

SUPPORTING STATEMENT

A. Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection.

The Commission is extending this information collection to allow broadcasters to continue to comply with the consumer education information collection requirements until they have completed, and are operating, their final, full-authorized post-transition (DTV) facility.

REVISED REQUIREMENTS:

(1) Broadcaster Education and Reporting (47 CFR 73.674).¹

(a) On-air Education. Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs), information crawls, snipes or tickers) to their viewers. Broadcasters must comply with one of three alternative sets of rules as provided in the Report and Order. Stations must also provide the following additional information: (1) geographically specific information detailing areas that are covered by the Grade B analog contour but are not predicted to receive digital service; (2) educational information describing areas where analog signal strength is generally sufficient for viewers to rely on an indoor antenna but where it is likely that they will need an outdoor antenna to receive the digital signal; (3) information to consumers about the need to periodically “rescan” when using over-the-air digital reception equipment, particularly through the end of the transition; (4) stations that are changing their broadcast frequency from VHF to UHF (or vice versa), information to consumers about the need for additional or different equipment to avoid loss of service. Stations may include this information to satisfy part of their existing PSA requirements. In addition, if applicable, stations must provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the geographic coverage area or population served by the station during or after the transition. Broadcasters must continue to provide on air education to their viewers until they complete their transition to digital-only operations and are operating their final, full-authorized post-transition (DTV) facility. In most cases, stations will be operating at full-authorized post-transition (DTV) facilities no later than the June 12, 2009 nationwide transition deadline, but, in some cases, stations will not have completed construction of their final, fully-authorized DTV facility by June 12 and, therefore, must continue to provide on-air DTV Transition consumer education information to their viewers.

(b) DTV Consumer Education Quarterly Activity Report, FCC Form 388. Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public website, they must post these reports on that website. Broadcasters must complete these filings every quarter until they complete their transition to digital-only operations and are operating their final, full-authorized post-transition (DTV) facility.

¹ For the recordkeeping requirement for the retention of FCC Form 388, see 73.3526(e)(11)(iv) and 73.3527(e)(13) which can be found under OMB control number 3060-0214.

Background:

After the nationwide DTV transition date of June 12, 2009, full-power television broadcast stations must transmit only digital signals, and may no longer transmit analog signals,² except for limited analog “nightlight” service.³ The DTV Delay Act directs the Commission to take any actions “necessary or appropriate to implement the provisions, and carry out the purposes” of the DTV Delay Act, and to do so within 30 days.⁴ Congress extended the transition date in order to permit analog service to continue until consumers have had additional time to prepare.⁵ But Congress also directed the Commission to provide flexibility for stations wanting to transition prior to the new date.⁶ Stations may have made extensive preparations for a February 17 digital transition and some may have difficulty altering their commitments at this time. The Commission’s challenge is to provide opportunities for some stations to end analog broadcasting early without sacrificing the goal of giving consumers additional time to prepare.

This information collection does not affect individuals or households; thus, there are no impacts under the Privacy Act.

² See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009). The DTV Delay Act (to be codified at 47 U.S.C. §§ 309(j)(14) and 337(e)), amends Section 309(j)(14) of the Communications Act to establish June 12, 2009 as the new nationwide deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A) (“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 June 12, 2009.”). See also 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 June 12, 2009.”).

³ See the Short-term Analog Flash and Emergency Readiness Act, Pub. L. No.110-459, 122 Stat. 5121 (2008) (“Analog Nightlight Act”). The Analog Nightlight Act permits stations to provide emergency and DTV transition information on their analog channel to viewers for up to 30 days after the transition deadline.

⁴ DTV Delay Act § 4(c) (“Notwithstanding any other provision of law, the Federal Communications Commission ... shall, not later than 30 days after the date of enactment of this Act, each adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act and the amendments made by this Act.”). In addition, the DTV Delay Act amends the Digital Television and Public Safety Act of 2005 (“DTV Act”), Pub. L. No. 109-171, 120 Stat. 4 (2006), to direct 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 June 13, 2009; and (2) to require by June 13, 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.

⁵ See, e.g., Cong. Rec. H895 (daily ed. February 4, 2009).

⁶ DTV Delay Act, § 4(a) (“PERMISSIVE EARLY TERMINATION UNDER EXISTING REQUIREMENTS.— Nothing in this Act is intended to prevent a licensee of a television broadcast station from terminating the broadcasting of such station’s analog television signal (and continuing to broadcast exclusively in the digital television service) prior to the date established by law under section 3002(b) of the Digital Television Transition and Public Safety Act of 2005 for termination of all licenses for full-power television stations in the analog television service (as amended by section 2 of this Act) so long as such prior termination is conducted in accordance with the Federal Communications Commission’s requirements in effect on the date of enactment of this Act, including the flexible procedures established in the Matter of Third Periodic Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television (FCC 07–228, MB Docket No. 07–91, released December 31, 2007”).

Statutory authority for this collection of information is contained in Sections 4(i), 303(r), 335, and 336, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 335, and 336.

2. Indicate how, by whom, and for what purpose the information is to be used.

Information will be provided to consumers by full-power television broadcasters, MVPDs, manufacturers of television receivers and related devices, and ETCs, for the purpose of educating the public about the DTV transition. Information will be provided to the Commission by full-power television broadcasters, DTV.gov Transition Partners, and certain wireless service providers in the 700 MHz band (*i.e.*, auction winners of 700 MHz spectrum), to allow the Commission to enforce its consumer education rules and to serve as the central clearinghouse and director of DTV Transition education efforts by remaining aware of industry efforts.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

Information provided to the Commission: Broadcasters will provide the required information to the Commission electronically via the FCC Form 388 (DTV Consumer Education Quarterly Activity Report) using the Commission's Consolidated DataBase System (CDBS).

Information provided to consumers/public: Broadcasters will provide the required information to their viewers via their regular over-the-air broadcast signal (e.g., via PSAs, information crawls, snipes, or tickers). In addition, broadcaster will post their FCC Form 388 Reports on their website.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

This agency does not impose a similar information collection on the respondents. There are no similar data available.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

In the record in MB Docket 07-148, the National Association of Broadcasters ("NAB") stated plans to make informative PSAs available to all broadcasters, even non-members, which will reduce the cost burden of the requirement to air them. Also, the mandatory broadcaster filing form does not require extensive information gathering. Most importantly, although these requirements will impose some costs on small broadcasters, they will also ensure that small broadcasters continue to retain their audiences after the transition by fully informing viewers of the steps necessary to keep watching. Small broadcasters rely completely on their viewing audience for their revenue stream, so this benefit should far outweigh any costs for this temporary requirement.

6. Describe the consequence to federal programs or policy activities if the collection is not conducted or is conducted less frequently.

Congress has mandated that after June 12, 2009, full -power broadcast stations must transmit only in digital signals, and may no longer transmit analog signals (except for FCC approved "analog nightlight" service). There is a clear and compelling need for educational efforts directed toward consumers. If the Commission does not take immediate and effective action to ensure that viewers are informed of the effect that the digital transition will have on them and the options that are available to them, some consumers may lose television service. The limited-duration burdens are the minimum necessary to ensure the success of the transition. Without these submissions, the Commission will not be able to verify that the DTV transition is progressing smoothly and play its leadership role in ensuring that the burden on consumers is minimized as much as possible.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- a) requiring respondents to report information to the agency more often than quarterly;
- b) requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;
- c) requiring respondents to submit more than an original and two copies of any document;
- d) requiring respondents to retain records for more than three years;
- e) in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;
- f) requiring the use of statistical data classification that has not been reviewed and approved by OMB;
- g) that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or
- h) requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

DTV Transition consumer education information must be made available to the Commission and the public rapidly and accurately.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format, and on data elements to be recorded, disclosed, or reported.

The Commission published a notice in the Federal Register on June 10, 2009 seeking public comment on the information collection requirements contained in this supporting statement, *see 74 FR 27546*. The

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Title: DTV Consumer Education Initiative; Sections 73.674; FCC Form 388.

Commission received a comment from Jeremy Lansman on June 29, 2009. The comment is attached in ROCIS for public viewing. The Commission's response to the comment is as follows:

Stations that have not completed construction of, and begun operation on, their full authorized post-transition digital facility must continue to comply with the requirements of the DTV Consumer Education Initiative. Please refer to the Third Report and Order in the Implementation of the DTV Delay Act docket (24 FCC Rcd 3399), specifically paragraph 37. This includes on-air notices and quarterly filings of Form 388. The specific number, duration, and type of on-air notices depend on the consumer education option the station previously elected – please refer to 47 CFR § 73.674(a). The content of the messages, however, must be revised to provide information about the limits on the specific station's digital service area and the anticipated date for it to complete construction and commence operation of its full, authorized post-transition digital facility.

9. Explain any decision to provide any payment or gift to respondents.

No payment or gift will be provided to the respondents.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.

There is no need for confidentiality for this collection of information.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

This collection of information does not address any private matters of a sensitive nature.

12. Provide an estimate of the hour burden of the collection of information. The statement should indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Provide estimates of annualized costs to respondents for the hour burdens for collections of information. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead this cost should be included in Item 13.

The following estimates are provided for public burden:⁷

| <u>Number of Respondents</u> | <u>Number of Filings</u> | <u>Number of Responses</u> | <u>Respondent's Burden Hours</u> | <u>Annual Burden Hours</u> | <u>Respondent's Hourly Salary⁸</u> | <u>Annual In-House Cost</u> |
|---|--------------------------|-------------------------------|----------------------------------|-----------------------------------|---|-----------------------------------|
| Broadcasters – Section 73.674 (FCC Form 388) | | | | | | |
| 200 | 4 | 800 | 3 hours | 2,400 | \$48.08 | \$115,392.00 |
| Broadcasters – Section 73.674 (On-Air Education)⁹ | | | | | | |
| 60 ¹⁰ | 1 | 60 | 85 hours | 5,100 | \$48.08 | \$245,208.00 |
| 100 ¹¹ | 1 | 100 | 26 hours | 2,600 | \$48.08 | \$125,008.00 |
| 40 ¹² | 1 | 40 | 11 hours | 440 | \$48.08 | \$21,155.20 |
| Broadcasters – Section 73.674 (Website Postings) | | | | | | |
| 200 | 4 | 800 | 0.5 hours | 400 | \$48.08 | \$19,232.00 |
| TOTALS | | | | | | |
| 200 Annual Respondents | | 1,800 Annual Responses | | 10,940 Annual Burden Hours | | \$525,995.20 In-House Cost |

13. Provide an estimate of the total annual cost burden to respondents resulting from the collection of information. The estimates should take into account costs associated with generating,

⁷ These estimates are based on FCC staff's knowledge and familiarity with the availability of the data required.

⁸ We estimate that the respondents would have an average salary of \$100,000/year (\$48.08/hour).

⁹ Because this required information to viewers will be included in the existing PSA requirements, the Commission expects that this requirement will not generally increase existing burdens.

¹⁰ This estimates the number of broadcasters that will use Option One to provide on-air education; see 47 C.F.R. § 73.674(c).

¹¹ This estimates the number of broadcasters that will use Option Two to provide on-air education; see 47 C.F.R. § 73.674(d).

¹² This estimates the number of NCE broadcasters that will use Option Three to provide on-air education; see 47 C.F.R. § 73.674(e).

maintaining, and disclosing or providing the information. Do not include the cost of any hour burden shown in Item 12.

- (a) Total annualized capital/startup costs: **None**
- (b) Total annual costs (O&M): **None**
- (c) Total annualized cost requested: **None**

14. Provide estimates of costs to the federal government. Provide a description of the method used to estimate costs, which should include quantification of hours, operational expenses such as equipment, overhead, printing, and support staff.

There is no cost to the Federal Government.

15. Unless this a new collection of information, explain the reasons for any program changes or adjustments.

There are program changes or adjustments to this information collection.

16. For collections of information whose results will be published, outline plans for tabulation, and publication.

The data will not be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

OMB approval of the expiration of the information collection will be displayed at 47 CFR 0.408.

18. Explain each exception to the certification statement.

The only exception to the Certification Statement is that the information collection is an extension instead of a revision as stated in the June 10, 2009 Notice (*see* 74 FR 27546).

B. Collections of Information Employing Statistical Methods

This information collection does not employ any statistical methods.