station identification requirements for digital stations in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station, or another programming source. In these situations, we will not require that the source of the programming be identified by the station whose multicast stream is being used to carry the programming.<sup>503</sup> However, if the station whose multicast stream is being used to carry the programming chooses to identify the station that is the source of the programming, we will require that the following format be used.<sup>504</sup>

"Station WYYY-DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming)."

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<sup>499</sup> See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20607, ¶¶ 34-36 (2001).

<sup>500</sup> 47 U.S.C. 336(e).

<sup>501</sup> 47 U.S.C. § 336(e)(2)(A).

<sup>502</sup> *Id.*

<sup>503</sup> Thus, if Station WYYY-DT is using one of its multicast streams to carry the programming of WXXX, WYYY-DT is not required to identify WXXX as the source of this programming. However, both WYYY and WXXX must otherwise comply with the station identification requirements in 47 C.F.R. § 73.1201 and must air station identification announcements for programming being transmitted by the station. Thus, for example, WXXX must air announcements with respect to its transmissions in its local market.

<sup>504</sup> See revised rule 47 C.F.R. § 73.1201(b) in Appendix B, *infra*.

200. We invited comment in the *Third DTV Periodic Review NPRM* on whether our current station identification rules for digital stations provide sufficient clarity to broadcasters and viewers. We specifically invited comment on whether the current rules provide for appropriate identification of multicast channels, particularly in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station. While we received no comment on this issue, we find that it is appropriate to revise our rules to enable stations that are sharing their broadcast streams with other licensees to provide clear identification of both the programming source (the station providing the programming) and the station on whose multicast stream the programming is transmitted.<sup>505</sup> We are aware that stations are increasingly sharing spectrum with other licensees and the Media Bureau receives numerous informal requests for guidance regarding station identification requirements in these circumstances. We find that the approach we adopt today will provide for clear identification of stations in situations in which a multicast station carrying programming provided by another station chooses to identify that station as the source of the programming. As stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for the viewers and for stations themselves.<sup>506</sup>

201. Background. In 2004, the Commission established rules generally requiring DTV stations to follow the same rules for station identification as analog stations.<sup>507</sup> Specifically, digital stations are required to make station identification announcements, either visually or aurally, at the beginning and end of each time of operation as well as hourly. The identification must consist of the station's call letters followed by the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion.

202. A station choosing to include its channel number in its station identification must use the major (analog) channel number.<sup>508</sup> The Commission adopted the ATSC A/65B standard and noted that PSIP, which is part of that standard, allows viewers to see a broadcaster's major channel number regardless of the broadcaster's allotted frequency for its digital broadcast channel.<sup>509</sup> The Commission permitted stations choosing to multicast to include additional information in their station announcements identifying each of the station's program streams.<sup>510</sup>

<sup>505</sup> Station identification is required only for licensees and permittees. Other programming providers need not be identified except as required by the sponsorship identification rules. See 47 C.F.R. § 73.1212.

<sup>506</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18354, ¶171.

<sup>507</sup> See *id.* at 18353-55, ¶¶ 169-173. See also 47 C.F.R. § 73.1201.

<sup>508</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18354-55, ¶¶ 172. See also 47 C.F.R. § 73.1201(b). Thus, a broadcaster who operates an NTSC service on channel "26" and a DTV service on channel "27" would use the major channel "26" in station identification announcements. *Id.*

<sup>509</sup> See *id.* This allows broadcasters to keep their existing channel number in the digital world, thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers. *Id.*

<sup>510</sup> See *id.* Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV), and 26.2 (SDTV). Stations may provide information in the station announcement identifying the network affiliation of the program service (e.g., "WXXX-DT, channel 26.1, YYY (community of license), your QQ network channel"). Stations simulcasting their analog programming on their digital channel are permitted to make station identification announcements simultaneously for both stations as long as the identification includes both call

203. Discussion. We hereby revise our station identification rules for those stations that broadcast a multicast stream that airs programming provided by another broadcast station and that choose to identify the station that is the source of the programming. When a station chooses to make such identification, we will require that the following format be used: “Station WYYY-DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming).” The transmitting station may insert between its call letters and its community of license the following information: the frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the name of the licensee providing the programming, and/or the name of the network affiliation for either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the mandatory format described above, to avoid confusion the identification should not include the frequency or channel number of the program source.

## VI. PROCEDURAL MATTERS

### A. Final Regulatory Flexibility Analysis

204. As required by the Regulatory Flexibility Act of 1980 (“RFA”),<sup>1</sup> the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this Report and Order. The FRFA is set forth in Appendix E.

### B. Final Paperwork Reduction Act Analysis

205. This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”),<sup>2</sup> and contains new and modified information collection requirements for full-power television broadcast stations, including the following: (1) Stations must file forms no later than February 18, 2008 detailing their transition plans and status (using FCC Form 387) and must update this form as events warrant and by October 20, 2008 if they have not completed construction;<sup>3</sup> (2) Stations without a construction permit for their final, post-transition (DTV) facility must file an application to construct or modify that facility (using FCC Forms 301 and 340),<sup>4</sup> stations without a license for their final, post-transition (DTV) facility must file an application for a license to cover that facility (using FCC Form 302 DTV),<sup>5</sup> and stations may request authority to transition early to their post-transition channel (also using FCC Forms 301 and 340);<sup>6</sup> (3) Stations with a construction deadline on or before February 17, 2009

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signs (e.g., “WXXX-TV and WXXX-DT”) if it is intended to serve as the identification for both program streams. Stations simulcasting the analog stream on the digital channel may also do a shortened identification for both streams (e.g., “WXXX-TV/DT”). *Id.*

<sup>1</sup> See 5 U.S.C. § 603. The RFA, See 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

<sup>2</sup> The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

<sup>3</sup> See, *supra*, Section V.A.1. See OMB Control No. 3060-1105 (Form 387).

<sup>4</sup> See, *supra*, Section V.D. See OMB Control Nos. 3060-0027 (Form 301) and 3060-0029 (Form 340).

<sup>5</sup> See, *supra*, Section V.D.2. See OMB Control No. 3060-0029 (Form 302-DTV).

<sup>6</sup> See, *supra*, Section V.C.3.a. See OMB Control Nos. 3060-0027 and 3060-0029.

may file a request for an extension of time to construct their final, post-transition (DTV) facility (using FCC Form 337); (4) Stations with a construction deadline occurring February 18, 2009 or later may file a notification of an event that would toll their deadline to construct their final, post-transition (DTV) facility (using FCC Informal Application Form);<sup>7</sup> (5) Stations may file a request for STA approval to temporarily remain on their in-core pre-transition DTV channel after the transition date (using FCC Informal Application Form);<sup>8</sup> (6) Stations may file a request for STA approval to build less than full, authorized post-transition facility by the transition date (using FCC Informal Application Form);<sup>9</sup> (7) Stations may file a notification pursuant to Section 73.1615 to temporarily reduce or cease existing analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities (using FCC Informal Application Form);<sup>10</sup> (8) Stations may file a request for STA approval to permanently reduce or terminate analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities (using FCC Informal Application Form);<sup>11</sup> (9) Stations may file a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date (using FCC Informal Application Form);<sup>12</sup> (10) Stations must comply with the PSIP requirement to populate the Event Information Tables (“EITs”) with accurate information about each event and to update the EIT if more accurate information becomes available;<sup>13</sup> (11) Stations must comply with the station identification rules that require a DTV station which chooses to identify a licensee that it is transmitting on one of its multicast streams to follow a specific format for making such a station identification announcement;<sup>14</sup> (12) Stations must comply with a viewer notification requirement (*i.e.*, stations must notify viewers about their planned service reduction or termination) if: (a) they will permanently reduce or terminate analog or pre-transition digital service before the transition date,<sup>15</sup> or (b) they will not serve at least the same population that receives their current analog TV and DTV service on February 18, 2009;<sup>16</sup> and (13) Stations claiming a “unique technical challenge” warranting a February 17, 2009 construction deadline must file a notification to document their status (using FCC Informal Application Form), if they do not file, or do not include such information in, an application for post-transition facilities (Forms 301 or 340).<sup>17</sup>

206. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the Office of Management and Budget (“OMB”) and the general public to comment on

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<sup>7</sup> See, *supra*, Section V.B.5. See OMB Control Nos. 3060-1001 (to be discontinued) and 3060-0407 (consolidating the collections for Form 337 and 47 C.F.R. § 73.3598).

<sup>8</sup> See, *supra*, Section V.B.7.a. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

<sup>9</sup> See, *supra*, Section V.B.7.b. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

<sup>10</sup> See, *supra*, Section V.C.1. See OMB Control Nos. 3060-0181 (47 C.F.R. § 73.1615) and 3060-0386 (47 C.F.R. § 73.1635).

<sup>11</sup> See, *supra*, Section V.C.2-3. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

<sup>12</sup> See, *supra*, Section V.C.4. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

<sup>13</sup> See, *supra*, Section V.H.3. See OMB Control No. 3060-1104 (47 C.F.R. § 73.682(d)).

<sup>14</sup> See, *supra*, Section V.H.5. See OMB Control No. 3060-0466 (47 C.F.R. § 73.1201(b)).

<sup>15</sup> See, *supra*, Section V.C. (New collection.)

<sup>16</sup> See, *supra*, Sections V.B.5. and V.B.7.(New collection.)

<sup>17</sup> See, *supra*, Sections V.B.3. (New collection.)

the information collection requirements contained in the *Third DTV Periodic Review NPRM*.<sup>18</sup> On June 22, 2007, the Commission submitted the proposed information collection requirements to OMB for review under Section 3507(d) of the PRA.<sup>19</sup> On July 9, 2007, the Commission published a Federal Register Notice addressing the burdens contained in the proposed information collection requirements and seeking comments from the public.<sup>20</sup> On August 15, 2007, OMB issued a Notice of Action and filed comments to each of these proposed information collection requirements. No other comments were filed with respect to these proposed collections. We note that some of the collections remain unchanged from when they were previously published in the Federal Register and submitted to OMB, while others that were submitted have been slightly revised, with such changes being largely procedural in nature (*e.g.*, filing date change, method of filing, etc.). In addition to the collections proposed in the *Third DTV Periodic Review NPRM*, this Report and Order also contains additional new or modified information collection requirements. Finally, we also note that, pursuant to the Small Business Paperwork Relief Act of 2002 (“SBPRA”), the Commission sought specific comment in the *Third DTV Periodic Review NPRM*<sup>21</sup> on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”<sup>22</sup> We received no comment on this issue.

207. The information collection requirements adopted in this Report and Order will be submitted to OMB for final review under Section 3507(d) of the PRA,<sup>23</sup> and OMB and the public will be afforded an opportunity to file comments on these final information collections. The Commission will seek emergency approval from OMB for Items 1-3 (noted above in paragraph 193) based, in part, on the prior submission for OMB approval of these information collection requirements.<sup>24</sup> The Commission will publish a Federal Register Notice addressing the burdens contained in each final information collection adopted in this proceeding. The Commission will also publish a separate notice seeking comments from the public and OMB on the final information collection requirements.

### **C. Congressional Review Act**

208. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.<sup>25</sup>

### **D. Additional Information**

209. For additional information on this proceeding, contact Evan Baranoff, [Evan.Baranoff@fcc.gov](mailto:Evan.Baranoff@fcc.gov), Eloise Gore, [Eloise.Gore@fcc.gov](mailto:Eloise.Gore@fcc.gov), Kim Matthews,

<sup>18</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9529-30, ¶¶ 127-129.

<sup>19</sup> 44 U.S.C. § 3507(d). See OMB Control Nos. 3060-0027, 3060-0029, 3060-0216, 3060-0386, 3060-0407, 3060-1104, and 3060-1105.

<sup>20</sup> See 72 Fed. Reg. 37310 (September 26, 2007).

<sup>21</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9530, ¶¶ 128.

<sup>22</sup> The Small Business Paperwork Relief Act of 2002 (“SBPRA”), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); See 44 U.S.C. 3506(c)(4).

<sup>23</sup> 44 U.S.C. § 3507(d).

<sup>24</sup> See OMB Control Nos. 3060-0027, 3060-0029, 3060-0407, and 3060-1105.

<sup>25</sup> See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; See Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

[Kim.Matthews@fcc.gov](mailto:Kim.Matthews@fcc.gov), or Maureen McCarthy, [Maureen.McCarthy@fcc.gov](mailto:Maureen.McCarthy@fcc.gov) of the Media Bureau, Policy Division, (202) 418-2120; John Gabrysch, [John.Gabrysch@fcc.gov](mailto:John.Gabrysch@fcc.gov), or Gordon Godfrey, [Gordon.Godfrey@fcc.gov](mailto:Gordon.Godfrey@fcc.gov), of the Engineering Division, Media Bureau at (202) 418-7000; or Shaun Maher, [Shaun.Maher@fcc.gov](mailto:Shaun.Maher@fcc.gov), or Nazifa Sawez, [Nazifa.Sawez@fcc.gov](mailto:Nazifa.Sawez@fcc.gov), of the Media Bureau, Video Division, (202) 418-1600.

## VII. ORDERING CLAUSES

210. IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 that this Report and Order IS ADOPTED and the Commission's rules ARE HEREBY AMENDED as set forth in Appendix B. FCC Forms 301, 337, 340, and 387 and rule sections 47 C.F.R. §§ 73.624(g), 73.682(d) and 73.1201 contain information collection requirements subject to the PRA and are not effective until approved by the OMB. FCC Forms 301 and 340 shall be published in the Federal Register and shall become effective and available for filing January 1, 2008, subject to OMB approval by this date. The Commission will publish a notice in the Federal Register announcing when OMB approval for these forms has been received. We find good cause for the procedures and forms to be effective by this date to ensure that full power television stations can meet the statutory deadline for transitioning to all digital service.<sup>1</sup> Forms 337 and 387 and rule sections 47 C.F.R. §§ 73.624(g) and 73.1201 shall become effective upon announcement in the Federal Register of OMB approval. Rule section 47 C.F.R. § 73.682(d) shall be published in the Federal Register and shall become effective 120 days after publication in the Federal Register, subject to OMB approval by this date. The Commission will publish a notice in the Federal Register announcing when OMB approval for this rule section has been received and when this rule will take effect. All other forms, rules and procedures adopted in this Report and Order shall become effective 30 days after publication in the Federal Register.

211. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is GRANTED DELEGATED AUTHORITY to make revisions where necessary to and establish filing deadlines for the electronic forms adopted in this Report and Order.

212. IT IS FURTHER ORDERED THAT the filing deadline for FCC Form 387 is February 18, 2008, subject to OMB approval by this date, for all television licensees and permittees.

213. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is GRANTED DELEGATED AUTHORITY to conduct expedited rulemaking proceedings to amend the DTV Table of Allotments and Appendix B to the DTV Table of Allotments as needed up to the full power transition deadline, including, as appropriate,

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<sup>1</sup> See 5 U.S.C. § 553(d)(3) ("The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except...as otherwise provided by the agency for good cause found and published with the rule."). See also 47 C.F.R. §§ 1.103(a), 1.427(b). As described in this Report and Order, full power television stations must complete their transition from analog to digital service by February 17, 2009. For stations that must apply for a construction permit to build their post-transition facilities, it is essential that the procedures and forms be effective and available for filing no later than January 1, 2008 to afford adequate time for ordering equipment and scheduling construction in time to meet this deadline. Because these forms have previously been submitted to OMB and because any delay can result in harm to television stations, and, in turn, to their viewers, we find that there is good cause to expedite the effective date of this rule. For these reasons, we are also requesting emergency PRA approval from OMB.

proceeding without notice and comment for changes that do not adversely affect other stations' post-transition operations.

214. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

215. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## List of Commenters

COMMENTS

1. 54 Broadcasting, Inc. (“54 Broadcasting”) (filed 8/15/07)
2. Advanced Television Systems Committee, Inc. (“ATSC”) (filed 8/7/07)
3. Agape Church, Inc. (“Agape”) (filed 8/3/07)
4. Allbritton Communications Company (“Allbritton”) (filed 8/16/07)
5. Anderson WFBC-TV Licensee, Inc. (“Anderson”) (filed 8/15/07)
6. Arkansas Educational Television Commission (filed 8/15/07)
7. Association for Maximum Service Television, Inc. and The National Association of Broadcasters, Joint Comments (“MSTV/NAB”) (filed 8/15/07)
8. Association of Federal Communications Consulting Engineers (“AFCCE”) (filed 8/15/07)
9. Association of Public Television Stations and the Public Broadcasting Service (“APTS/PBS”) (filed 8/15/07)
10. Bahakel Communications (“Bahakel”) (filed 8/15/07)
11. Banks Boise, Inc (filed 8/15/07)
12. Barrington Broadcasting Group, LLC (“Barrington”) (filed 8/15/07)
13. Benton Foundation (“Benton.”)<sup>1</sup> (filed 8/15/07)
14. Board of Governors of Missouri State University (filed 8/14/07)
15. Byron W. St. Clair (“St. Clair”) (filed 8/15/07)
16. Calipatria Broadcasting Company, LLC (“Calipatria”) (filed 8/15/07)
17. Capitol Broadcasting Company, Inc. (“Capitol”) (filed 8/15/07)
18. CBS Corporation (“CBS”) (filed 8/15/07)
19. Central Michigan University (filed 8/13/07)
20. Chelsey Broadcasting Company of Youngstown, LLC (“Chelsey”) (filed 8/15/07)
21. Christian Faith Broadcast, Inc. (“CFB”) (filed 8/15/07)
22. Christian Television Network, Inc, Christian Television Network of Iowa, Inc. and Volunteer Christian Television, Inc. (“Christian Network”) (filed 8/15/07)
23. Coalition of Organizations for Accessible Technology (“COAT”) (filed 8/9/07)
24. Cox Broadcasting (“Cox”) (filed 8/15/07)
25. Cohen, Dippell and Everist, P.C. (“Cohen, Dippell and Everist”) (filed 8/15/07)
26. Community Television of Southern California (filed 8/15/07)
27. Consumer Electronics Association (“CEA”) (filed 8/15/07)
28. DIRECTV (filed 8/30/07)
29. Du Treil, Lundin & Rackley (“dLR”) (filed 8/14/07)
30. Educational Broadcast Corporation (“EBC”) (filed 8/15/07)
31. Entravision Holdings (“Entravision”) (filed 8/15/07)

<sup>1</sup> The complete list of commenters jointly filing with the Benton Foundation in this pleading include: The Campaign Legal Center, Free Press, communication Service for the Deaf, Hearing Loss Association of America – New York State, Northern Virginia Center for Deaf and Hard of Hearing Persons, United States Conference of Catholic Bishops, National Hispanic Media Coalition, Democracy Now, consumer Action, Common Cause, Citizen Advocacy Center, Common Cause Illinois, Common Cause Michigan, Common Cause Ohio, Common Cause Wisconsin, Illinois Campaign for Political Reform, Illinois PIRG, League of Women Voters of Minnesota, League of Women Voters of Wisconsin, Ohio Citizen Action Education Fund, Sunshine Project – University of Illinois at Springfield, Take Action Minnesota, Wisconsin Democracy Campaign, Michigan Campaign Finance Network, The Alliance for Community Media, The Center for Digital Democracy, Chicago Media Action

32. Esteem License Holdings, Inc. (“Esteem”) (filed 8/15/07)
33. Georgia Public Telecommunications Commission (filed 8/15/07)
34. Glendive Broadcasting Corporation (“Glendive”) (filed 8/15/07)
35. Granite Broadcasting Corporation (“Granite”) (filed 8/15/07)
36. Gray Television, Inc. (“Gray Television”) (filed 8/15/07)
37. Greater Dayton Public Television, Inc. (“Greater Dayton”) (filed 8/15/07)
38. Griffin Communications, LLC (“Griffin”) (filed 8/15/07)
39. Hammett and Edison, Inc. (“Hammett and Edison”) (filed 8/10/07)
40. Harris Corporation (“Harris”) (filed 8/10/07)
41. Hawaii Public Television Foundation (“Hawaii PTV Foundation”) (filed 8/14/07)
42. Hoak Media, LLC (“Hoak”) (filed 8/15/07)
43. Hubbard Broadcasting, Inc. (“Hubbard”) (filed 8/15/07)
44. Independence Television Company (“Independence”) (filed 8/15/07)
45. Independent Communications, Inc. (“Independent, KTTM”) (filed 10/26/07)
46. Independent Communications, Inc. (“Independent, KTTW”) (filed 10/26/07)
47. Independent Multifamily Communications Council (“IMCC”) (filed 11/28/07)
48. Iowa Public Broadcasting Board dba Iowa Public Television (filed 8/15/07)
49. Joseph M. Davis, P.E. (“Davis”) (filed 8/15/07)
50. KCTS Television (filed 8/13/07)
51. Khanna & Guill, Inc. – Consulting Engineers (“Khanna”) (filed 8/29/07)
52. Khanna and Guill (“Khanna 8/8/07”) (filed 8/8/07)
53. KJLA (filed 8/15/07)
54. KRCA License, LLC (“KRCA”) (filed 8/15/07)
55. KSLS, Inc (“KSLS”) (filed 8/15/07)
56. Lambert Broadcasting of Burlington, LLC (“Lambert”) (filed 8/15/07)
57. LeSEA Broadcasting Corporation (“LeSEA”) (filed 8/15/07)
58. LATV Networks (“LATV”) (filed 8/15/07)
59. LG Electronics USA, Inc. (“LG”) (filed 8/15/07)
60. LIN Television Corporation (“LIN”) (filed 8/15/07)
61. Long Communications, LLC (“Long”) (filed 8/15/07)
62. Maranatha Broadcasting Company, Inc. (“Maranatha”) (filed 8/15/07)
63. Meredith Corporation (“Meredith”) (filed 8/15/07)
64. Metropolitan Television Alliance, LLC (filed 8/15/07)
65. Mid-South Public Communications Foundation (“Mid-South”) (filed 8/15/07)
66. Montecito Hawaii License, LLC (“Montecito Hawaii”) (filed 8/15/07)
67. Montecito Television License Corporation of Wichita (“Montecito of Wichita”) (filed 8/15/07)
68. Multicultural Television Broadcasting, LLC (“Multicultural”) (filed 8/15/07)
69. National Cable and Telecommunications Association (“NCTA”) (filed 8/15/07)
70. Native American Public Telecommunications (“NAPT”) (filed 8/15/07)
71. Nebraska Educational Telecommunications Commission and the University of Nebraska (“Nebraska PTV Licensees”) (filed 8/14/07)
72. Nexstar Broadcasting, Inc. (“Nexstar”) (filed 8/15/07)
73. Northeastern Educational Television of Ohio, Inc (filed 8/15/07)
74. Norwell Television, LLC (“Norwell”) (filed 8/15/07)
75. Oklahoma Educational Television Authority (filed 8/15/07)
76. Pappas Telecasting Companies (“Pappas”) (filed 8/15/07)
77. Parker Broadcasting (“Parker”) (filed 8/15/07)

78. Pennsylvania State University (“Penn State”) (filed 8/15/07)
79. Permian Basin Public Telecommunications, Inc. (“Permian Basin”) (filed 8/15/07)
80. Post-Newsweek Stations, Inc. (“Post-Newsweek”) (filed 8/15/07)
81. Public Broadcasting of Northwest Pennsylvania (“PBNP”) (filed 8/13/07)
82. Quincy Newspapers, Inc. (“Quincy”) (filed 8/15/07)
83. Raycom Media, Inc. (“Raycom”) (filed 8/15/07)
84. River Broadcast Co., LLC (“Red River”) (filed 8/15/07)
85. Rocky Mountain Public Broadcasting Network, Inc (“Rocky Mountain”) (filed 8/13/07)
86. Saga Quad States Communications, LLC (“Saga”) (filed 8/15/07)
87. School Board of Miami Dade County, Florida (filed 8/3/07)
88. Scripps Howard Broadcasting Company (“Scripps-Howard”) (filed 8/15/07)
89. Scripps Howard Broadcasting -- Engineering Statement by John F.X. Browne (“Scripps”) (filed 8/15/07)
90. Shenandoah Valley Educational Television Corporation (“SVETC Stations”) (filed 8/15/07)
91. Sinclair Broadcast Group, Inc. (“Sinclair”) (filed 8/15/07)
92. Sistema Universitario Ana G. Mendez, Inc. (filed 8/14/07)
93. Sky Television, LLC (“Sky”) (filed 8/15/07)
94. Smoky Hills Public Television Corporation (“Smoky Hills”) (filed 8/13/07)
95. Sorensen Television Systems, Inc (“Sorensen”) (filed 7/24/07)
96. South Carolina Educational Television Commission (filed 8/13/07)
97. Southeastern Media Holdings, Inc. (filed 8/15/07)
98. Southern Broadcast Company of Sarasota (“Broadcast Company of Sarasota”) (filed 8/15/07)
99. St. Louis Regional Educational and Public Television Commission (“St. Louis PTV”) (filed 8/13/07)
100. State of Wisconsin Educational Communications Board (“State of Wisconsin Board”) (filed 8/14/07)
101. Sunbelt Multimedia Co. (“Sunbelt”) (filed 8/15/07)
102. Sunflower Broadcasting, Inc (“Sunflower”) (filed 8/15/07)
103. Thunder Bay Broadcasting Corporation (“Thunder Bay”) (filed 8/15/07)
104. Tribune Broadcasting Company (“Tribune”) (filed 8/15/07)
105. Tri-State Public Teleplex, Inc. (“Tri-State”) (filed 8/15/07)
106. Twin Cities Public Television, Inc. (“Twin Cities”) (filed 8/15/07)
107. United Communications Corp. (“United”) (filed 8/16/07)
108. University of Alaska (filed 8/15/07)
109. University of Houston System (filed 8/15/07)
110. University of Michigan (filed 8/13/07)
111. University of North Carolina (filed 8/15/07)
112. University of Utah and the Utah State Board of Regents (“Utah Stations”) (filed 8/15/07)
113. Univision (filed 8/15/07)
114. Upper Cumberland Broadcast Council (“UCBC”) (filed 8/14/07)
115. Valley Public Television, Inc. (“Valley”) (filed 8/15/07)
116. Vermont ETV, Inc. (“Vermont ETV”) (filed 8/15/07)
117. Walt Disney Company (“Disney”) (filed 8/15/07)
118. WBOC, Inc. (“WBOC”) (filed 8/15/07)
119. WDEF-TV, Inc. (“WDEF”) (filed 8/15/07)
120. West Virginia Media Holdings, LLC (“West Virginia Media Holdings”) (filed 8/15/07)
121. WGBH Educational Foundation (“WGBH”) (filed 8/15/07)

122. WKSG Public Telecommunications Council (“WKSG”) (filed 8/15/07)
123. WLNY Limited Partnership (“WLNY”) (filed 7/9/07)
124. WPSD-TV, LLC (“WPSD”) (filed 8/15/07)
125. WYFF Hearst-Argyle Television, Inc. (“Hearst-Argyle”) (filed 8/15/07)

### **REPLY COMMENTS**

1. Ackerley Broadcasting Operations, LLC (filed 8/30/07)
2. Allbritton Communications Co. and Gannett Co., Inc. (filed 8/30/07)
3. Association of Public Television Stations and the Public Broadcasting Service (filed 8/30/07)
4. Barrington Bay City License, LLC (filed 8/30/07)
5. Belo Corp. (filed 8/30/07)
6. Capitol Broadcasting Company, Inc. (filed 8/30/07)
7. Central NY News, Inc. (filed 8/30/07)
8. Cohen, Dippell and Everist, P.C. (filed 8/30/07)
9. Corridor Television, LLP (filed 8/30/07)
10. Dispatch Broadcast Group (filed 9/4/07)
11. DuTreil, Lundin & Rackley (filed 8/30/07)
12. Echostar Satellite L.L.C. (filed 8/30/07)
13. Grant Communications (filed 8/30/07)
14. Larry E. Will, P.E. (filed 8/30/07)
15. Mid State Television, Inc. (filed 8/30/07)
16. MSTV and NAB (filed 8/30/07)
17. National Cable and Telecommunications Association (“NCTA”) (filed 8/30/07)
18. Sonshine Family Television (filed 8/29/07)
19. Sunbeam Television Corp. (filed 8/30/07)
20. Tribune Broadcasting Company (filed 8/30/07)
21. Walt Disney Company (filed 8/30/07)
22. WQED Multimedia (“WQED”) (filed 8/30/07)

## APPENDIX B

Rule Changes<sup>1</sup>

## PART 15—RADIO FREQUENCY DEVICES

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 15 continues to read as follows:  
Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Amend Section 15.117(i)(2) to read as follows:

Section 15.117 TV broadcast receivers.

\*\*\*\*\*

(i) Digital television reception capability implementation schedule.

\*\*\*\*\*

(2) For purposes of this implementation schedule, screen sizes are to be measured diagonally across the picture viewing area. ~~The requirement for equipping new TV broadcast receivers with DTV reception capability does not apply to units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, i.e., the vertical measurement of a screen in the 4:3 aspect ratio that measures 13" diagonally across the picture viewing area.~~

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3. Amend Section 15.120(b) to read as follows:

15.120 Program blocking technology requirements for television receivers.

\*\*\*\*\*

(b) Effective January 1, 2000, all TV broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger, **measured diagonally, or with displays in the 16:9 aspect ratio that are 19.8 cm (7.8 in) or greater in height and digital television receivers without an associated display device** shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

## PART 73—RADIO BROADCAST SERVICES

1. The authority for Part 73 continues to read as follows:

<sup>1</sup> New text is shown in **bold** and deleted text is shown in ~~strikethrough~~.

Authority: 47 U.S.C. 154, 303, 334 and 336.

2. Add a new Section 73.616 to read as follows:

**Section 73.616 Post-transition DTV station interference protection.**

**(a) Applications seeking facilities that will operate prior to the end of the DTV transition must also comply with section 73.623.**

**(b) A petition to add a new channel to the post-transition DTV Table of Allotments contained in section 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of sections 73.623(d) with respect to all existing DTV allotments in the post-transition DTV Table; the principle community coverage requirements of section 73.625(a); the Class A TV and digital Class A TV protection requirements in paragraph (f) of this section; the land mobile protection requirements of section 73.623(e); and the FM radio protection requirement of section 73.623(f).**

**(c) The reference coordinates of a post-transition DTV allotment shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.**

**(d) The protected facilities of a post-transition DTV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.**

**(e) An application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another post-transition DTV station. For this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the post-transition DTV allotment facilities of the applicant or portions of that population receiving masking interference from any other station.**

**(1) For evaluating compliance with the requirements of this paragraph, interference to populations served is to be predicted based on the 2000 census population data and otherwise according to the procedure set forth in OET Bulletin No. 69, including population served within service areas determined in accordance with section 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Applicants may request the use of a cell size other than**

the default of 2.0 km per side, but only requests for cell sizes of 1.0 km per side will be considered. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, Room CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. These documents are also available through the Internet on the FCC Home Page at <http://www.fcc.gov>. The threshold levels at which interference is considered to occur are:

(i) For co-channel stations, the D/U ratio is +15 dB. This value is only valid at locations where the signal-to-noise ratio is 28 dB or greater. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, this value is +23 dB. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values are computed from the following formula:

$$D/U = 15 + 10 \log_{10} [1.0 / (1.0 - 10^{-x/10})]$$

Where  $x = S/N - 15.19$  (minimum signal to noise ratio)

(ii) For interference from a lower first-adjacent channel, the D/U ratio is -28 dB.

(iii) For interference from an upper first-adjacent channel, the D/U ratio is -26 dB.

(2) Due to the frequency spacing that exists between Channels 4 and 5, between Channels 6 and 7, and between Channels 13 and 14, the minimum adjacent channel technical criteria specified in this section shall not be applicable to these pairs of channels (see section 73.603(a)).

(f) A petition to add a new channel to the post-transition DTV Table or a post-transition DTV station application that proposes to expand its allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to Subpart J of this part, within the protected contour defined in section 73.6010 of this part.

(1) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of Sec. 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-analog TV" specified in section 73.623(c)(2).

(2) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of section 73.699 of this part) fails to meet the D/U signal ratios specified in paragraph 73.616(e).

(3) In support of a request for waiver of the interference protection requirements of this section, an applicant for a post-transition DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longley-Rice

methodology is provided in OET Bulletin No. 69, which is available through the Internet at <http://www.fcc.gov/oet/info/documents/bulletins/#69>.

**NOTE:** When this rule was adopted, the filing freeze announced in an August 2004 Public Notice (19 FCC Rcd 14810 (MB 2004)) remained in effect. For a short period of time after the filing freeze is lifted, until a date to be announced by a Media Bureau Public Notice, applicants must protect Appendix B facilities in addition to any authorized facilities required to be protected pursuant to this rule section.

3. Amend Section 73.622 by revising Section 73.622(f)(4) to read as follows:

Section 73.622 Digital television table of allotments.

\*\*\*\*\*

(f) DTV maximum power and antenna heights.

\*\*\*\*\*

(4) UHF DTV stations may request an increase in power, up to a maximum of 1000 kW ERP, to enhance service within their authorized service area ~~through use of antenna beamtilting in excess of 1 degree,~~ as follows:

~~(i) Field strengths at the outer edge of the station's service area shall be no greater than the levels that would exist if the station were operating at its assigned DTV power.~~

~~(ii) Where a station operates at higher power under the provisions of this paragraph, its field strengths at the edge of its service area are to be calculated assuming 1 dB of additional antenna gain over the antenna gain pattern specified by the manufacturer.~~

~~(iii) Where a first adjacent channel DTV station or allotment is located closer than 110 km or a first adjacent channel analog TV station is located closer than 106 km from the proposed transmitter site, the application must be accompanied by a technical showing that the proposed operation complies with the technical criteria in §73.623(c) and thereby will not result in new interference exceeding the de minimis standard for new interference set forth in that section, or statements from affected stations agreeing to the proposed operation in accordance with §73.623(f).~~

~~(iv) A licensee desiring to operate at higher power under these provisions shall submit, with its initial application for a DTV construction permit or subsequent application to modify its DTV facilities, an engineering analysis demonstrating that the predicted field strengths and predicted interference within its service area would comport with the requirements of this paragraph. The licensee also must notify, by certified mail, all stations that could potentially be affected by such operation at the time the station files its application for a construction permit or modification of facilities. Potentially affected stations to be notified include stations on co-channel and first-adjacent channel allotments that are located at distances less than the minimum geographic spacing requirements in §73.623(d)(2). For example, in Zone I a co-channel DTV station within~~

~~196.3 km or a first-adjacent channel DTV station within 110 km must be notified. A station that believes that its service is being affected beyond the de minimis standard set forth in §73.623(c) may file an informal objection with the Commission. Such an informal objection shall include an engineering analysis demonstrating that additional impermissible interference would occur. The Commission may condition grant of authority to operate at increased power pursuant to this provision on validation of actual performance through field measurements.~~

\* \* \* \* \*

4. Amend Section 73.623 paragraph (a) to read as follows:

Section 73.623 DTV applications and changes to DTV allotments.

(a) General. This section contains the technical criteria for evaluating applications requesting DTV facilities that do not conform to the provisions of § 73.622 and petitions for rule making to amend the **pre-transition** DTV Table of Allotments (§73.622(b)). Petitions to amend the DTV Table (other than those also expressly requesting amendment of this section) and applications for new DTV broadcast stations or for changes in authorized DTV stations filed pursuant to this section will not be accepted for filing if they fail to comply with the requirements of this section. **Petitions for rule making and applications seeking facilities that will operate after the end of the DTV transition must also comply with section 73.616.**\* \* \* \* \*

5. Amend Section 73.624 by adding paragraphs (d)(1)(v)-(vii), revising paragraph (d)(3) and revising (g) to read as follows:

Section 73.624 Digital television broadcast stations.

\* \* \* \* \*

(d) Digital television broadcast facilities that comply with the FCC DTV Standard (section 73.682(d)), shall be constructed in the following markets by the following dates:

(1)(i) May 1, 1999: all network-affiliated television stations in the top ten television markets;

(ii) November 1, 1999: all network-affiliated television stations not included in category (1) (i) and in the top 30 television markets;

(iii) May 1, 2002: all remaining commercial television stations;

(iv) May 1, 2003: all noncommercial television stations.

**(v) May 18, 2008 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations that will use the same channel used for pre-transition operation for post-transition operation and that, as of December 31, 2007, have a construction permit for facilities that conform to the facilities defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87-268 and codified at 47 C.F.R. § 73.622(i).**

**(vi) August 18, 2008 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations that will use the same channel used for pre-transition operation for post-transition operation but which, as of December 31, 2007, do not have a construction permit for facilities that conform to the facilities defined by the new DTV Table of Allotments and accompanying Appendix B, established by the Seventh Report and Order in MB Docket No. 87-268 and codified at 47 C.F.R. § 73.622(i).**

**(vii) February 17, 2009 in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel and for those stations whose post-transition channel is the same as their pre-transition channel but that are subject to a unique technical challenge that has been specifically recognized as such by the Commission.**

\* \* \* \* \*

(3) Authority delegated.

(i) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

**(ii) For construction deadlines occurring prior to February 18, 2009, the following circumstances may include, ~~Such circumstances shall~~, but shall not be limited to:**

(A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; **or**

~~(B) The lack of equipment necessary to obtain a digital television signal; or~~ **(B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.**

~~(C) Where the cost of meeting the minimum build-out requirements exceeds the station's financial resources.~~

**(iii) For construction deadlines occurring after February 17, 2009, the tolling provisions of Section 73.3598 shall apply.**

(iv) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

(v) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

\* \* \* \* \*

(g) Commercial and noncommercial DTV licensees **and permittees** must annually remit a fee of five percent of the gross revenues derived from all ancillary or supplementary services, as defined by paragraph (b) of this section, which are feeable, as defined in paragraphs (g)(2)(i) through (ii) of this section.

\* \* \* \* \*

(2) Payment of fees. (i) Each December 1, all commercial and noncommercial DTV licensees **and permittees** will electronically report whether they provided ancillary or supplementary services in the twelve-month period ending on the preceding September 30. Licensees **and permittees** will further report, for the applicable period: (A) a brief description of the services provided; (B) which services were feeable ancillary or supplementary services; (C) whether any ancillary or supplementary services provided were not subject to a fee; (D) gross revenues received from all feeable ancillary and supplementary services provided during the applicable period; and (E) the amount of bitstream used to provide ancillary or supplementary services during the applicable period. Licensees **and permittees** will certify under penalty of perjury the accuracy of the information reported. Failure to file regardless of revenues from ancillary or supplementary services or provision of such services may result in appropriate sanctions.

(ii) If a commercial or noncommercial DTV licensee or permittee has provided feeable ancillary or supplementary services at any point during a twelve-month period ending on September 30, the licensee or permittee must additionally file the FCC's standard remittance form (Form 159) on the subsequent December 1. Licensees **and permittees** will certify the amount of gross revenues received from feeable ancillary or supplementary services for the applicable twelve-month period and will remit the payment of the required fee.

(iii) The Commission reserves the right to audit each licensee's **or permittee's** records which support the calculation of the amount specified on line 23A of Form 159. Each licensee or permittee, therefore, is required to retain such records for three years from the date of remittance of fees.

6. Amend Section 73.682(d) to read as follows:

Section 73.682 TV transmission standards.

\* \* \* \* \*

(d) Digital broadcast television transmission standard. Effective **[120 days after publication in the Federal Register]** ~~February 1, 2005~~, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: "ATSC Standard Digital Audio Compression (AC-3)" (incorporated by reference, see § 73.8000), **ATSC A/53, Parts 1-6: 2007** ~~ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2:~~ "ATSC Digital Television Standard," **(January 3, 2007)**, except for Section ~~6.1.2 5.1.2-~~ ("Compression Format Constraints") of **A/53 Part 4: 2007 Annex A** ("MPEG-2 Video Systems

Characteristics”) and the phrase “see **Table 6.2** ~~Table 3~~” in Section 6.1.1 ~~5.1.1~~ **Table 6.1** ~~Table 2~~ and Section **6.1.3** ~~5.1.2~~ **Table 6.3** ~~Table 4~~ (incorporated by reference, see § 73.8000), and ATSC A/65C ~~B~~: “ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,” (Revision **C**) ~~B~~ **With Amendment No. 1,” (January 2, 2006)** ~~2003~~ (incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC ~~Doc.~~ A/54A: “**Recommended Practice: Guide to Use of the ATSC Digital Television Standard, including Corrigendum No. 1,” (December 4, 2003, Corrigendum No. 1 dated December 20, 2006)** ~~October 4, 1995~~), and ATSC ~~Doc.~~ A/69: “Recommended Practice PSIP Implementation Guidelines for Broadcasters,” (June 25, 2002) (Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303)).

7. Revise Section 73.1201 to read as follows:

Section 73.1201 Station identification.

\* \* \* \* \*

(b) Content. (1) Official station identification shall consist of the station's call letters immediately followed by the community or communities specified in its license as the station's location; Provided, That the name of the licensee, the station's frequency, the station's channel number, as stated on the station's license, and/or the station's network affiliation may be inserted between the call letters and station location. DTV stations, or DAB Stations, choosing to include the station's channel number in the station identification must use the station's major channel number and may distinguish multicast program streams. For example, a DTV station with major channel number 26 may use 26.1 to identify an HDTV program service and 26.2 to identify an SDTV program service. **A DTV station that is devoting one of its multicast streams to transmit the programming of another television licensee must identify itself and may also identify the licensee that it is transmitting. If a DTV station in this situation chooses to identify the station that is the source of the programming it is transmitting, it must use the following format: Station WYYY-DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming). The transmitting station may insert between its call letters and its community of license the following information: the frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the licensee providing the programming, and/or the name of the network of either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the format described above, the identification may not include the frequency or channel number of the program source.** A radio station operating in DAB hybrid mode or extended hybrid mode shall identify its digital signal, including any free multicast audio programming streams, in a manner that appropriately alerts its audience to the fact that it is listening to a digital audio broadcast. No other insertion between the station's call letters and the community or communities specified in its license is permissible.

(2) A station may include in its official station identification the name of any additional community or communities, but the community to which the station is licensed must be named first.

(c) Channel —(1) General. Except as otherwise provided in this paragraph, in making the identification announcement the call letters shall be given only on the channel, or channels in the case of a broadcaster that is multicasting more than a single channel, identified thereby.

\* \* \* \* \*

8. Revise Section 73.3598(b) to read as follows:

Section 73.3598 Period of construction.

(a) Each original construction permit for the construction of a new TV (**including full-power DTV**), AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, or to make changes in such existing stations, shall specify a period of three years from the date of issuance of the original construction permit within which construction shall be completed and application for license filed. Each original construction permit for the construction of a new LPFM station shall specify a period of eighteen months from the date of issuance of the construction permit within which construction shall be completed and application for license filed.

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

(i) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes); ~~or~~

(ii) the grant of the permit is the subject of administrative or judicial review ( i.e. , petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement; **or**

**(iii) a request for international coordination, with respect to an original construction permit for a new DTV station, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received, or the licensee or permittee is challenging the response from Canada or Mexico on the grounds that the facility as approved would not permit the station to serve the population that is both approved by the Commission and served by the station's TV (analog) facility to be vacated by February 17, 2009.**

\* \* \* \* \*

9. Amend Section 73.8000(b)(2) and (3) to read as follows:

Section 73.8000 Incorporation by reference.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) ATSC A/53B; **Parts 1-6: 2007** “ATSC Digital Television Standard,” dated **(January 3, 2007)** ~~August 7, 2001, Revision B, with Amendment 1 dated May 23, 2002 and Amendment 2 dated May 19, 2003~~, IBR approved for § 73.682, except for section **6.1.2** ~~5.1.2~~ of **A/53 Part 4: 2007 Annex A**, and the phrase “see **Table 6.2** ~~Table 3~~” in Section **6.1.1** ~~5.1.1~~. **Table 6.1** ~~Table 2~~ and Section **6.1.3** ~~5.1.2~~ **Table 6.3** ~~Table 4~~.

(3) ATSC A/65C B: “ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,” (Revision C B) **With Amendment No. 1,** **(January 2, 2006)** ~~March 18, 2006~~ **2003, with Amendment 1 dated May 9, 2006**, and IBR approved for § 73.682, IBR approved for §§ 73.9000-73.9001.

## PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Amend Section 76.55(c)(3) to read as follows:

Section 76.55 Definitions applicable to the must-carry rules.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) A television broadcast station that does not deliver to the principal headend, as defined in §76.5(pp), of a cable system ~~[either]~~ a signal level of  $-45\text{dBm}$  for **analog** UHF signals, ~~[or]~~  $-49\text{dBm}$  for **analog** VHF signals, **or  $-61\text{dBm}$  for digital signals** at the input terminals of the signal processing equipment, *i.e.*, the input to the first active component of the signal processing equipment relevant to the signal at issue, if such station does not agree to be responsible for the costs of delivering to the cable system a signal of good quality or a baseband video signal.

## APPENDIX C

## FCC Forms Changes

The Federal Communications Commission revises FCC Form 301 as set forth below:

1. Main Form Section I – General Information, Question 4.b. (Service Type) on page one is revised to allow the filer to indicate whether the application is for pre-transition DTV facilities, post-transition DTV facilities, or both. The revised question will read as follows [bold used to show changes]:

“b. Service Type:  AM  FM  TV  **DTV Pre-Transition**  **DTV Post-Transition**  **DTV Both (Pre- and Post-Transition)**”

2. Instructions Section I.D. (General Information), Item 4 is revised to explain the new service types for DTV applications: (a) DTV Pre-Transition, (b) DTV Post-Transition, (c) DTV Both (Pre- and Post-Transition). Item 4 is revised to add the following new paragraph [bold used to show changes]:

**“DTV Service Type: The DTV Pre-Transition service type is for a station whose application relates solely to its pre-transition DTV operation on a channel that is not allotted for post-transition use by this station and will not affect its authorized post-transition operation. The DTV Post-Transition service type is for a station whose application relates solely to its post-transition operation and will not affect its authorized pre-transition operation. The DTV Both (Pre- and Post-Transition) service type is for a station whose application relates to both its pre- and post-transition operation. Only a station whose pre-transition DTV channel is the same as its post-transition channel may use the DTV Both service type.”**

3. Form Section III-D – DTV Engineering on page 17 is revised by changing the two paragraphs preceding Question 1. The revised paragraphs will read as follows [bold used to show changes]:

“Complete ~~Certification Checklist~~ Questions 1-5, and provide all data and information for the proposed facility, as requested in Technical Specifications, Items 1-13.

**“Pre-Transition Certification Checklist. An application concerning a pre-transition channel must complete questions 1(a)-(c), and 2-5.** A correct answer of “Yes” to all of these questions below will ensure an expeditious grant of a construction permit **application to modify pre-transition facilities.** However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to grant of the application. An answer of “No” will require additional evaluation of the applicable information in this form before a construction permit can be granted.

**“Post-Transition Expedited Processing. An application concerning a post-transition channel must complete questions 1(a), (d)-(e), and 2-5. A station**

applying for a construction permit to build its post-transition channel will receive expedited processing if its application (1) does not seek to expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”); (2) specifies facilities that match or closely approximate those defined in the new DTV Table Appendix B facilities; and (3) is filed within 45 days of the effective date of the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91.

4. Form Section III-D – DTV Engineering, Question 1 on page 17 is revised by changing (b) and (c) and by adding (d) and (e). Revised questions (b) and (c) and new questions (d) and (e) will read as follows [bold used to show changes]:

“(b) It will operate a **pre-transition facility** from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 C.F.R. Section 73.622.  Yes  No

“(c) It will operate a **pre-transition facility** with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 C.F.R. Section 73.622.  Yes  No

“(d) It will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”).  Yes  No  Don’t Know”

“(e) It will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B.  Yes  No  Don’t Know

5. Instructions to Section III-D (DTV Engineering) is revised to explain that: (i) question 1(a) applies to all facility changes (and both the current and new DTV Tables in 47 C.F.R. §§ 73.622(b) and (i)), (ii) questions 1(b) and 1(c) apply only to applications for pre-transition facilities, and (iii) questions 1(d) and 1(e) apply only to applications for post-transition facilities. Item 1 (of Instructions Section III.H.) is revised as follows [bold used to show changes]:

“Certifications Checklist. Items 1-5 set forth a series of certifications concerning the Commission’s technical allotment standards and operational requirements for DTV stations.

“Item 1: The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 C.F.R. Section 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission’s Table of Television Allotments, 47 C.F.R. Sections 73.622(ab) **or** (i), (b) it will operate a **pre-transition facility** with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as

referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), (c) it will operate with **pre-transition** facilities that do not exceed the power and antenna height maxima specified in Section 73.622(f), (d) **it will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i), and (e) it will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B. .**

“If any of items 1(a)-1(c) are answered “No” **in an application of a pre-transition facility**, the applicant must demonstrate in response to Section III-D, Item 11 that the proposal will not cause or increase interference to any other DTV broadcast application, DTV allotment, or analog TV broadcast authorization.

“Interference is to be predicted **for pre-transition facilities** in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in MM Docket No. 87-268. See 47 C.F.R. Section 73.623.

“**If any of items 1(a), 1(d)-(e) are answered “No” in an application of a post-transition facility, the applicant will not qualify for expedited processing.**

“**Interference is to be predicted for post-transition facilities in accordance with the procedure set forth in the Third DTV Periodic Report and Order in MB Docket No. 07-91. See 47 C.F.R. Sections 73.616 and 73.623.**

6. Form Section III-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Question 11, first paragraph, on page 19 is revised as follows [bold used to show changes]:

“Does the proposed facility satisfy the **pre-transition** interference protection provisions of 47 C.F.R. Section 73.623(a) (Applicable only if Certification Checklist Items 1(a), (b), or (c) are answered “No.”) **and/or the post-transition interference protection provisions of 47 C.F.R. Section 73.616?**  Yes  No “

7. Form and Instructions Section III-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Questions, is revised to make non-substantive conforming edits necessary because of the other changes.

The Federal Communications Commission revises FCC Form 340 as set forth below:

8. Main Form Section I – General Information, Question 4.b. (Service Type) on page one is revised to allow the filer to indicate whether the application is for pre-transition DTV facilities, post-transition DTV facilities, or both. The revised question will read as follows [bold used to show changes]:

“b. Service Type:  FM  TV  **DTV Pre-Transition**  **DTV Post-Transition**  **DTV Both (Pre- and Post-Transition)**”

9. Instructions for Section I. (General Information), Item (Question) 4 is revised to explain the new service types for DTV applications: (a) DTV Pre-Transition, (b) DTV Post-Transition, (c) DTV Both (Pre- and Post-Transition). Item (Question) 4 is revised to add the following new paragraph [bold used to show changes]:

**“DTV Service Type: The DTV Pre-Transition service type is for a station whose application relates solely to its pre-transition DTV operation and will not affect its authorized post-transition operation. The DTV Post-Transition service type is for a station whose application relates solely to its post-transition operation and will not affect its authorized pre-transition operation. The DTV Both (Pre- and Post-Transition) service type is for a station whose application relates to both its pre- and post-transition operation. Only a station whose pre-transition DTV channel is the same as its post-transition channel may use the DTV Both service type.”**

10. Form Section VII-D – DTV Engineering on page 15 is revised by changing the two paragraphs preceding Question 1. The revised paragraphs will read as follows [bold used to show changes]:

“Complete ~~Certification Checklist~~ Questions 1-5, and provide all data and information for the proposed facility, as requested in Technical Specifications, Items 1-13.

**“Pre-Transition Certification Checklist. An application concerning a pre-transition channel must complete questions 1(a)-(c), and 2-5.** A correct answer of “Yes” to all of these questions below will ensure an expeditious grant of a construction permit **application to change pre-transition facilities.** However, if the proposed facility is located within the Canadian or Mexican borders, coordination of the proposal under the appropriate treaties may be required prior to grant of the application. An answer of “No” will require additional evaluation of the applicable information in this form before a construction permit can be granted.

**“Post-Transition Expedited Processing. An application concerning a post-transition channel must complete questions 1(a), (d)-(e), and 2-5. A station applying for a construction permit to build its post-transition channel will receive expedited processing if its application (1) does not seek to expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”); (2) specifies facilities that match or closely approximate those defined in the new DTV Table Appendix B facilities; and (3) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91.**

11. Form Section VII-D – DTV Engineering, Question 1, on page 15 is revised by changing (b) and (c) and by adding (d) and (e). Revised questions (b) and (c) and new questions (d) and (e) will read as follows [bold used to show changes]:

“(b) It will operate a **pre-transition facility** from a transmitting antenna located within 5.0 km (3.1 miles) of the DTV reference site for this station as established in 47 C.F.R. Section 73.622.  Yes  No

“(c) It will operate a **pre-transition facility** with an effective radiated power (ERP) and antenna height above average terrain (HAAT) that do not exceed the DTV reference ERP and HAAT for this station as established in 47 C.F.R. Section 73.622.  Yes  No

“(d) It will operate at **post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i) (“new DTV Table Appendix B”)**.  Yes  No  Don’t Know”

“(e) It will operate at **post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B**.  Yes  No  Don’t Know

12. Instructions to Section VII-D (DTV Engineering) is revised to explain that: (i) question 1(a) applies to all facility changes (see 47 C.F.R. §§ 73.622(a) and (i)), (ii) questions 1(b) and 1(c) apply only to applications for pre-transition facilities, and (iii) questions 1(d) and 1(e). Item 1 (of Instructions to Section VII) is revised as follows [bold used to show changes]:

“Certifications Checklist. Items 1-5 set forth a series of certifications concerning the Commission’s technical allotment standards and operational requirements for DTV stations.

“Item 1: The applicant must certify compliance with the digital television channel allotment and operational requirements contained in 47 C.F.R. Section 73.622. Specifically, this question requires that the applicant certify that (a) the application specifies a channel and community in accordance with the Commission’s Table of Television Allotments, 47 C.F.R. Sections 73.622(ab) **or (i)**, (b) it will operate a **pre-transition facility** with a transmitting antenna located within 5 kilometers of the DTV reference coordinates for the station, as referenced in Section 73.622(d) and set forth in the Sixth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 14588 (1997), (c) it will operate with **pre-transition** facilities that do not exceed the power and antenna height maxima specified in Section 73.622(f), (d) **it will operate at post-transition facilities that do not expand the noise-limited service contour in any direction beyond that established by Appendix B of the Seventh Report and Order in MB Docket No. 87-268 establishing the new DTV Table of Allotments in 47 C.F.R. § 73.622(i)**, and (e) **it will operate at post-transition facilities that match or reduce by no more than five percent with respect to predicted population from those defined in the new DTV Table Appendix B**.

“If any of items 1(a)-1(c) are answered “No” **in an application of a pre-transition facility**, the applicant must demonstrate in response to Section III-D, Item 11 that the proposal will not cause or increase interference to any other DTV broadcast application, DTV allotment, or analog TV broadcast authorization.

“Interference is to be predicted **for a pre-transition facility** in accordance with the procedure set forth in Appendix B of the Sixth Report and Order in MM Docket No. 87-268. See 47 C.F.R. Section 73.623.

“**If any of items 1(a), 1(d)-(e) are answered “No” in an application of a post-transition facility, the applicant will not qualify for expedited processing.**

“**Interference is to be predicted for a post-transition facility in accordance with the procedures set forth in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91. See 47 C.F.R. Sections 73.616 and 73.623.**

13. Form Section VII-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Question 11, first paragraph, on page 17 is revised as follows [bold used to show changes]:

“Does the proposed facility satisfy the **pre-transition** interference protection provisions of 47 C.F.R. Section 73.623(a) (Applicable only if Certification Checklist Items 1(a), (b), or (c) are answered “No.”) **and/or the post-transition interference protection provisions of 47 C.F.R. Section 73.616?**  Yes  No “

14. Form and Instructions Section VII-D – DTV Engineering (TECHNICAL SPECIFICATIONS) TECH BOX Questions, is revised to make non-substantive conforming edits necessary because of the other changes.

The Federal Communications Commission revises FCC Form 337 as set forth below:

15. Main Form is revised to reflect the proposed rule revisions to 47 C.F.R. § 73.624(d) in section V.C.4. and Appendix A. Specifically, Question 5 on page 2 is revised as follows [bold used to show changes]:

- ~~technical (e.g., equipment delays)~~
- legal reasons beyond station's control** (e.g., litigation, **international coordination**)
- severe financial hardship** (e.g., ~~inability to finance~~ **bankruptcy, negative cash flow**)
- other reasons (e.g., natural disasters)

16. Instructions are revised to reflect the proposed rule revisions to 47 C.F.R. § 73.624(d) in section V.C.4. and Appendix A. Specifically, Item 5 is revised to by adding a new paragraphs and deleting the last paragraph as follows [bold used to show changes]:

Item 5: Reason for Delay in Construction. In the Fifth Report and Order in MM Docket No. 87-268, 12 FCC Rcd 12809 (1997), on reconsideration, 13 FCC Rcd 6860 (1998), the Commission announced its willingness to grant, on a case-by-case basis, an extension to the applicable DTV construction deadline where a broadcaster has been unable to complete construction due to circumstances that are either unforeseeable or beyond the permittee's control, provided the broadcaster has taken all reasonable steps to resolve the problem expeditiously. The Commission also stated that it would modify its existing policies regarding extensions, taking into account problems encountered that are unique to the DTV conversion.

**In the Report and Order in MB Docket No. 07-91, \_\_ FCC Rcd \_\_ (2007), the Commission adopted a stricter standard for the grant of an extension of the applicable DTV construction deadline. See 47 C.F.R. § 73.624(d)(3).**

**First, stations may no longer obtain an extension because of technical reasons, such as equipment delays. Second, the Commission tightened the financial showing required for an extension. While previously requiring a showing that the cost of meeting the minimum build-out requirements exceeded the station's financial resources, the Commission now requires a showing that the station is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. In order to be considered for an extension due to financial hardship, a station must: (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. In addition, the station must submit a schedule that outlines the time period for the completion of construction. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 C.F.R. Section 0.459.**

**The Commission will continue to consider extension requests where the station is facing legal obstacles, where resolution of the issue is truly beyond the control of the station. Such circumstances may include, for example, where a station is awaiting Commission action on an application for a DTV construction permit and action is delayed for reasons beyond the station's control (e.g., obtaining required**

governmental approvals such as FAA, Canadian and Mexican clearance) or where the Commission's action on the application is the subject of a court appeal.

**In addition, the Commission will continue to consider other circumstances that are either unforeseeable or beyond the station's control. Such circumstances may include, for example, acts of God, terrorism, and such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities that are unforeseeable events warranting additional time to construct.**

In responding to this question, the applicant should attest to the nature of the problem(s) preventing the timely completion of construction and provide a detailed explanation of the reason(s) requiring an additional time to construct its station's DTV facilities.

~~Among the problems found in specific instances to warrant the granting of additional time to construct have been such technical obstacles as equipment delivery delays, unavailability of work or tower crews, and tower safety and other construction delays; and such legal obstacles as delays in obtaining required governmental (e.g., FAA, Canadian and Mexican) clearances, outstanding judicial litigation involving zoning, and the pendency of DTV channel change rulemakings and DTV construction permit applications. See Digital Television Construction Deadline, 16 FCC Rcd 8122 (2001). In addition, such natural disasters as floods, tornadoes, hurricanes, earthquakes and other calamities would be unforeseeable events warranting additional time to construct. Finally, in Memorandum Opinion and Order on Reconsideration (MM Docket No. 00-39), FCC-01-330 (adopted November 8, 2001), the Commission recognized that some broadcasters, despite their reasonable, good faith efforts and the Commission's reduced build-out requirements, may be financially unable to timely complete the construction of their DTV facilities. The Commission will therefore consider, on a case-by-case basis, whether a broadcaster should be afforded additional time to construct its DTV facilities because the cost of meeting the minimum build-out requirements would create an undue financial hardship. In this regard, the applicant should provide an itemized estimate of the cost of meeting the minimum build-out requirements and a detailed statement explaining why its financial condition precludes such an expenditure. The applicant should also describe its good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing, and why those efforts were unsuccessful. To the extent that an applicant's description of its financial condition sets forth information that is proprietary and not customarily disclosed to the public, the applicant may request that the Commission treat the information as confidential. See 47 C.F.R. Section 0.459.~~

17. Form and Instructions are revised to make non-substantive changes necessary to update the form.

The Federal Communications Commission creates a new FCC Form – “FCC Form 387: DTV Transition Status Report” – as set forth below:

18. The new Form will contain the following data elements [bold used to show changes]:

**NOTE: This Form must be filed by all full-power broadcast television stations (licensees and permittees) no later than February 18, 2008. Each**

Licensee/Permittee is responsible for the continuing accuracy and completeness of the information furnished in this Form. Each Licensee/Permittee must update this Form, as necessary, until such Licensee/Permittee reports the completion of its transition (*i.e.*, that it has begun operating its full, authorized facility as defined in the post-transition DTV Table, 47 C.F.R. 73.622(i), and accompanying Appendix B). In addition, Each Licensee/Permittee that has not reported the completion of its full, authorized post-transition facility on this Form on or before October 20, 2008, must update this Form to report their current status as of that date.

#### SECTION I – GENERAL INFORMATION

**Item 1. Licensee/Permittee Information: Legal Name of the Licensee/Permittee; Mailing Address; City; State or Country (if foreign address); ZIP Code; Telephone Number (include area code) E-Mail Address (if available).**

**Item 2. Contact Information (if different from licensee/permittee): Contact Representative; Firm or Company Name; Mailing Address; City; State or Country (if foreign address); ZIP Code; Telephone Number (include area code) E-Mail Address (if available).**

**Item 3. Station/Facility Information: (a) FCC Registration Number; Call Sign; Facility ID Number; Community of License: City, State; Network Affiliation (if applicable); (b) Currently Assigned Channels: NTSC Channel; Post-Transition DTV Channel; Pre-Transition DTV Channel (if different from Post-Transition channel); (c) Relevant FCC File No. for Post-Transition Authorization, if on file with Commission (or indicate “Not Yet Filed”); (d) Post-Transition Construction Deadline: (i) February 17, 2009 if Pre-Transition DTV Channel is different from Post-Transition channel; (ii) Date 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in the Third DTV Periodic Review proceeding, MB Docket No. 07-91; (iii) February 17, 2009 if the station demonstrates that it faces a unique technical challenge (e.g., side-mounted antenna-related issue) preventing it from completing construction of its full, authorized post-transition facility; (iv) Expiration date of construction permit or pending application for an extension of time to construct a post-transition facility.**

#### SECTION II – POST-TRANSITION FACILITY (Complete all items unless otherwise indicated.)

**Item 1. Operational Status: Is the Licensee/Permittee now operating its fully authorized final, DTV (post-transition) facility?  Yes or  No (If YES, Licensee/Permittee is finished with this Form; If NO, go to Item 2.)**

**Item 2. If Item 1 is NO (i.e., not fully operational), then indicate operational status of final, DTV (post-transition) facility and indicate date Licensee/Permittee expects to begin full, authorized post-transition operations: (check one)**

(i). Licensee/Permittee is operating its post-transition facility pursuant to program test authority; see 47 C.F.R. § 73.1620(a). If checked, indicate date Licensee/Permittee expects to file its license to cover (FCC Form 302) application.

(ii). Licensee/Permittee is operating its post-transition facility pursuant to special temporary authority (STA) or at a reduced facility. If checked, indicate power level and percentage of analog population covered by reduced facility.

(iii). Licensee/Permittee is not operating its post-transition facility.

**Item 3. Construction Status: Has the Licensee/Permittee completed construction of its final, DTV (post-transition) facility?**  Yes or  No (If YES, skip Items 4-5 and go to Item 6(a); If NO, go to Item 4.)

**Item 4. If Item 3 is NO (i.e., not fully constructed), then indicate construction status of final, DTV (post-transition) facility and indicate date Licensee/Permittee expects to complete construction: (check all that apply)**

(i). Licensee/Permittee has not begun construction of its post-transition facility.

(ii). Licensee/Permittee is now constructing its post-transition facility.

(iii). Licensee/Permittee has constructed a reduced post-transition facility and additional construction is needed to complete Licensee/Permittee's fully authorized facility.

**Item 5. Construction Permit Status: Does the Licensee/Permittee hold a license or construction permit for its final, DTV (post-transition) facility?**  Yes or  No (If YES, then indicate relevant FCC File No. and go to Item 6(a); If NO, skip Item 6(a) and go to Item 6(b).)

**Item 6(a). Does the Licensee/Permittee need to modify its license or construction permit in order to match the post-transition facilities defined for the Licensee/Permittee in the new DTV Table of Allotments, 47 C.F.R. § 73.622(i), as adopted in the Seventh Report and Order in MB Docket No. 87-268?**  Yes or  No (If YES, go to 6(b); If NO, skip Item 6(b).)

**Item 6(b). Has the Licensee/Permittee filed an application for a new or modified construction permit for its final, DTV (post-transition) facility?**  Yes or  No (If YES, then indicate date filed and relevant FCC File No.; If NO, then indicate date Licensee/Permittee expects to file such application.) (NOTE: To qualify for expedited processing, the Licensee/Permittee must file its application within 45 days of the effective date of Section 73.616 of the rules adopted in the Third DTV Periodic Review proceeding, MB Docket No. 07-91, as well as meet other criteria described in that proceeding.)

**SECTION III – NEXT STEPS (For Licensee/Permittees that are not fully constructed or operational.)**

**At present, Licensee/Permittee has the following needs that must be addressed before it can fully construct and operate its final, DTV (post-transition) facility: (check all that apply and for all checked responses, describe issue and estimated date of resolution.)**

(i). Licensee/Permittee needs to obtain FCC action on a pending application. (If checked, indicate date filed and relevant FCC File No.)

(ii). Licensee/Permittee needs to obtain international government clearance for its post-transition facility.

(iii). Licensee/Permittee needs to obtain FAA approval for its post-transition facility.

- (iv). Licensee/Permittee needs to obtain state or local governmental approval (e.g., zoning) for post-transition facility.
- (v). Licensee/Permittee needs to obtain, adjust and/or install equipment for its post-transition facility. (If checked, specify need below and indicate when equipment was ordered and expected delivery date.)
- (1). New antenna.
- (2). Adjust or install antenna (except for side-mount issue).
- (3). Switch side-mounted DTV antenna with top-mounted analog antenna.
- (4). New transmitter.
- (5). Adjust or install transmitter.
- (6). General installation of equipment requiring hiring of a tower crew.
- (7). Other equipment needs. (If checked, specify.)
- (vi). Licensee/Permittee needs to change its tower location or construct a new tower.
- (vii). Licensee/Permittee needs to coordinate its transition with other broadcast stations. (If checked, specify Call Signs of those other stations.)
- (viii). Licensee/Permittee has other needs that must be addressed before it can fully construct and operate its post-transition facility. (If checked, specify.)

#### SECTION IV –ANALOG SERVICE

**Item 1. Status of Analog Service. (Check one.) Note: Full-power television broadcast stations must cease broadcasting in analog as of the transition date (i.e., February 17, 2009), as required by statute; see 47 U.S.C. § 309(j)(14).**

- (i). Licensee/Permittee will continue to provide full, authorized analog service until the transition date.
- (ii). Licensee/Permittee has obtained FCC approval to reduce its analog service prior to the transition date. If checked, indicate relevant FCC File No., date reduced service will begin, power level and percentage of population covered by Licensee/Permittee's analog service.
- (iii). Licensee/Permittee has obtained FCC approval to terminate its analog service prior to the transition date. If checked, indicate relevant FCC File No. and date service will cease.
- (iv). Licensee/Permittee has filed an application with the FCC requesting approval to reduce its analog service prior to the transition date. If checked, indicate relevant FCC File No., proposed date reduced service would begin, proposed power level and percentage of population that would be covered by Licensee/Permittee's proposed reduced analog service.
- (v). Licensee/Permittee has filed an application with the FCC requesting approval to terminate its analog service prior to the transition date. If checked, indicate relevant FCC File No. and proposed date service will cease.

**SECTION V – DTV TRANSITION PLAN (For Licensee/Permittees that are not fully constructed or operational.)**

**Licensee/Permittee must describe in detail its plans for ceasing analog broadcasting by the February 17, 2009 transition date and for completing construction of its post-transition facility by the deadline. For example, plan must include a detailed timeline of the Licensee/Permittee’s plans to complete construction and any necessary testing of the Licensee/Permittee’s full, authorized post-transition facility.**

**SECTION VI – Anti-Drug Abuse Act Certification and Licensee/Permittee’s signature.**

**Note: this Form will be posted on [www.fcc.gov](http://www.fcc.gov) and [www.dtv.gov](http://www.dtv.gov).**

19. The Instructions to the new Form will explain the data elements noted above.

**APPENDIX D**

**List of Stations Identified as Ready  
to Commence Post-Transition DTV Operations**

**[Note: This appendix will be attached as a separate MS Excel file.]**

## APPENDIX E

**Final Regulatory Flexibility Act Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)<sup>2</sup> an Initial Regulatory Flexibility Analysis (“IRFA”) was included in the Notice of Proposed Rulemaking to this proceeding (“*Third DTV Periodic Review NPRM*”).<sup>3</sup> The Commission sought written public comment on the proposals in the *Third DTV Periodic Review NPRM*, including comment on the IRFA.<sup>4</sup> The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis (“FRFA”) conforms to the RFA.<sup>5</sup>

**A. Need for, and Objectives of, the Report and Order**

2. This Report and Order in the third periodic review of the Commission’s rules and policies affecting the conversion of the nation’s broadcast television system to digital television (“DTV”) resolves issues necessary to complete this transition from analog to DTV. The Commission conducts these periodic reviews in order to assess the progress of the DTV transition and make any necessary adjustments to the Commission’s rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition. In 2005, Congress mandated that, after February 17, 2009, full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.

3. With the DTV transition deadline less than 14 months away, our focus is now on overseeing broadcasters’ construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. The Commission wants to ensure that no consumers are left behind in the DTV transition. The Commission recognizes that the transition is a complex undertaking presenting many challenges to the broadcast industry, and that some disruption of television service may be unavoidable leading up to the analog turn-off. Therefore, the Commission adopts rules to offer broadcasters regulatory flexibility, while at the same time requiring broadcasters to maintain the best possible television service to the public and meet viewers’ over-the-air reception expectations after the transition date.

4. The purpose of this Report and Order, generally, is to (1) provide a progress report on the transition; (2) describe the status and readiness of full-power television broadcast stations to complete their transition; (3) adopt procedures and rule changes necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition facilities while maintaining the best possible television service to their viewers; and (4) address other issues related to the transition. Stations face many challenges in order to be ready to make their transition by the February 17, 2009 statutory transition deadline. Stations must

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<sup>2</sup> See 5 U.S.C. § 603. The RFA, See 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

<sup>3</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9529, ¶ 126, and 9548, app. C.

<sup>4</sup> *Id.*

<sup>5</sup> See 5 U.S.C. § 604.

focus their full attention on constructing their final digital facilities before they must cease analog operations.

5. The primary objectives of this Report and Order is to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) complete construction of, and begin operations on, their final, DTV facility. In addition, the Report and Order offers broadcasters to the extent possible regulatory flexibility to meet these goals.<sup>6</sup>

6. Mandatory Termination of Analog Television Broadcasting. By statute, after the February 17, 2009 transition date, all full-power television broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.<sup>7</sup> This statutory mandate affords the Commission no discretion to offer any regulatory flexibility to small television broadcasters concerning the mandatory analog turn-off. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations cease analog broadcasting as of the February 17, 2009 transition date.

7. Construction deadlines for DTV facilities. The Report and Order sets deadlines for all full-power television broadcast stations to complete construction of their final, post-transition (DTV) facility in order to ensure that DTV stations will be providing service on their final, post-transition channels by the February 17, 2009 transition date.<sup>8</sup> The Report and Order sets construction deadlines based on a station's channel assignment for pre- and post-transition operation, and other circumstances affecting the station's ability to complete final, post-transition facilities. The Report and Order establishes the following deadlines for full-power television broadcast stations to construct their full, authorized post-transition (digital) facilities (as defined in the post-transition DTV Table Appendix B): (1) May 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities; (2) August 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities; (3) February 17, 2009 will be the construction deadline for: (a) stations building digital facilities based on a new channel allotment in the post-transition DTV Table, *i.e.*, stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations; and (b) stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.

8. The Report and Order also adopts rules and policies to limit the situations in which stations may obtain more time to satisfy the construction deadlines adopted for completion of

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<sup>6</sup> See discussion in Section E. of this FRFA.

<sup>7</sup> Congress established February 17, 2009 as the hard deadline for the end of analog transmissions by full-power television broadcast stations. 47 U.S.C. § 309(j)(14)(A). Congress has directed the Commission to "take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)." 47 U.S.C.A. § 309 Note. See *supra* note 1 of the Report and Order.

<sup>8</sup> See *supra* Section V.B. of the Report and Order.

final, post-transition facilities.<sup>9</sup> Stations with a construction deadline on or before February 17, 2009 must comply with the revised rule Section 73.624(d).<sup>10</sup> Specifically, the revised rule Section 73.624(d) no longer grants stations additional time to construct because of equipment delays, absent extraordinary circumstances.<sup>11</sup> The revised rule also requires a stronger demonstration of financial hardship than is now required.<sup>12</sup> The revised financial hardship standard requires the licensee or permittee of a station to show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years. Stations seeking an extension based upon financial considerations under this new rule would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations must submit a schedule of when they expect to complete construction.<sup>13</sup> As previously required, stations making such requests must electronically file FCC Form 337.<sup>14</sup> Stations with a construction deadline occurring February 18, 2009 or later may only obtain more time to meet their construction deadline under the tolling standard set forth in Section 73.3598(b) of the rules, which now applies to DTV singletons, analog TV, and other broadcast services.<sup>15</sup> Stations must file a notification to inform the Commission of the circumstances that it believes should toll its construction period.<sup>16</sup> Stations filing such notifications must do so electronically through the CDBS using the Informal Application filing form.

**B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA**

9. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

**C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply**

10. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted.<sup>17</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”<sup>18</sup> In addition, the term

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<sup>9</sup> See *supra* Section V.B.5. of the Report and Order.

<sup>10</sup> See revised rule 47 C.F.R. § 73.624(d) in Appendix B of the Report and Order. See also *supra* Section V.B.5. of the Report and Order.

<sup>11</sup> See revised rule 47 C.F.R. § 73.624(d) (eliminating paragraph (d)(3)(ii)(B)) in Appendix B of the Report and Order. The proposed rule would continue to allow extension requests based on stations' inability to construct because of delays in obtaining zoning or FAA approvals, or similar constraints. 47 C.F.R. § 73.624(d) (3)(ii)(A).

<sup>12</sup> See revised rule 47 C.F.R. § 73.624(d) (revising paragraph (d)(3)(ii)(C)) in Appendix B of the Report and Order.

<sup>13</sup> See *supra* Section V.B.5. of the Report and Order.

<sup>14</sup> 47 C.F.R. § 73.624(d). See OMB Control No. 3060-1001.

<sup>15</sup> See revised rule 47 C.F.R. § 73.3598 in Appendix B of the Report and Order. See also *supra* Section V.C.5. of the Report and Order.

<sup>16</sup> See 47 C.F.R. § 73.3598(c), (d).

<sup>17</sup> *Id.* § 603(b)(3).

<sup>18</sup> 5 U.S.C. § 601(6).

“small business” has the same meaning as the term “small business concern” under the Small Business Act.<sup>19</sup> A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>20</sup>

11. We adopt our tentative conclusion in the *Third DTV Periodic Review NPRM* and find that only full-power television broadcast stations will be directly and primarily affected by rules adopted in this Report and Order. Although we also find that the rules adopted will not directly affect Class A TV stations, low power television (“LPTV”) stations and TV translator stations,<sup>21</sup> it is still possible that these entities may be affected by the rules adopted. We find, however, that no other types of entities will be directly affected by the rules adopted. Therefore, in this FRFA, we consider the impact of the rules adopted on small television broadcast stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

### 1. Entities Directly Affected By Proposed Rules

12. Television Broadcasting. The rules and policies adopted herein apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts.<sup>22</sup> Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”<sup>23</sup> The Commission has estimated the number of licensed commercial television stations to be 1,376.<sup>24</sup> According to Commission review of the BIA Financial Network, MPro Television Database (“BIA”) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations<sup>25</sup> (or about 72 percent) have revenues of \$13.0 million or less and thus qualify as small entities under the SBA definition. The Commission has

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<sup>19</sup> *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

<sup>20</sup> 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

<sup>21</sup> As noted in note 5 of the Report and Order, the statutory transition deadline applies only to full-power stations. See 47 U.S.C. §§ 309(j)(14) and 337(e). The transition timing for LPTV, translator and Class A stations will be addressed in a separate proceeding.

<sup>22</sup> See 13 C.F.R. § 121.201, NAICS Code 515120.

<sup>23</sup> *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

<sup>24</sup> See News Release, “Broadcast Station Totals as of December 31, 2006,” 2007 WL 221575 (dated Jan. 26, 2007) (“*Broadcast Station Totals*”); also available at <http://www.fcc.gov/mb/>.

<sup>25</sup> We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* FRFA note 23; however, we are using BIA’s estimate for purposes of this revenue comparison.

estimated the number of licensed NCE television stations to be 380.<sup>26</sup> We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations<sup>27</sup> must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

13. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

14. Class A TV, LPTV, and TV translator stations. The rules and policies adopted herein may also apply to licensees of Class A TV stations, low power television (“LPTV”) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts.<sup>28</sup> Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators.<sup>29</sup> Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA’s definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

## 2. Entities Not Directly Affected By Rules

15. We adopt our tentative conclusion that the rules adopted herein will not directly affect any other types of entities other than full-power television broadcast station licensees and permittees.<sup>30</sup> In the *Third DTV Periodic Review NPRM*, we invited comment on this tentative conclusion and, in particular, out of an abundance of caution, we invited comment from any small cable operators, small multichannel video programming distributors (“MVPDs”),<sup>31</sup> or small electronics equipment manufacturers who believed they might be directly affected by the

<sup>26</sup> See *Broadcast Station Totals*, *supra* FRFA note 23.

<sup>27</sup> “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

<sup>28</sup> See 13 C.F.R. § 121.201, NAICS Code 515120.

<sup>29</sup> See *Broadcast Station Totals*, *supra* FRFA note 23.

<sup>30</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9548, app. C.

proposed rules.<sup>32</sup> We did not receive comments on this issue. Because the rules adopted herein pertain only to full-power television broadcast licensees and potential licensees of television service, we find that these rules will not directly affect small cable operators, small MVPDs, or small electronics equipment manufacturers. We, thus, adopt our tentative conclusion that these entities fall outside the scope of this FRFA. Accordingly, we do not discuss these entities, which were listed in the IRFA.<sup>33</sup>

#### **D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements**

16. The rules and policies adopted by this Report and Order will impose mandatory compliance and reporting requirements on full-power television broadcast stations, including requiring that such stations: (1) must file a form with the Commission no later than February 18, 2008 detailing their current transition status and their plans for completing their transitions by the statutory deadline, and must file updates to these forms as necessary – and at a minimum by October 20, 2008 – until they report the completion of their transition;<sup>34</sup> (2) must file an application for a new or modified construction permit for their final, post-transition (DTV) facility, if the station does not have an existing construction permit for such facility;<sup>35</sup> (3) must file an application for a license to cover their final, post-transition (DTV) facility, if the station does not have an existing license for such facility;<sup>36</sup> (4) must populate, and update as necessary, the Event Information Tables (“EITs”) in PSIP data with accurate information about each event, in accordance with the current version of the ATSC PSIP standard, A/65-C;<sup>37</sup> (5) must follow a specific format if choosing to identify a licensee that it is transmitting on one of its multicast streams;<sup>38</sup> and (6) must file a notification to document their status as a station facing a “unique technical challenge” (warranting a February 17, 2009 construction deadline), if they do not file, or do not include such information in, an application for post-transition facilities (Forms 301 or 340).<sup>39</sup>

17. In addition, the rules and policies adopted in this Report and Order will impose additional compliance and reporting requirements on full-power television broadcast stations that choose to take advantage of voluntary opportunities for regulatory flexibility offered by this Report and Order. Because these voluntary requirements may afford small television broadcast

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<sup>31</sup> MVPDs include such entities as Direct Broadcast Satellite (DBS) providers, private cable operators (PCOs), also known as satellite master antenna television (SMATV) systems, home satellite dish (HSD) services, multipoint distribution services (MDS)/multichannel multipoint distribution service (MMDS), Instructional Television Fixed Service (ITFS), local multipoint distribution service (LMDS) and open video systems (OVS).

<sup>32</sup> See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9548, app. C.

<sup>33</sup> See *id.*

<sup>34</sup> See *supra* Section V.A.1. of the Report and Order.

<sup>35</sup> See *supra* Section V.D. of the Report and Order.

<sup>36</sup> See *supra* Section V.D.2. of the Report and Order.

<sup>37</sup> See *supra* Section V.H.3. of the Report and Order. PSIP data is transmitted along with a station’s DTV signal and provides DTV receivers with information about the station and what is being broadcast. See *id.*

<sup>38</sup> See *supra* Section V.H.5. of the Report and Order.

<sup>39</sup> See, *supra*, Sections V.B.3. of the Report and Order.

stations the opportunity for regulatory flexibility and reduced burdens, they are discussed in Section E. of this FRFA.<sup>40</sup>

18. Transition Status Form. The Report and Order will require that every full-power television broadcast station must file a form with the Commission no later than February 18, 2008 that details (1) the current status of the station's digital transition; (2) the additional steps, if any, the station needs to take to be prepared for the transition deadline; and (3) their timeline to meet the transition deadline.<sup>41</sup> These filings will be posted on the Commission's website. Stations must update the form as events warrant and by October 20, 2008 if they have reported the completion of their transition. These forms will assist the Commission, industry, and the public in assessing progress and making plans for the transition date. The form will provide information on the status of each station's construction of final, DTV facilities, allowing the Commission, industry, and the public to track the progress of the DTV transition.

19. Applications for New or Modified Construction Permits. Under the current rules, stations that need to construct or modify DTV facilities must file construction permit or modification applications.<sup>42</sup> Commercial stations must file FCC Form 301 and NCE stations must file FCC Form 340.<sup>43</sup> Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze.<sup>44</sup> According to the Report and Order, 634 stations will not be using their currently authorized DTV channel for post-transition operations and will, therefore, need to file an application to construct their final, DTV facility. In addition, if any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations need to change their DTV facilities, *e.g.*, because if they do not have an authorization for their intended operations, then such stations will need to file a modification application.<sup>45</sup> Thus, both these groups of stations will need to file applications for their final, post-transition facility. In addition, stations that file such applications will also need to file applications for a license to cover their final, post-transition facility.

20. Program System and Information Protocol ("PSIP") standard. The Report and Order revises rule Section 73.682(d) to reflect the revisions to the ATSC Program System and Information Protocol ("PSIP") standard since the *Second DTV Periodic Report and Order*.<sup>46</sup> The current version of the ATSC PSIP standard is A/65-C. PSIP data is transmitted along with a station's DTV signal and provides DTV receivers with information about the station and what is being broadcast. PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the "major" channel number), thereby making it easy for viewers to tune to the

<sup>40</sup> To request various opportunities for regulatory flexibility, stations would have to file applications with the Commission. *See, e.g.*, Section VI.B. of the Report and Order (listing proposed information collections contained in the Report and Order).

<sup>41</sup> *See supra* Section V.A.1. of the Report and Order.

<sup>42</sup> *See* 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538.

<sup>43</sup> *Id.*

<sup>44</sup> *See supra* Section V.D. of the Report and Order.

<sup>45</sup> *See id.*

<sup>46</sup> *See supra* Section V.H.3. of the Report and Order. *See also* revised rule 47 C.F.R. § 73.682(d) in Appendix B of the Report and Order.

station's DTV channel even if they only know the station's major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things.<sup>47</sup> The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers. This new revision to the ATSC standard further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available.<sup>48</sup> Currently, many broadcasters provide only general information in the EIT tables. For example, a network affiliate may provide "network programming" as the descriptor for the majority of its program offerings.

21. Station Identification Requirement. The Report and Order revises rule Section 73.1201 of the rules, regarding station identification requirements for DTV stations in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station or another programming source.<sup>49</sup> In these situations, the rules do not require that the source of the programming be identified by the station whose multicast stream is being used to carry the programming. However, if the station whose multicast stream is being used to carry the programming chooses to identify the station that is the source of the programming, the rules are revised to require that the following format be used in making that station identification: "Station WYYY-DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming)."

**E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered**

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>50</sup>

23. As previously noted, the Commission has no discretion to offer any regulatory flexibility to small television broadcasters concerning the mandatory analog turn-off on the February 17, 2009 transition date. Rather, to implement this statutory mandate, the Commission must ensure that all full-power television broadcast stations, including small stations, cease analog broadcasting as of the February 17, 2009 transition date.

24. The Report and Order, however, does offer stations opportunities for regulatory flexibility with respect to the other mandatory compliance requirements, most specifically to the post-transition construction deadlines. In formulating these opportunities for regulatory

<sup>47</sup> *Id.*

<sup>48</sup> See *supra* Section V.H.3. of the Report and Order.

<sup>49</sup> See *supra* Section V.H.5. of the Report and Order. See also revised rule 47 C.F.R. § 73.1201 in Appendix B of the Report and Order.

<sup>50</sup> 5 U.S.C. § 603(c)(1)-(c)(4)

flexibility, the Commission considered the benefits of such regulatory relief to small stations, particularly to NCE stations and small market stations (*i.e.*, stations which are not a top-four network in markets 1-100). To qualify for, and benefit from, some of these opportunities, however, stations must satisfy additional compliance or reporting requirements.

25. Such opportunities for regulatory flexibility adopted by this Report and Order that will benefit small stations include the following: (1) Stations may qualify for expedited processing of their applications to build post-transition facilities to speed their receipt of construction permits for such facilities; (2) Stations that will not use their pre-transition DTV channel for post-transition operations may forego further construction of their pre-transition DTV channel to the extent that such a facility has been partially built in order to focus their efforts on constructing their final DTV facility on their post-transition channel; (3) Stations may seek STA for one of two provisions for a “phased transition” that would afford qualifying stations regulatory relief in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition date; and (4) Stations may request Commission approval to reduce or terminate analog TV or pre-transition DTV service before the transition date if doing so would facilitate their transition, provided they satisfy a viewer notification requirement.

26. Expedited Processing. The Report and Order adopts rules and policies to offer expedited processing of stations’ applications to build their post-transition facilities that may well benefit smaller stations. Stations may obtain expedited processing provided that their application: (1) does not seek to expand the station’s facilities beyond its final DTV Table Appendix B facilities; (2) specifies facilities that are no more than five percent smaller than those specified in the post-transition DTV Table Appendix B (with respect to predicted population); and (3) is filed within 45 days of the effective date of this Report and Order.<sup>51</sup> It is each station’s responsibility to ensure that it can begin operations on its post-transition channel no later than the deadline for the transition on February 17, 2009. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission.

27. Minor Expansion Applications. The Report and Order also adopts a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that will not use their pre-transition DTV channel for post-transition operation. This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears.<sup>52</sup>

28. Regulatory Relief in Meeting Construction Deadlines. With respect to the construction deadlines established for stations to build final, post-transition facilities, the Report and Order offers a variety of opportunities for regulatory flexibility if it would facilitate the transition and ensure that all full-power stations meet the February 17, 2009 statutory transition date. Small stations, including NCE stations and small market stations (*i.e.*, stations which are not a top-four network in markets 1-100) may particularly benefit from these opportunities for regulatory relief because of the unique challenges they may face in completing their transition.

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<sup>51</sup> See *supra* Section V.D.1. of the Report and Order.

<sup>52</sup> See *supra* Section V.E. of the Report and Order.

29. While establishing a stricter standard for requests for extension of time to construct DTV facilities, the Report and Order eliminates the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel.<sup>53</sup> This will help many small stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to transition away from analog transmission by the transition date. The Report and Order also allows stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service.<sup>54</sup>

30. Provisions for a Phased Transition. The Report and Order permits stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition.<sup>55</sup> The Report and Order also permits stations to operate their post-transition facilities, pursuant to STA, at less than their full, authorized facilities, provided: (1) They demonstrate a legitimate impediment to the construction of such facilities; (2) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (3) They do not cause impermissible interference to other stations or prevent other stations from making their transition.<sup>56</sup> To provide additional regulatory relief for NCE and small market stations (*i.e.*, stations which are not a top-four network in markets 1-100), the Commission will consider on case-by-case basis allowing these stations a reduced service requirement if their circumstances warrant it.<sup>57</sup>

31. Permanent Reduction or Termination of Analog TV or Pre-Transition DTV Service. To facilitate the construction of, and commencement of operations on, post-transition facilities, the Report and Order provides stations with the flexibility to permanently reduce or terminate their analog or pre-transition digital service before the transition date, provided the station satisfies the following two requirements: (1) The station demonstrates that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and (2) The station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station.<sup>58</sup> In addition, stations may file only a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date, subject only to a viewer notification requirement. These opportunities may provide financial relief to small stations by freeing them to focus their efforts on completion of their final, post-transition facility. Stations must file these requests electronically through the CDBS using the Informal Application filing form.

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<sup>53</sup> See *supra* Section V.B.1. of the Report and Order.

<sup>54</sup> See *supra* Section V.C.3.a. of the Report and Order.

<sup>55</sup> See *supra* Section V.B.7.a. of the Report and Order.

<sup>56</sup> See *supra* Section V.B.7.b. of the Report and Order.

<sup>57</sup> *Id.*

<sup>58</sup> See *supra* Section V.C.2-3. of the Report and Order.

32. Temporary Service Disruptions of Less Than 30 Days. The Report and Order also clarifies that Section 73.1615 of the Commission's rules permits stations to reduce or cease service temporarily without prior Commission approval in order to modify existing facilities.<sup>59</sup> Stations may use this existing provision to temporarily reduce or cease existing analog or pre-transition digital service where necessary to facilitate construction of final post-transition facilities. Because this provision does not require prior Commission authorization, and does not require licensees to justify the need for the service disruption, this provision gives stations substantial flexibility to temporarily reduce or cease analog or digital service pre-transition. Stations must notify the Commission before commencing the temporary reduction or cessation of service, but do not need prior Commission approval. The flexibility accorded by Section 73.1615 is intended for service disruptions of 30 days or less. Stations must file these notifications (pursuant to Section 73.1615) electronically through the CDBS using the Informal Application filing form.

33. Other Alternatives Considered. The *Third DTV Periodic Review NPRM* sought comment on whether small broadcasters would be particularly impacted by updating Section 73.682(d) to reflect the new revisions to the ATSC PSIP standard. No comments were received on this issue. The Report and Order determines that the value of EITs to consumers outweighs the burdens of this requirement.<sup>60</sup> The *Third DTV Periodic Review NPRM* also encouraged broadcasters to suggest alternative proposals that would avoid the imposition of significant and unreasonable burdens on small TV broadcasters, consistent with the statutory mandate for full-power TV broadcast stations to cease analog broadcasting by February 17, 2009, as well as with broadcasters' obligation to provide and maintain the best possible TV service to the public. No comments were received on this issue.

**F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission's Proposals**

34. None.

**G. Report to Congress**

35. The Commission will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.<sup>61</sup> In addition, the Commission will send a copy of this Report and Order, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the Federal Register.<sup>62</sup>

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<sup>59</sup> See *supra* Section V.C.1. of the Report and Order.

<sup>60</sup> See *supra* Section V.H.3. of the Report and Order.

<sup>61</sup> See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; see Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

<sup>62</sup> See 5 U.S.C. § 604(b).

**APPENDIX F**

**Stations Granted Extension Requests**

**[Note: This appendix will be attached as a separate MS Excel file.]**

**STATEMENT OF  
CHAIRMAN KEVIN J. MARTIN**

*Re: Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television.*

Today we take another important step toward facilitating a timely digital transition. Facilitating a smooth transition, however, is not an easy task. With this Order, the Commission has made technical adjustments to its rules and policies to enable broadcasters to take the actions necessary to complete the conversion from analog to digital. As all major changes tend to be, the coming transition to digital television transmission is an exciting—but complicated—revolution. The rules we adopt in this item attempt to provide broadcasters the flexibility they need while at the same time ensuring that any disruption to over-the-air viewers is minimized to the fullest extent possible.

Importantly, the Commission's oversight over this process does not end here. We require broadcasters to update us on their progress toward meeting their statutory deadline for the transition. Such reports must be filed in February 2008 and October 2008. The Commission will review this information, assess the progress toward meeting the transition, and take whatever actions are necessary to ensure that the digital transition remains on track. It is by taking concrete steps to advance this transition that we can ensure that the broadcast spectrum is made available as soon as possible for critically important public safety needs and broadband wireless uses. We are committed to making the digital transition proceed as swiftly and smoothly as possible.

**SEPARATE STATEMENT OF  
COMMISSIONER MICHAEL J. COPPS**

Re: *In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television.*

One year earlier would have been the charm. Sometimes timing is everything, and here a year's earlier start might have been the difference between a seamless and a chaotic Digital TV Transition. Had we acted then, we could have established a far more measured and orderly switch-over process, and the difficult trade-offs and compressed schedules contained in this Order could have been largely avoided. If a dissent could legitimately be based on frustration at being stuck in this situation, I would dissent today—I am that frustrated by our inaction.

But we are where we are. Given that fact, I think the Order does an acceptable job of balancing the various technical and policy factors in play. Unfortunately, at this point, the transition will not be as smooth as it might have been. Not every consumer will have access to all of their analog broadcast channels on February 17, 2009 and then wake up happily the next morning to those same stations in digital. There will be some period of time—perhaps before the transition date and almost certainly after—in which some stations may not be able to provide service to all of their viewers. Thankfully, the Order adopts our earlier proposal to require every broadcast station in the country to file a DTV status report this February—telling us where they are, what more they need to do, and how they plan to get there. Those reports should give us a much better picture of specific issues that may arise—hopefully, with enough time to address them.

Pulling the switch on stations all across the land at one and the same time in February 2009 is going to be a real throw of the dice. It is unfathomable to me that we are planning to turn off every analog signal in the country on a single day without running at least one test market first. Other countries are transitioning over time, with phased schedules. The United Kingdom, for example, is transitioning between 2007 and 2012, region-by-region, learning at every step along the way and making the necessary adjustments. The UK recently transitioned the small town of Whitehaven as the first step in a multi-year transition plan; a few years ago, Germany took a similar step in Berlin. The lessons learned from those initial test markets doubtless will prove invaluable to those countries' broader transition efforts. We need some of that real-world experience here. Why in the world aren't we doing that? I am encouraged that the Chairman and my colleagues are willing to sit down now and begin exploring the idea of one or more DTV demonstration projects around the country. I recognize there may be legal, technical, and practical challenges with planning and conducting such a test this close to the national transition date. But I believe it can be done. At least—for the sake of a successful DTV transition—let's hope it can.

**STATEMENT OF  
COMMISSIONER JONATHAN S. ADELSTEIN**

*Re: In the Matter of Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television.*

I have long advocated that the Commission take steps to ensure that over-the-air viewers are not disenfranchised during or after the digital TV transition, and that all full-power stations are prepared to cease analog transmission and to operate in digital by the end of the transition on February 17<sup>th</sup>, 2009. I support this item because it provides critical information for broadcasters to complete their station's transition from analog to digital transmission. I am pleased we took steps to ensure that this Order, in large part, offers the flexibility and guidance required for broadcasters to make the necessary transition. It is too late in the game to put broadcasters under unduly tight restraints as they rush to complete so much work in so little time.

I am also pleased we recently accelerated our consideration of this Order. For example, in much of the country, important technical work on towers and antennae cannot be accomplished in the winter months, so every day is critical. We have lost valuable time focused on other more tangential aspects of the transition while not moving forward on clarifying urgent demands on broadcasters to get a huge job done in short order. While this should have been completed even earlier, it is critical that we finished this year.

Because the law does not provide for any waivers or extensions of time, February 17<sup>th</sup>, 2009 is indeed the last day that full-power broadcast stations will be allowed to transmit in analog. There are a total of 1,812 stations that will be serving the American people after the transition but, to date, a little over 800 stations are considered to have fully completed construction of their digital facilities and are capable of broadcasting in digital in the final position from which they will broadcast. This data demonstrates the urgent need to have in place the deadlines we establish in this Order for broadcasters to finish their construction. This is especially important because the failure by broadcasters to do so will result in their loss of interference protection.

So, I am encouraged that we have at last lit the pathway for broadcasters, who have invested billions into this effort, to take the final steps on completing the analog to digital transition. I believe this item strikes the appropriate balance in providing specific guidance while taking into account the various conditions faced by each broadcaster. In particular, while this Order sets strict construction deadlines, the item also recognizes the unique technical challenges and other considerations, including weather, equipment shortages, and availability of tower crews, facing broadcasters. Broadcasters with genuine and demonstrable difficulties should be allowed the requisite flexibility, whether it is extensions, late transitions, or pre-transition service reductions and terminations. This additional flexibility should alleviate some of the technical challenges and other concerns broadcasters have raised in this proceeding.

I continue to believe, however, that poor long-term planning and the continued lack of a national, federal and an internal FCC coordination plan have left us in the unfortunate position of playing catch-up. Rather than being proactive – anticipating problems and concerns, and developing an effective strategy – we've been reactive. And so while this *Order* helps to propel

the DTV Transition forward, we must be mindful that there is still a lot at stake and we owe it to the American public not to fail.

I think we have truly taken the right step by establishing a requirement that broadcasters complete a transition status form detailing their transition status, any additional steps needed to commence their full, digital operations, as well as their timeline to meet the February 17, 2009 deadline. I appreciate the majority support for additionally committing to prepare a report on the status of the DTV transition on the basis of the information provided in these forms. It is imperative that we have a comprehensive sense of where each full-power broadcast station is prior to the end of the transition. And while each individual form will be posted on the Commission's website, we, along with Congress, will benefit from a comprehensive report to provide both the broadcaster and ourselves sufficient time for any mid-course correction.

As I've reiterated during this process, everyone has a lot invested in this transition, and with coordinated effort, we can succeed in getting it done right.

**STATEMENT OF  
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television.*

This Order reflects the joint commitment of broadcasters, industry, and the FCC to ensuring a seamless transition for all Americans on February 17, 2009. The multifaceted details of the DTV transition are highly-technical and require expert attention. We must provide broadcasters support and structure as we close in on the final months before the transition.

This Order is the result of input from broadcasters, and will allow them flexibility in making structural changes to their facilities. A one-size-fits-all approach is not prudent for an industry that serves thousands of diverse communities. From visiting the top of the Empire State Building with engineers, to meeting with local Tennessee broadcasters, one thing is clear-- this will take individualized planning for the unique issues all across the country. I am pleased that this Order represents an understanding of the geographic, economic, and technical realities faced by American broadcasters as we approach the transition deadline.

The DTV transition is the most significant television revolution since the advent of color tv, and will likely result in incredible innovations for consumers as we realize the benefits of valuable spectrum now available for new technologies. I hope that we will continue to work together to effect a smooth and seamless transition.

**STATEMENT OF  
COMMISSIONER ROBERT M. MCDOWELL**

*Re: Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television.*

Today's Order provides a progress report on the digital transition, establishes deadlines and procedures to ensure that the February 17, 2009 transition date is met and offers regulatory flexibility to broadcasters to facilitate their construction of digital facilities by the deadline. The specifics set forth in the Order regarding when stations may and must cease analog operations, when they may and must begin operating on their post-transition digital channel, and what regulatory flexibility they have, will help ensure that the complicated, coordinated switch to DTV becomes a reality.

Of course, the broadcasters and the Commission still have a tremendous amount of work to do before February 17, 2009. The transition is an extremely complex undertaking that presents many challenges to the industry and to us as regulators. Many broadcasters will want more flexibility than we grant them in this Order. However, we have attempted to balance carefully their need for flexibility and certainty with the Commission's obligation to oversee the transition for the benefit of over-the-air viewers.

I thank and congratulate the Media Bureau staff for their tireless work on this Order.