

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

In the Matter of
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

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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 broadcast stations must transmit only in digital signals, and may no longer transmit analog signals.¹ With this

¹ 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 § (continued....)

Notice of Proposed Rule Making (“Notice”), we begin our third periodic review of the transition of the nation’s broadcast television system from analog to digital television (“DTV”).² 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. Here, we consider how to ensure that broadcasters complete construction of their final, post-transition (digital) facilities by the statutory deadline.

II. EXECUTIVE SUMMARY

2. In this Third DTV Periodic Review, we (1) provide a progress report on the transition; (2) describe the status and readiness of existing stations to complete the transition; (3) analyze and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. Stations that have not completed construction of their post-transition channels must focus their full attention on the construction efforts necessary to move from analog to digital transmission no later than the February 17, 2009 deadline established by Congress. Specifically, we propose the following actions to facilitate the transition for full-power television stations:³

- We tentatively conclude that February 17, 2009 will be the construction deadline for stations that are building digital facilities based on their new channel allotments in the new DTV Table of Allotments (“DTV Table”) and accompanying Appendix B (“new DTV Table Appendix B”), which will be established by an order in the Commission’s DTV proceeding, MB Docket No. 87-268 (*i.e.*, stations whose DTV channel for pre-transition operation is not their channel for post-transition use).⁴ [Section V.C.1. and proposed rule 47 C.F.R. § 73.624(d)(1)(v) in Appendix A]

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3005(a) also created a coupon program to subsidize the purchase of digital-to-analog (“D-to-A”) converter boxes. *Id.* See *infra* notes 35 and 36.

² 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 *infra* notes 7 and 8.

³ We note that the statutory transition deadline applies only to full-power stations. See 47 U.S.C. §§ 309(j)(14) and 337(e). We will address the digital transition for low power television (“LPTV”) stations in a separate proceeding. The Commission previously determined that it has discretion under 47 U.S.C. § 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease. *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*”). Accordingly, the Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations. *Id.* at 19336 ¶ 19.

⁴ 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 *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*”). The *Seventh FNPRM* sets forth a channel for each eligible broadcast TV station in the proposed new DTV Table. The details of each station’s channel assignment, including technical facilities and predicted service and interference information, are set forth in the proposed new DTV Table Appendix B.

- We propose that stations whose post-transition channel is the same as their pre-transition DTV channel, who are not facing unique technical challenges, and who are granted either an extension in the *Construction Deadline Extension Order* or a waiver in the *Use-or-Lose Order* must complete construction of their DTV facilities by the deadline established in those orders (*i.e.*, six months from the release date of the orders). These stations have had their post-transition channel assignments for several years. [Section V.C.2.]
- We propose that February 17, 2009 will be the construction deadline for stations facing unique technical challenges, such as those with side-mounted digital antennas or similar situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities. [Section V.C.3.]
- We tentatively conclude that stations that have not completed construction of full, authorized facilities on their pre-transition channel may be excused from completion of construction if this is not their post-transition channel.⁵ These stations will be permitted to carry-over protection to their full, authorized facilities. [Section V.C.1.]
- We propose to restrict the situations in which grants of an extension of time to construct digital facilities will be considered for construction deadlines prior to the end of the transition. In addition, beginning February 17, 2009, we propose to apply the existing “tolling” standard applied to analog stations to requests for additional time to construct digital facilities and will toll the construction deadline only in limited and unavoidable circumstances. [Section V.C.4. and proposed rule 47 C.F.R. § 73.624(d)(3) in Appendix A]
- We propose to require all full-power television stations to file a form with the Commission detailing their current transition status, additional steps necessary in order to be prepared for digital-only operation on February 17, 2009, and a timeline for making those steps. [Section V., ¶ 35 and Appendix B]
- We consider whether and, if so, under what circumstances we should accept new requests by stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and “flash cut” from their analog channel to their post-transition channel. [Section V.B.]
- We examine the circumstances in which a station may be allowed to reduce or terminate its analog service to facilitate construction of its final, DTV facility on its post-transition channel. [Section V.A.]
- We propose to allow stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service. [Section V.C.5.]
- We request comment on additional proposals to provide stations with regulatory flexibility to facilitate stations’ construction of their post-transition facilities by the statutory deadline. [Section V.C.6.]

⁵ Our proposal applies to stations that have pending construction permits (“CPs”), that have requested CP extensions, that have been granted CP extensions, that have been granted waivers of the use-or-lose deadlines, and that have waivers for their checklist facility deadline.

- We propose to offer expedited processing to a station applying for a CP to build its post-transition channel, provided that its application (i) does not seek to expand the station's noise-limited service contour in any direction beyond that established by the new DTV Table Appendix B; (ii) specifies facilities that match or closely approximate those new 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 deviate no more than five percent from those new DTV Table Appendix B facilities with respect to predicted population); and (iii) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. We propose to revise FCC Forms 301 and 340 accordingly. [Section V.D. and Appendix B]
- We tentatively conclude that we will not accept applications to expand post-transition facilities until we have completed processing the applications to build authorized facilities, but we seek comment on ways to consider expansion applications sooner without delaying the transition. [Section V.E.]
- We tentatively conclude to adopt a new 0.5 percent interference standard to apply to maximizations and to new channel allotments after the transition. [Section V.F. and proposed rule 47 C.F.R. § 73.616 in Appendix A]
- We propose to update the Commission's rules to reflect any revisions to the ATSC standards concerning DTV transmission and PSIP since the adoption of the *Second DTV Periodic Report and Order*. [Sections V.G.1. and V.G.2. and proposed rule 47 C.F.R. § 73.882(d) in Appendix A]
- We seek comment on whether the Commission can and should revise Section 73.624(g) to require DTV stations that are permittees operating pursuant to a DTV STA or other FCC authorization for DTV transmission 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. [Section V.G.3.]
- We invite comment on whether further amendments are needed to the station identification rules and, in particular, whether the current rules provide for appropriate identification of multicast channels. [Section V.G.4.]
- We invite comment on whether coordination is needed between broadcasters and MVPDs to ensure a smooth transition, whether this coordination is underway, and what actions the Commission should take to assist broadcasters with their coordination efforts. [Section V.G.6.]

III. BACKGROUND

3. Congress specifically requires the Commission to evaluate the progress of the nation's transition to digital television.⁶ The first DTV periodic review began in March 2000⁷

⁶ See 47 U.S.C. § 336(g).

⁷ 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 (continued....))

and the second in January 2003.⁸ In addition to these periodic reviews, the Commission has continued to conduct its DTV proceeding, through which it has developed new channel allotments and assignments.⁹ The Commission recently issued a *Seventh FNPRM* in connection with the DTV proceeding.¹⁰

4. The *Second DTV Periodic Report and Order* 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).¹¹ At the start of this process, licensees proposed their post-transition facilities.¹² After each channel election round, the Commission announced proposed post-transition channels – called tentative channel designations (“TCDs”).

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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).

⁸ *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*”).

⁹ 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 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). 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*”).

¹⁰ *See generally Seventh FNPRM, supra note 4.*

¹¹ *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.

¹² 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.

5. The channel election process culminated in the adoption of the *Seventh FNPRM*, which proposed a new DTV Table.¹³ The proposed new DTV Table provides eligible stations with channels for post-transition operations inside the core TV spectrum. The DTV Table is based on the TCDs announced for stations, 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.¹⁴ The proposed DTV Table will ultimately replace the current DTV Table.¹⁵

6. 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.¹⁶ The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts.¹⁷ 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.¹⁸ Full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital upon the end of the transition on February 17, 2009.¹⁹

IV. PROGRESS REPORT

7. 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 migration to DTV by adopting a standard for digital broadcasting, creating an initial DTV Table, awarding DTV licenses, establishing operating rules for the new service,

¹³ Comments on the proposed new DTV Table were due January 25th and replies were due February 26th. See *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Order Granting Extension of Time for Filing Comments and Reply Comments, 22 FCC Rcd 188 (MB 2007) (extending the comment filing dates established in the *Seventh FNPRM*).

¹⁴ *Seventh FNPRM*, 21 FCC Rcd at 12105 ¶ 15.

¹⁵ The *Seventh FNPRM* proposes to codify the new DTV Table in 47 C.F.R. § 73.622(i). *Seventh FNPRM*, 21 FCC Rcd at 12123, app. A. The current DTV Table, which is contained in 47 C.F.R. § 73.622(b), will become obsolete at the end of all authorized interim 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.

¹⁶ 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).

¹⁷ Previously, 47 U.S.C. § 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline if the Commission determined that less than 85 percent of the television households in a licensee's market were capable of receiving the signals of DTV broadcast stations through various means (*i.e.*, via over-the-air reception, cable or satellite, or digital-to-analog conversion technology). 47 U.S.C. § 309(j)(14)(B)(iii) (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.

¹⁸ See 47 U.S.C. § 337(e)(1).

¹⁹ *Id.*

monitoring the physical build-out of DTV broadcast stations, and helping to educate consumers about the transition. At the end of the transition, television broadcast operations will be limited to the core TV spectrum,²⁰ enabling the recovery of a total of 108 MHz of spectrum (*i.e.*, TV channels 52-69).²¹ Twenty-four megahertz of spectrum currently used for TV broadcast channels 63, 64, 68, and 69 have been reallocated for critically important public safety needs. The remaining 84 MHz (currently TV broadcast channels 52-62 and 65-67) have been or will be auctioned for new wireless services.²²

A. Status of DTV Operations

8. In 1997, the Commission granted eligible licensees a paired channel for digital operations during the transition and set dates for construction and operation of broadcasters' facilities on their allotted DTV channels.²³ Pursuant to the construction schedule set forth in Section 73.624(d) of the Commission's rules, affiliates of the top four networks in the top ten television markets were required to complete construction of their DTV facilities by May 1, 1999; top four network affiliates in markets 11-30 by November 1, 1999; all remaining commercial television stations by May 1, 2002; and all noncommercial educational ("NCE") television stations by May 1, 2003.²⁴

9. As of April 2, 2007, 1,702 television stations in all markets (representing approximately 98.8 percent of all stations) have been granted a DTV construction permit ("CP") or license.²⁵ A total of 1,603 stations are now broadcasting a digital signal. Of these, 1,215 stations are authorized with licensed facilities or program test authority and 388 stations are operating pursuant to special temporary authority ("STA") or experimental DTV authority.

10. In the top 30 television markets, all 119 top-four network-affiliated television stations are on the air in digital, 110 with licensed DTV facilities or program test authority and nine with 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 top-four 79

²⁰ The "core spectrum" is comprised of low-VHF channels 2 to 4 (54-72 MHz) and 5 to 6 (76-88 MHz), 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).

²¹ *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.").

²² Channels 60-69 (746-806 MHz) were reallocated for public safety and wireless communications services in 1998. *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). Channels 52-59 were reallocated for new wireless services in 2001. *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*"). *See also* 47 U.S.C. §§ 309(j)(14)(B), (15)(C) and 337(e)(1).

²³ *See supra* note 9.

²⁴ 47 C.F.R. § 73.624(d)(1).

²⁵ This data is publicly available and is frequently updated. *See* <http://www.fcc.gov/mb/video/dtvstatus.html>.

network affiliated stations are providing DTV service, 74 with licensed DTV facilities and five with STAs.

11. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of April 2, 2007, 1,136 of these stations (92.4 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 April 2, 2007, 348 (93.3 percent) of these stations are broadcasting a digital signal.²⁶

B. Status of Consumer Capability to Receive DTV Signals

12. In connection with the 2006 Competition Report, the Commission requested information about the number of households relying solely on over-the-air broadcast television for programming.²⁷ In comments filed to that proceeding, the National Association of Broadcasters (“NAB”) indicated that there are approximately 69 million television sets are not connected to any MVPD service.²⁸ Specifically, NAB reported that nearly 19.6 million households rely solely on over-the-air broadcast television, and there are approximately 45.5 million sets in those homes.²⁹ NAB states that “in these 19.6 million over-the-air households, there are approximately 1.3 million over-the-air digital sets.” Thus, according to NAB, “[t]here are roughly 18.7 million over-the-air households with only analog sets, and these households have about 44.2 million analog sets.” NAB reports that an additional 23.5 million television sets in 14.7 million MVPD households remain unconnected to the MVPD service. NAB states that this 2006 data showing large numbers of over-the-air television sets is consistent with two surveys conducted in 2005.³⁰

13. 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 1998.³¹ 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,

²⁶ 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).

²⁷ *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 06-189, Notice of Inquiry, 21 FCC Rcd 12229, 12308 ¶ 57 (2006). The Commission also sought information about the number of cable and satellite households that rely on over-the-air service on one or more of their television sets not connected to a multichannel video programming distributor (“MVPD”). *Id.*

²⁸ *Id.*

²⁹ See NAB comments in MB Docket No. 06-189 at 2 (citing Knowledge Networks/Statistical Research, Inc., Home Technology Monitor Ownership Survey (Spring 2006); Nielsen Media Research, Television Household Estimates (2005-2006)).

³⁰ *Id.*

³¹ See *Ex Parte* comments of CEA in MB Docket No. 03-15 (dated April 2, 2007)(“CEA Ex Parte”).

33.4 million in 2008, 35.2 million in 2009 and 36.4 million in 2010.³² CEA estimates that DTV sales will represent 69 percent of all TV sales in 2006.³³

14. In order 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 requires, as of March 1, 2007, that all television receiver equipment (*e.g.*, TV sets (all sizes), VCRs, digital video recorders, and any other TV receiving devices) manufactured or 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.³⁴

15. In addition, 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.³⁵ 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. Without a D-to-A converter box, consumers will not be able to view full-power TV broadcasts after the transition date unless they purchase DTV sets (television sets with a built-in digital tuner) or subscribe to a pay television service. Congress directed the National Telecommunications and Information Administration (“NTIA”) of the U.S. Department of Commerce to administer this subsidy

³² *Id.*

³³ *Id.* CEA projects that DTV sales will represent 92 percent of all TV sales in 2007.

³⁴ 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*”).

³⁵ 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).

program.³⁶ In March 2007, NTIA issued final rules to implement the program, which subsidizes the purchase of D-to-A converter boxes.³⁷

C. Status of Broadcasters' Transition

16. Stations are responsible for meeting the statutory deadline for the DTV transition. The Commission has no discretion to waive or change this transition date.³⁸ 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 and risk losing their authorizations to operate after the transition date.³⁹

17. We have proposed post-transition channel assignments for all eligible stations.⁴⁰ In the proposed new DTV Table, 1,812 stations received proposed post-transition DTV channels.⁴¹ 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.

18. The process of transitioning the entire TV broadcast industry to digital-only operation on each station's final channels will be complex. Accordingly, stations already should be planning 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. We have provided a list of

³⁶ 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.

³⁷ See generally *NTIA Coupon Program Final Rule*, *supra* note 35. NTIA established rules for the coupon program in 47 C.F.R. § 301. The rules became effective April 16, 2007.

³⁸ See 47 U.S.C. §§ 309(j)(14) and 337(e)(1).

³⁹ A station failing to meet its construction deadline may be subject to license revocation procedures (47 U.S.C. § 312), the issuance of forfeitures (47 U.S.C. § 503), or other remedial measures, such as admonishment. For example, we 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." 47 U.S.C. § 312(g). If discontinuing operations, stations 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).

⁴⁰ 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 12117-18 ¶ 50.

⁴¹ 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," DA 07-20 (MB rel. Jan. 8, 2007) ("New Permittees PN"). Additional new permittees may also be announced before the transition deadline. See *Seventh FNPRM*, 21 FCC Rcd at 12118 ¶ 53.

752 stations in Appendix D hereto that we believe fall into this category and seek input from those stations regarding our assessment.⁴²

19. Most 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, and if so to what extent, they must change their transmission facilities to operate on their post-transition channels. As described below, stations may seek to change their antenna or tower locations.⁴³ Stations may also need to change their effective radiated power (ERP), antenna height above average terrain (HAAT) or antenna pattern as set forth in the new DTV Table Appendix B, as adopted.

20. Before discussing the issues that must be addressed to complete the transition, we first categorize the circumstances that stations are in to describe what stations in each group must accomplish. First, there are stations that will remain on their current DTV in-core channel. Second, there are stations that will return to their analog in-core channel. Third, there are stations that will move to a completely new in-core channel. In addition to these three general categories, stations without a paired channel ("singleton stations")⁴⁴ that will flash cut⁴⁵ from broadcasting on their analog channel to broadcasting on a digital channel raise unique issues that we will consider separately. We seek comment on these categories and circumstances in general and on the particular tentative conclusions, proposals and queries in the Issue Analysis (section V), below.

1. Category One: Stations remaining on their current DTV in-core channel

21. There are 1,178 stations remaining on their current DTV in-core channel for post-transition operations, based on the proposed new DTV Table.⁴⁶ Most of these stations will have a relatively simple transition because they already have the authorizations necessary to operate at

⁴² See Appendix D, "List of Stations Believed Ready to Commence Post-Transition Operations," to this Notice. Appendix D includes those stations whose post-transition channel is the same as their pre-transition DTV channel and that have constructed their full, authorized DTV facilities as defined in the new DTV Table Appendix B.

⁴³ A station that must change its DTV tower location may face a considerable challenge, especially if the station must construct a new tower. Such a station must consider whether there are any existing towers that can be used or if a new tower must be constructed. Because of the lead times involved in purchasing or leasing land with appropriate FAA clearances, local and state zoning requirements, and varying timelines for designing the new tower, ordering equipment, delivery of equipment, and construction-related issues, such a station must begin planning as soon as possible in order to transition by the deadline. In some cases, building a new tower at this stage in the process may no longer be a viable option.

⁴⁴ As noted *infra* in ¶ 29, "singletons" or "single-channel licensees" refers to those licensees that do not have a second or "paired" channel to convert to DTV. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18300 ¶ 49, n.101 (citing to *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order, 13 FCC Rcd 6860, 6865 ¶ 11 (1998) ("*Service Reconsideration Order*").

⁴⁵ "Flash-cut" refers to the situation where a station gives up its pre-transition digital channel and transitions to digital service using its analog channel or a newly allotted channel. See *infra* discussion of flash cutting in section V.B.

⁴⁶ See *supra* ¶ 17.

their proposed post-transition facilities as specified in the proposed new DTV Table Appendix B. In fact, many of these stations have already constructed and received licenses for their post-transition facilities,⁴⁷ and so will simply turn off their analog service to complete their transition.

22. Some stations in this category, however, may not have completed their authorized construction. This would include a station that has not built anything and has a CP or extension of its “checklist” deadline⁴⁸ and a station that has constructed a reduced facility and is operating pursuant to Special Temporary Authority (“STA”). In addition to turning off their analog service, these stations may need to make changes to match their post-transition facilities as specified in the new DTV Table Appendix B. The difficulty faced by these stations will depend on the type of change and degree of change required to complete their authorized construction.⁴⁹

23. Furthermore, some of these stations may have pending applications with unresolved international coordination issues. Licensees in this category with pending applications should consult with the Commission staff about the timing for action on their applications. In addition, they should coordinate with Commission staff regarding necessary modifications to their applications that will result in international approval. They may need to proceed with constructing authorized facilities to the extent approved by Canada or Mexico if the issues delaying action on their applications cannot be resolved in time to allow construction to be completed before the end of the transition.⁵⁰

2. Category Two: Stations returning to their analog in-core channel

24. There are 517 stations that will return to their current analog in-core channel for post-transition operations, based on the proposed new DTV Table.⁵¹ Stations in category two may face each of the category one challenges involving tower construction, antenna replacement or relocation, and transmitter replacement or power adjustments.

⁴⁷ See Appendix D.

⁴⁸ See *infra* ¶ 56 (explaining the deadline established for building “checklist” facilities).

⁴⁹ For example, stations in this category may need to adjust their transmitter power, their antenna design, their antenna location, or some combination thereof. We expect that relatively minor adjustments to operating power can be done easily, perhaps through the use of in-house engineers. See Ex Parte Comments of Capitol Broadcasting Company, Inc. in MB Docket No. 03-15 (dated April 27, 2005) (“Capitol Ex Parte”). Changes involving more significant power changes and/or changes to transmitting antennas may require more time and effort. For example, a number of stations currently have a top-mounted analog antenna and a side-mounted digital antenna, and to provide full digital service will need to re-mount the digital antenna to the top of the tower. According to Capitol Broadcasting, it may take a crew approximately two to three weeks to complete the installation once the necessary hardware and crew are on site, assuming the same tower site and good weather. See *id.* See *infra* discussion in section V.C.3. Also, if an entirely new transmission line and/or antenna must be installed, additional time will be needed to order the transmission line and antenna and have it delivered to the site. According to Capitol Broadcasting, it may take up to six months to design, order, receive and install a new antenna. See *id.* Other stations may need to install a new DTV transmitter. Harris Corporation expects that a large number of new digital transmitters will need to be ordered, manufactured, and installed. See Ex Parte Comments of Harris Corporation in MB Docket No. 03-15 (dated April 3, 2007) (“Harris Ex Parte”).

⁵⁰ These stations may be required to adjust their transmitter power, their antenna location, their antenna design, or some combination thereof.

⁵¹ See *supra* ¶ 17. This group of stations includes some analog singletons and flash-cutters.

25. In addition, these stations may need to determine whether they can use any of their analog or digital transmission equipment (*e.g.*, transmitter, transmission line or waveguide, and antenna).⁵² If a station finds it has a transmitter that it could use, it will also need to determine whether that transmitter can provide the appropriate power level. It is our understanding that a station that is going to stay within a spectrum band (low-VHF, high-VHF or UHF) and change its frequency within 5 or 6 channels (36 MHz or less) will most likely require fewer technical changes than if the change of broadcast frequency is more than 6 channels.⁵³ We expect that channel moves of fewer than 5 or 6 channels may require only minor modifications to the station's digital transmitter, whereas more significant changes may require major modifications or an entirely new transmitter.⁵⁴ We seek comment on these assumptions.

26. Stations that will return to their current analog channel also may need to determine whether their current analog or DTV antenna can be used. Generally, the design, condition and channel of operation of their current antennas, as well as the stations' directional antenna characteristics established in the new DTV Table Appendix B, as adopted, must be considered when these stations evaluate the suitability of their antennas for post-transition DTV operation. The ability of these stations to use an existing digital antenna may depend upon how significant the change in channel numbers will be for these stations as they move from their current DTV channel back to their current analog in-core channel. It is our understanding that channel moves of more than 5 or 6 channels will likely require a new antenna and transmission line or new waveguide.⁵⁵ We seek comment on these assumptions.

27. These stations also must consider the impact on their analog TV service, which might be disrupted entirely or limited in reach to a smaller area during periods of work on the tower. For example, a temporary reduction in coverage might be due to reduced power analog TV operation at a backup site in order to facilitate construction on the main tower facility.⁵⁶

3. Category Three: Stations moving to a completely new in-core channel

28. There are 117 stations that will move to a completely new in-core channel for post-transition operations, based on the proposed new DTV Table.⁵⁷ These stations face similar

⁵² According to Harris Corporation, it may take 1 to 4 weeks for a station to assess whether its analog transmitter is digital capable or if its digital transmitter can be retuned. If a new transmitter is needed, Harris estimates it may take 3-4 months to obtain. If a new channel mask filter also is needed, Harris estimates it may take 6 months to obtain. *See Harris Ex Parte.*

⁵³ *See id.*; Capitol Ex Parte.

⁵⁴ According to Capitol Broadcasting, if only minor parts are required, the parts may be available on a vendor's shelf. If major components are required, it may take up to two months to receive. The modifications may take four to five days once the parts are at the transmitter site. *See Capitol Ex Parte.*

⁵⁵ According to Capitol Broadcasting, it could take up to eight months to receive the new antenna and transmitter, if ordered today, depending upon demand. *See Capitol Ex Parte.* Waiting until closer to the end of the transition, when there is more likely to be even greater demand for such equipment, could result in even greater delays. According to Capitol Broadcasting, it generally will take approximately two weeks to take the old antenna down and can take up to two months to put the new antenna and waveguide up. *See id.*

⁵⁶ *See id.*

⁵⁷ *See supra* ¶ 17.

challenges to those returning to their analog (in-core) channel. In addition, these stations will need to coordinate with other stations to complete their move. For example, another station may occupy the relocating station's post-transition channel or it may occupy an adjacent channel (located in the same or a nearby area) to the relocating station's post-transition channel. Also, these stations may find that their tower site cannot support three antennas at once, as may be necessary to accommodate their current analog and DTV operations while preparing for broadcasting on their post-transition channel.

4. Singleton stations

29. There are 137 stations that do not have a paired channel (*i.e.*, stations that do not have both an analog and a digital channel), based on the proposed new DTV Table. These stations are commonly referred to as "singletons." These stations fit in one of the preceding three categories, but they may encounter different challenges and circumstances that deserve special consideration in this review. Specifically, for this discussion, "singletons" include (1) those stations described in footnote 101 of the *Second DTV Periodic Report and Order* as licensees that did not receive a second or "paired" channel to use during the transition to DTV;⁵⁸ (2) those stations that had a paired DTV channel and that we authorized to discontinue providing analog TV service;⁵⁹ (3) those paired-channel stations that gave up their interim DTV channel pursuant to "flash cut" approval;⁶⁰ and (4) those paired-channel stations that we propose to allow to "flash cut."⁶¹ Singletons include DTV and analog TV stations, and can be unbuilt, operating at reduced facilities, or fully constructed and licensed. Analog TV singletons will be flash cutting from broadcasting on their analog channel to broadcasting on a digital channel. Flash-cutting often will involve singletons ending their analog TV operation and beginning their DTV operation on their current analog channel, but in some cases will require that a station change to a new channel for post-transition operation. Singleton stations, like those with paired channels, are responsible to ensure that they have completed the construction of their digital facilities by the February 17, 2009 deadline, except for stations whose initial CPs expire later.⁶² After February 17, 2009, stations that have not constructed analog facilities may only construct digital facilities on their post-transition channel.

⁵⁸ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18300 ¶ 49, n.101. As explained in this footnote, TV station permittees whose applications for a new station were not granted on or before April 3, 1997 were not eligible for an initial DTV paired license. In 1998, the Commission decided that such single-channel stations could build their authorized analog TV station and later convert to DTV on their single channel (but must convert by the end of the transition) or modify their authorization to DTV and build their new DTV station on their single channel. See *Service Reconsideration Order*, 13 FCC Rcd at 6865 ¶ 11.

⁵⁹ As noted in section V.A., *infra*, we have permitted these stations to turn in their analog channel and be digital-only.

⁶⁰ See Public Notice, "DTV Transition – Approval of 'Flash-Cut' Requests," DA 07-1847 (MB rel. April 25, 2007) ("*Flash Cut PN*").

⁶¹ See *infra* section V.B.

⁶² Single-channel stations receive a CP with a three-year construction period. 47 C.F.R. § 73.3598(a). Thus, new stations whose CPs were granted after February 2006 will have construction deadlines later than February 17, 2009.

30. Singleton licensees and permittees should have a post-transition channel in the proposed new DTV Table and proposed facilities specified in the proposed new DTV Table Appendix B, provided such permittee status is announced by Public Notice before the order establishing the new DTV Table is adopted.⁶³ DTV singletons remaining on their current DTV channel for post-transition operations face the same challenges identified in category one above. These stations must complete authorized construction consistent with the new DTV Table Appendix B, as adopted. Stations that have done so and are operating and licensed need not take any further steps at this time. DTV singletons that have not completed construction must do so as discussed below.⁶⁴ A few DTV singletons are moving to different channels in the new DTV Table, including some currently authorized for out-of-core operations. In addition to the potential challenges described for paired stations going to a new channel for post-transition operation (category three in the preceding section), unbuilt DTV singletons must complete their required construction by their CP expiration date, whether that date is before or after the transition deadline.

31. Analog singletons that will remain on their currently authorized channel for post-transition operations face the same challenges identified in category two above. Unbuilt analog singletons must also meet their CP expiration date requirements. Depending on the time left for them to complete construction, most of these stations should consider requesting that the Commission modify their authorization to specify DTV operation, particularly stations that have recently received CP grants.⁶⁵ Stations in this situation that choose to construct their authorized analog broadcast facility for operation until February 17, 2009 should plan for its conversion to DTV when they purchase their transmitter and antenna system.

32. Analog singletons moving to a new channel for post-transition operations face the same issues identified in category three above. Some also have a CP for their analog channel that expires either before or after the transition deadline. Stations that have an analog CP expiring before the transition deadline should consider applying for a modification of their analog CP to make it easier to complete the required analog channel construction while also building their post-transition facility. They also should take steps to efficiently complete this simultaneous dual-channel construction of both their pre-transition analog and post-transition facilities (for example, having a tower crew install both antennas at the same time or ordering an antenna or transmitter that can be readily converted from analog operation to DTV operation). They may also want to explore the possibility of requesting that their single-channel analog authorization be modified to specify pre-transition DTV operation on their post-transition channel. Such a modification would require interference protection to be provided to all potentially affected stations and construction to be completed before the station's CP expires. Stations whose analog CP will expire after the transition deadline should consider applying for a modification of their analog CP to specify the post-transition facilities that they will need to

⁶³ See *Seventh FNPRM*, 21 FCC Rcd at 12117-18 ¶¶ 50-53, 12123, app.A, 12147, app.B.

⁶⁴ See *infra* section V.C.

⁶⁵ See, e.g., *New Permittees PN*, *supra* note 41. Stations that receive a new CP and that will remain on this channel for post-transition operations may either construct their analog facilities (for use until the end of the transition) or apply to the Commission for permission to construct a digital facility on their analog channel for post-transition operations. *Seventh FNPRM*, 21 FCC Rcd at 12118-19 ¶ 54.

complete before their CP expires. As noted above, February 17, 2009 is the deadline for all full-power television broadcast stations to end analog transmissions.

V. ISSUE ANALYSIS

33. In this Third DTV Periodic Review, we consider how to ensure that full-power TV broadcast stations complete their transition to digital-only operations by the statutory deadline. Specifically, we consider when stations may and must cease operating on their analog channel, when stations may and must begin operating on their post-transition channel, and what regulatory flexibility we can provide to facilitate these efforts. By statute, stations must cease analog operations by 11:59 p.m. on February 17, 2009. Stations, thus, should have their digital facilities in place and ready to commence operations no later than 12:00 a.m. on February 18, 2009.

34. We seek comment on what actions the Commission should take to facilitate broadcasters' completion of the transition by the statutory deadline. We seek comment on how to ensure that broadcasters (1) complete construction of their post-transition facilities in a timely and efficient manner; and (2) have in place (in-core) facilities that can reach their viewers. In view of the statutory change from a soft to a hard transition deadline, the Commission's focus has moved beyond simply ensuring that stations are operating in digital. Our focus is now on overseeing broadcasters' construction of their final, post-transition channel with facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog.

35. We begin by proposing that every full-power television broadcast station file a form with the Commission 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 switch-over deadline; and (3) a plan for how it intends to meet that deadline. These filings will be posted on the Commission's website. We believe that these forms will assist the Commission, industry, and the public in assessing progress and making plans for the digital switchover date.

36. We also consider when stations may reduce their current (pre-transition) television service in order to complete their transition. Next, we consider the deadlines by which stations must construct and operate their current DTV channels or lose interference protection – or even authority to operate – on those channels. Third, we propose deadlines for the construction and operation of post-transition facilities and consider the ability of stations to transition early. We also consider the steps necessary for broadcasters to construct and operate their post-transition channels. Issues raised in this section include the rules, procedures and interference standards for stations to file applications for CPs to build their post-transition DTV facilities and to request authorization to maximize their facilities. Finally, we address other issues related to the DTV transition.⁶⁶

⁶⁶ While we recognize 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, these housekeeping matters will be addressed in a separate rulemaking in the DTV proceeding, MB Docket No. 87-268. We, nonetheless, seek comment on whether resolution of any housekeeping issues requires more immediate attention.

A. Reduction and Termination of Analog Service

37. In this section, we consider the reduction and termination of stations' analog TV service. Until February 17, 2009, the Commission's rules require stations to continue operating their existing licensed analog facilities.⁶⁷ To best achieve their respective transitions, however, some stations may find it desirable to reduce or terminate their analog operations before the February 17, 2009 transition date. In some cases, stations may need to reduce or end their analog service because such operations may impede construction and operation of post-transition (digital) facilities. Such circumstances may include, but are not limited to: (1) stations that would like to switch their side-mounted digital antenna with their top-mounted analog antenna before the end of the transition;⁶⁸ (2) stations that need to add a third antenna to their tower but cannot do so without reducing or ending analog service because the tower cannot support the additional weight; and (3) stations that are terminating analog service early as part of a voluntary band-clearing arrangement. We seek comment on these and other circumstances where stations can facilitate their transitions by reducing or terminating their analog service in advance of the transition deadline.

38. Background. The Commission generally has not favored reductions in television service. Proposals that would result in a loss in TV 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.⁶⁹ Consistent with this precedent, the Commission allows stations to reduce their service from that required by their licenses only upon an appropriate public interest showing.⁷⁰ Losses in service may be justified, for example, to facilitate the station's transition to DTV.⁷¹ The Commission is generally most concerned where there is a loss

⁶⁷ 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)..

⁶⁸ *See infra* discussion in section V.C.3.

⁶⁹ *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).

⁷⁰ *See, e.g., KTVO-TV, Inc.*, 96 FCC 2d 472 (1983) (upholding initial decision that found loss of TV service was outweighed by the provision of a new first service and additional service gains).

⁷¹ 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 In Re 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).

of an area's only network or NCE TV service,⁷² or where the loss results in an area becoming less than well served, *i.e.*, served by fewer than five full-power over-the-air signals.⁷³ In cases in which a station seeks to reduce analog TV service, it can also use an engineering analysis performed in accordance with the Office of Engineering and Technology's OET Bulletin No. 69 ("OET 69") methodology⁷⁴ to show that the area where service would be reduced is area that is already terrain shielded such that viewers located in that area do not actually receive the station's signal over-the-air now.

39. Notwithstanding the strong public interest in maintaining TV service, the Commission does permit the early return of out-of-core (TV channels 52-69) analog channels under certain circumstances in order to facilitate the DTV transition. 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.⁷⁵ Generally speaking, these policies provide that the Commission will approve voluntary agreements between incumbent broadcasters and new licensees to clear the 700 MHz 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.⁷⁶

40. The Commission's 700 MHz band-clearing policies differ 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. Envisioning the early recovery of TV channels 60-69, the Commission established a "rebuttable presumption" favoring requests for voluntary band-clearing involving channels 59-

⁷² See, e.g., *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Lima, OH; Muncie, IN, Rockford, IL, and Grand Rapids, MI)*, MM Docket No. 87-417, Memorandum Opinion and Order, 7 FCC Rcd 5933 (1992) (denying request to reduce TV service because it would deprive a community of its only currently allotted NCE TV channel).

⁷³ See, e.g., *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Columbus and Monona, WI)*, MB Docket No. 05-122, Memorandum Opinion and Order, 21 FCC Rcd 10012 (MB 2006) (noting that most of the loss area is well served with five or more aural services).

⁷⁴ See *OET Bulletin No. 69*, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," (Feb. 6, 2004) ("OET Bulletin No. 69"), available at www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf.

⁷⁵ See WT Docket No. 99-168 and GN Docket No. 01-74. See also *infra* notes 77 and 78.

⁷⁶ 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. (WNVN, 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.

69.⁷⁷ 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.⁷⁸ In this case-by-case review, the Commission considers whether grant of the request would result in public interest benefits, such as making new or expanded public safety or other wireless services available to consumers, especially in rural or other underserved communities.⁷⁹ The Commission weighs these benefits against any likely public interest harms, such as the loss of any of the four stations with the largest audience share in the designated market area, the loss of the sole service licensed to the local community, the loss of a community's sole service on a channel reserved for NCE TV broadcast service, or a negative effect on the pace of the DTV transition in the market.⁸⁰

41. Discussion. In light of the hard deadline for the cessation of analog TV service, we believe the most significant public interest objective should be to ensure that stations meet the transition deadline. The original statutory provision requiring the termination of analog broadcasts established December 31, 2006 as the last day for analog operations, but allowed that deadline to be postponed if an 85 percent DTV reception benchmark was not reached in a given market.⁸¹ The Commission's goal under this former approach was to increase DTV operations as quickly as possible without causing significant analog service loss.⁸² We believe, however, that Congress' adoption of the hard deadline of February 17, 2009, now weighs in favor of an increasing tolerance for the loss of analog service as we near the switch-over date and where it will facilitate the transition.

42. Stations with Out-of-Core Analog Channels. As noted above, stations that might affect the upper 700 MHz band (*i.e.*, TV channels 59-69) can receive a "rebuttable presumption" favoring their requests to terminate analog service. We believe the disparate band-clearing

⁷⁷ 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*").

⁷⁸ *See Lower 700 MHz Report and Order*, 17 FCC Rcd at 1095-96 ¶ 184.

⁷⁹ *See id.* at n. 549. *See also* cases in *supra* note 76.

⁸⁰ *See Lower 700 MHz Report and Order*, 17 FCC Rcd at 1096 ¶ 184 n.549.

⁸¹ *See* 47 U.S.C. § 309(j)(14)(B) (2005); and *supra* note 17.

⁸² *See Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-19 ¶¶ 72-87.

treatment with respect to stations in the lower 700 MHz band (*i.e.*, TV channels 52-58) is no longer appropriate. 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, 2008.⁸³ Accordingly, we propose to 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 59-69.⁸⁴ Moreover, we propose to apply the relaxed “rebuttable presumption” to out-of-core stations seeking to reduce rather than terminate their analog service. Requests to reduce or terminate analog service would be made in accordance with the Commission’s rules.⁸⁵ We seek comment on our proposed treatment of out-of-core stations seeking to reduce or terminate their analog service.

43. Stations with In-Core Analog Channels. In contrast to out-of-core stations’ return of their analog channels, in-core stations’ requests to reduce and terminate analog service have been less favored to this point. We believe it may now be appropriate to examine the circumstances under which we will allow in-core stations to reduce or discontinue analog TV broadcasting. We seek comment on the factors and circumstances we should consider when evaluating in-core stations’ requests to reduce or terminate their analog TV service before the February 17, 2009 transition date. We invite comment on ways to ensure that stations meet the statutory transition deadline, while still minimizing the loss of TV service to consumers. If we permit early reduction or termination of analog service, how do we ensure that the public continues to have access to news and information, including emergency and other public safety information during the transition?

44. First, with respect to a station requesting to reduce its analog service – short of terminating its analog broadcasting, we seek comment on whether we should establish a presumption that any reduction in a station’s analog TV service is in the public interest if:

- (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;

⁸³ 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).

⁸⁴ In other words, we propose to apply the relaxed “rebuttable presumption” standard to all out-of-core stations seeking to return their analog TV channels. *See supra* ¶ 40 (discussing “rebuttable presumption” standard).

⁸⁵ Stations making requests to reduce analog TV service should do so in accordance with the rules to modify an existing license or authorization by using FCC Form 301 (commercial stations) or FCC Form 340 (NCE stations). *See* 47 C.F.R. §§ 73.1615, 73.1690, 73.3533, 73.3538. Stations making requests to terminate TV service should do so in accordance with the rules to modify an existing license or authorization and to discontinue operations. *See id.* *See also* 47 C.F.R. § 73.1750. Stations discontinuing only one service of their paired license, however, should not return their license or authorization, as would otherwise be required by 47 C.F.R. § 73.1750. In addition, stations making requests to reduce service may, if more applicable, instead apply for an STA pursuant to 47 C.F.R. § 73.1635. Consistent with the rules for license modification and discontinuance of operation, stations terminating their service may send a letter to the Video Division of the Media Bureau and send an e-mail to analog@fcc.gov in lieu of filing an application. *See* 47 C.F.R. §§ 73.1690, 73.1750.

- (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;⁸⁶
- (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.

We seek comment on the usefulness and timing of this proposal, including whether there are other factors or situations where we should presume that a reduction in service would be, or would not be, in the public interest. For example, should we consider the level of cable and satellite penetration in the areas that will lose over-the-air service? We also seek comment on whether and, if so, how these factors should be relaxed as we approach the DTV transition date. As noted above, requests to reduce analog service would be made in accordance with the Commission's rules.⁸⁷

45. If a station is unable to qualify for the above proposed presumption, we propose to consider the station's request to reduce analog TV service (on an in-core channel) on a case-by-case basis. We invite comment on the appropriate showing and balancing of factors to consider in such a case-by-case analysis. As above, we seek comment on whether we should permit an increasing amount of analog TV service loss the closer we get to the end of the transition. What information must stations provide to demonstrate that reduced analog service would be in the public interest? We would expect that our case-by-case analysis would involve consideration of the factors discussed above. For example, we believe that broadcasters must be able to deliver their signals to cable and satellite providers so that reduced analog signals do not prevent cable and satellite carriage. In addition, we believe that broadcasters must also commit to on-air consumer education about the station's transition and how to continue viewing the station. We seek comment on these proposals.

46. Some broadcasters have side-mounted antennas and similar problems that prevent them from completing the build-out of their digital facilities while they are still operating their

⁸⁶ We seek comment on what that number of services would be. For example, the Commission has previously been concerned where the loss results in an area becoming less than well served, *i.e.*, with fewer than five full-power over-the-air signals; *see supra* note 73. In other contexts, such as the satellite context, we note that the Commission has considered whether an area would become "underserved," *i.e.*, an area with two or fewer full-service stations. *Television Satellite Stations Review of Policy and Rules*, MM Docket No. 87-8, Report and Order, 6 FCC Rcd 4212, 4215 ¶ 19 (1991) ("[A] proposed satellite's community of license is considered underserved if there are two or fewer full-service stations already licensed to it."). We propose to allow stations to minimize the loss of service to their service area or population and satisfy this condition through the use of analog translators. As previously noted, the statutory deadline applies only to full-power stations. *See supra* note 3; *see also* 47 U.S.C. §§ 309(j)(14) and 337(e). Stations interested in the temporary use of analog translators should file requests for STA in accordance with 47 C.F.R. § 73.1635.

⁸⁷ *See supra* note 85.

full analog facilities.⁸⁸ Such stations, if they are providing DTV service to 100 percent of their replication area, may want to wait until February 17, 2009 to move their digital antenna into its final position.⁸⁹ This approach may be acceptable provided there is a minimal disruption of service after the deadline due to post-deadline construction activities. We seek comment on this approach and urge each station operating under these circumstances to consider how much of their replicated area is served by their side-mounted digital antenna. It is critically important that analog over-the-air viewers who obtain the necessary digital receivers (whether TV sets or D-to-A converters) are able to receive DTV service over-the-air upon expiration of the deadline for the transition on February 17, 2009. If it is necessary for stations to reduce analog service before the transition to be sure all viewers have digital service on and after the transition date, we will consider such requests.

47. With respect to a station requesting to terminate its analog TV service on an in-core channel, we seek comment on whether and, if so, under what conditions we would permit such an action. We would expect to apply a stricter standard to the early termination of analog in-core service than to a reduction in service. We believe our analysis of requests to terminate analog service would at least involve consideration of the relevant factors discussed above for a reduction of service. We seek comment on this proposal, and also on whether we should require a station requesting termination of analog in-core service to demonstrate that a reduction in service is an unacceptable alternative. As noted above, requests to terminate in-core analog service would be made in accordance with the Commission's rules.⁹⁰

B. Return of Pre-Transition DTV Channel; Flash Cut Requests

48. In this section, we consider whether and, if so, when to allow additional stations to return their pre-transition-only DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) and flash cut at or before the transition deadline from their current analog channel to their post-transition channel. 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.⁹¹ As the Commission noted, the potential public interest benefits of flash cuts 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.⁹² Based on the criteria established in the *Second DTV Periodic Report*

⁸⁸ See, e.g., *DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline*, Order, FCC 07-91 at section III.C. (rel. May 18, 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, FCC 07-90 at section III.C. (rel. May 18, 2007) (“*Use or Lose Order*”). Both orders recognize the unique technical challenges faced by stations with side-mounted antenna-related issues.

⁸⁹ See *infra* discussion in section V.C.3. (addressing stations with special circumstances).

⁹⁰ See *supra* note 86.

⁹¹ The *Second DTV Periodic Report and Order* required the Media Bureau to approve a station's request to surrender its pre-transition DTV channel and election to flash cut in certain circumstances. *Second DTV Periodic Report and Order*, 19 FCC Red at 18321-18323 ¶¶ 95-97, 18325 ¶¶ 102-104.

⁹² *Id.* at 18323 ¶ 96.

and Order, the Media Bureau has approved the flash cut requests of numerous stations.⁹³ In this Third DTV Periodic Review, we consider expanding the range of circumstances in which we will allow stations to flash cut.

49. Background. 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.⁹⁴ 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.⁹⁵

50. 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.⁹⁶ 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,⁹⁷ 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).⁹⁸ In the 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.⁹⁹ The Commission also stated in the *Second DTV Periodic Report and Order* that stations would not be eligible to flash cut if they “have been denied an extension of the construction requirements and admonished because they failed

⁹³ *Flash Cut PN*, *supra* note 60.

⁹⁴ *Second DTV Periodic Report and Order*, 19 FCC Rcd 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.

⁹⁵ *Id.* at 18325 ¶ 104.

⁹⁶ *Id.* at 18322 ¶ 95.

⁹⁷ *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.*

⁹⁸ 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 conclusive nor dispositive and that special circumstances raised by the resulting loss of digital broadcast service could rebut the presumption. *Id.* at 18323 ¶ 96.

⁹⁹ *See id.*

to demonstrate that they are meeting the necessary criteria for an extension and have not come into compliance.”¹⁰⁰

51. The Media Bureau recently approved by Public Notice the flash cut requests of 32 stations based on the criteria established in the *Second DTV Periodic Report and Order*. These stations were approved to turn off or discontinue construction of their pre-transition DTV channel.¹⁰¹ 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*.¹⁰²

52. Discussion. We seek comment on whether and, if so, under what circumstances we should accept new requests by stations to return their pre-transition DTV channel before the end of the transition and “flash cut” from their analog channel to their post-transition channel (which must be different from their pre-transition DTV channel).¹⁰³ For instance, we seek comment on the following factors: (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. We invite comment on these criteria and on other criteria that may be relevant. We encourage commenters to address the public’s desire to continue to receive DTV signals that are currently available and the impact that allowing stations to turn off pre-transition DTV signals would have on the successful and timely completion of the transition. We also seek comment on the impact of this proposal on cable and satellite subscribers. Consistent with the decision in the *Second DTV Periodic Report and Order*, stations that have been admonished by the Commission for failure to meet their construction deadline would not qualify to flash cut.¹⁰⁴

C. Construction Deadline for Full, Authorized DTV Facilities

53. In light of the short amount of time remaining before the transition deadline, it is critical that stations finalize construction of their post-transition facilities expeditiously to ensure the provision of TV broadcast service to the public when analog transmissions cease. In this section, we consider whether to require stations to continue construction of pre-transition channels that are not going to be used by the station after the transition. We also consider the deadline by which we will require TV broadcast stations to complete construction of their post-transition facilities.

54. As discussed below, we are proposing to adopt a different approach for the remainder of the transition with respect to deadlines for construction of DTV facilities and interference protection. Until now, a primary focus of the Commission has been to facilitate the

¹⁰⁰ *Id.* at 18323 ¶ 97.

¹⁰¹ *Flash Cut PN*, *supra* note 60.

¹⁰² *Id.*

¹⁰³ Stations may continue to obtain flash cut approval pursuant to the *Second DTV Periodic Report and Order* and *Flash Cut PN*.

¹⁰⁴ See *Second DTV Periodic Report and Order*, 19 FCC Red at 18321 ¶ 95.

initiation of DTV service to the public during the transition.¹⁰⁵ This approach was designed, in part, to accomplish the goal of completing the transition by the December 31, 2006 “flexible” deadline originally established by Congress, which allowed for exceptions to the deadline.¹⁰⁶ Now that Congress has established a “hard” deadline for completion of the transition, with no exceptions, we believe our emphasis should shift toward ensuring that DTV stations will be providing service on their final, post-transition channels by that date. In general, we now must focus on striking the appropriate balance between the public interest in assuring that post-transition channels are fully constructed by February 17, 2009, and the public interest in pre-transition digital and analog service. These, like other issues raised in this Notice, require careful self-assessment by licensees to determine how best to serve the public while at the same time making efficient use of the resources available (manufacturing capacity, tower crews, etc.) available to them.

55. Previous Construction Deadlines and Use or Lose Policies. As discussed above, the DTV construction schedule adopted by the Commission in 1997, 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, 2003.¹⁰⁷ In 2004, 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.¹⁰⁸ 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 will 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 will remain on their current DTV channel after the transition. If they will move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006.¹⁰⁹ 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.¹¹⁰ In addition, these “use-or-lose” replication/maximization deadlines became the new deadlines for stations operating temporary

¹⁰⁵ See *id.* at 18314-17 ¶¶ 78-80.

¹⁰⁶ See *supra* note 17. Guided by this statutory directive, the Commission established construction deadlines and “use or lose” policies that provided incentives to stations to provide DTV service during the transition, which in turn gave viewers an incentive to purchase equipment that would enable them to view these signals. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18314-15 ¶ 78.

¹⁰⁷ See section IV.A., *supra*. 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).

¹⁰⁸ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319 ¶¶ 72-87.

¹⁰⁹ *Id.* at 18314-18315 ¶ 78.

¹¹⁰ *Id.* at 18317-18318 ¶¶ 85-86.

DTV facilities pursuant to STA to complete construction of their licensed DTV facilities.¹¹¹ Approximately 80 percent of the stations in each of these categories met their respective deadlines.

56. In the *Second DTV Periodic Report and Order*, the Commission noted that certain stations had not yet been granted an initial DTV construction permit. The Commission 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.¹¹²

57. In two separate orders adopted subsequent to the adoption of this Notice, the Commission 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).¹¹³ In the *Construction Deadline Extension Order*, the Commission considered 145 requests for an extension of time to construct a DTV facility.¹¹⁴ 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 an additional six months from the release date of the *Construction Deadline Extension Order* in which to complete construction.¹¹⁵ 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.¹¹⁶ In the *Use or Lose*

¹¹¹ 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.

¹¹² *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 has been coordinated with Canada and Mexico, “checklist” facilities generally do not require further international coordination.

¹¹³ See generally *Construction Deadline Extension Order*, *supra* note 88; and *Use or Lose Order*, *supra* note 88.

¹¹⁴ See *Construction Deadline Extension Order*, *supra* note 88, at ¶ 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.*

¹¹⁵ See *id.* at ¶ 1, and section III.A.

¹¹⁶ See *id.* at ¶ 1, and section III.B. As discussed *infra* in section V.C.3., ¶ 73, the Commission also granted four stations, facing unique technical challenges (*e.g.*, side-mounted antenna-related issues) preventing them from completing construction of their DTV facilities, CP extensions until February 17, 2009. See *id.* at ¶ 1, and section III.C. As discussed *infra* in section V.C.3., ¶ 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 *id.* at ¶ 1, and sections III.D. and III.E.

Order, the Commission considered 192 requests for waiver of the “use or lose” deadlines.¹¹⁷ For 102 stations whose pre-transition DTV channel is the same as the station’s post-transition DTV channel, the Commission granted these stations a waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction.¹¹⁸ 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.¹¹⁹ 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.¹²⁰ We intend to treat similarly any stations that have a construction permit for which the original time to complete construction has not yet have expired. These stations still have time remaining on their original construction permit to complete the build-out of their pre-transition DTV facilities or they may have had their original construction permit extended and the extended deadline has not yet expired. Thus, these stations are not addressed in the *Construction Deadline Extension Order* or *Use-or-Lose Order*. These stations should continue to follow existing rules and procedures (*i.e.*, continue to build their current DTV CP and, if that CP expires before they have completed construction, file a request for extension of the CP). Once final rules are adopted in this proceeding and become effective, stations will be subject to the new rules, including changes to Section 73.624(d).

58. Revised Construction Deadlines and Use or Lose Policy. Going forward, we propose to establish construction deadlines for DTV facilities that vary based on a station’s channel assignments for pre- and post-transition operation and other circumstances affecting the station’s ability to complete final, post-transition facilities.¹²¹ We believe this revised approach will best permit stations to focus their efforts on completing construction of final, post-transition facilities in the time remaining before the end of the transition. In conjunction with this

¹¹⁷ See *Use or Lose Order*, *supra* note 88, at ¶ 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 or Lose Order* was adopted simultaneously with the *Construction Deadline Extension Order*.

¹¹⁸ See *id.* at ¶ 1, and section III.A.

¹¹⁹ See *id.* at ¶ 1, and section III.B. As discussed *infra* in section V.C.3., ¶ 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 *id.* at ¶ 1, and section III.C. As discussed *infra* in section V.C.3., ¶ 78, the Commission denied the “use or lose” waiver requests of seven stations. See *id.* at 1, and section III.D. As discussed *infra* in section V.C.3., ¶ 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), four of which were to stations remaining on their current DTV channel for post-transition use. See *id.* at 1, and section III.E.

¹²⁰ See *Construction Deadline Extension Order*, *supra* note 88, at ¶¶ 2-3; and *Use or Lose Order*, *supra* note 88, at ¶¶ 3-4.

¹²¹ See *infra* sections V.C.1-3.

approach, we propose to tighten the standard by which we evaluate future requests for extension of time to construct a DTV facility.¹²² In addition, with respect to construction deadlines of February 17, 2009 or later, we propose to evaluate all requests for additional time to construct under the “tolling” standard currently applied to analog broadcast TV stations and DTV singleton stations.¹²³

59. In this section, we consider construction deadlines for differently situated stations. First, we consider stations whose post-transition channel is different from their pre-transition DTV channel. These are stations that will be starting over with a new channel for DTV service. Second, we consider stations whose post-transition channel is the same as their pre-transition DTV channel. Unlike the first group, these are stations that have long been assigned the channel that they will use for post-transition operations. Third, we consider stations in other situations, including those facing unique technical challenges. Finally, we consider alternatives that might afford stations with regulatory flexibility. We seek comment on the proposed deadlines and tentative conclusions below, and also seek comment on alternative deadlines for these stations.

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

60. For stations whose pre-transition DTV channel is different from their post-transition channel, we propose not to require further construction of their pre-transition DTV channel and propose to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities. 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 new DTV Table Appendix B, as adopted.¹²⁴ Our proposal is designed to give stations facing the challenges associated with moving to a new DTV channel the maximum possible time to complete their post-transition facilities before analog transmissions must cease. We seek comment on this approach, and on whether an earlier construction date would still be appropriate in some circumstances.

61. With the establishment of the hard deadline, we believe the focus must turn to facilitating stations’ efforts to construct their permanent DTV facilities that will be used to provide service after the transition. Therefore, at this stage in the DTV transition, we propose to allow a station to terminate further construction of its pre-transition DTV channel if this channel is not the station’s post-transition channel. We request comment on this proposal. We believe that requiring stations to build or expand facilities that would only be operated until the end of the transition – *i.e.*, for less than two years – potentially could undermine the larger public interest objective of ensuring a timely transition to digital broadcasting by diverting limited

¹²² See *infra* section V.C.4. (¶¶ 79-84) (proposing a stricter standard to evaluate pre-transition requests for an extension of time to construct DTV facilities). See also proposed rule 47 C.F.R. § 73.624(d)(3) in Appendix A.

¹²³ See *infra* section V.C.4. (¶¶ 85-87) (proposing to use the tolling standard in 47 C.F.R. §73.3598(b) to evaluate requests for additional time to construct DTV facilities with construction deadlines occurring post-transition, *i.e.*, February 17, 2009 and later). See 47 C.F.R. §73.3598(b) (rule for analog CPs and singletons).

¹²⁴ See *infra* discussion of application requirements in section V.D.

resources from what is a far more important goal: the construction of final, post-transition facilities.

62. At the same time, however, we recognize that many stations whose pre-transition DTV channels are not the channels they will operate on post-transition 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. It is not our intent to treat these stations unfairly or reward stations that have been less diligent in providing DTV service during the transition. However, as noted above, it is critical at this juncture to focus on the completion of final DTV facilities. In order to accomplish this goal, we believe we must permit stations to cease investing time and resources in completing facilities that will be used for the remainder of the transition simply in order to retain interference protection on their final, post-transition channels. Instead, we need to ensure that stations are focused on finalizing their post-transition facilities now to ensure service to the public when analog transmissions cease.

63. Accordingly, we propose to change our “use or lose” policy for stations whose pre-transition DTV channel is not their post-transition channel as follows. For such stations that received either an extension of their construction deadline in the *Construction Deadline Extension Order* or a waiver of their use-or-lose deadline in the *Use or Lose Order* (i.e., 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), we propose that these stations will not lose protection to their post-transition channels. We note that many stations that have not built their transitional facilities have faced recognizable impediments to doing so. In addition, most of these 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 they were found to have a valid reason not to have met the applicable deadline. Thus, we do not believe that allowing stations that faced such impediments to retain interference protection on their final, post-transition facility unfairly rewards these stations. We seek comment on this approach. We specifically invite comment on the effect of this proposal on stations moving to a different DTV channel for post-transition operations that have fully complied with their use-or-lose deadlines and construction permit build-out requirements.

64. Under our proposal here, stations with a pre-transition DTV channel that is not the same as their final, post-transition channel have the following options. We request comment on our proposal, discussed below.

65. Pre-Transition DTV Channel Unbuilt or Not in Operation. We propose to permit a station that has not constructed an operational pre-transition DTV facility to elect simply to return its CP for that facility to the Commission and focus its efforts on construction of its post-transition facility. Thus, a station that has either not begun construction of its pre-transition DTV facility or has not begun operating that facility, and will be moving to a different channel at the end of the transition, may return the CP for that facility to the Commission. As stations in this situation are not currently providing digital service to the public, we believe it is appropriate at this stage in the transition to allow these channels to be returned. We request comment on this approach. Stations electing this option would be required to obtain flash cut approval in accordance with the proposals discussed in section V.B., *supra*. Stations electing this approach

would be able to carry over interference protection to their post-transition channel, as noted above.

66. Pre-Transition DTV Channel in Operation. Stations with operational DTV facilities on a pre-transition channel may have several options. Under each of these options, we propose to permit a station to carry over interference protection to its post-transition channel, as noted above.

- First, stations may discontinue further construction on their pre-transition DTV facility and to operate the facility they have constructed at this point during the remainder of the transition while they focus on construction of their permanent DTV facility. We propose to permit these stations to file an application to modify their existing CP to match their pre-transition DTV facility in accordance with the Commission's rules.¹²⁵ The station would then continue operation of the facility for the remainder of the transition without devoting resources to further build-out of that facility.
- Second, stations may be permitted to cease operating their pre-transition DTV facility in certain circumstances. We propose that these stations must obtain flash cut approval in accordance with the proposals discussed in section V.B., *supra*.
- Third, stations may decide they would like to continue construction of their full, authorized DTV facility on their pre-transition channel. While we do not want to deny stations in this third category the opportunity to continue to build pre-transition DTV facilities and to provide service on these facilities for the remainder of the transition, we believe it is appropriate to require that these facilities be completed expeditiously. Accordingly, for stations in this third category, we propose to permit the station to continue to build its pre-transition DTV facility, but will require that construction be completed by the deadline established for them in the *Construction Deadline Extension Order* or in the *Use or Lose Order* (*i.e.*, 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).

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

67. Many stations whose pre-transition DTV channel is the same as their post-transition channel have already made substantial progress toward construction of facilities that will be used to provide service after the transition. Specifically, they have already constructed their full, authorized DTV facilities in accordance with their existing CP or license and the Commission's previous build-out requirements established in the *Second DTV Periodic Report and Order*.¹²⁶ Some of these stations have built DTV facilities that match¹²⁷ those defined in the

¹²⁵ Stations seeking to modify an existing license or authorization should use FCC Form 301 or 340; *see* 47 C.F.R. §§ 73.1615, 73.1690(b), 73.3533, 73.3538.

¹²⁶ *See* list of stations in Appendix D, *infra*.

proposed new DTV Table Appendix B and are, therefore, now ready for post-transition operations. Other stations whose pre-transition DTV channel is the same as their post-transition channel have built their full, authorized DTV facilities in accordance with their existing CP or license but for some reason these facilities do not match those facilities defined in the proposed new DTV Table Appendix B.¹²⁸ These stations will need to file an application for a new CP or an application for modification of CP to change their facilities to match those facilities defined in the new DTV Table Appendix B, as adopted.¹²⁹ We discuss below, in section V.D., the process by which stations must file such applications.

68. Other stations with the same pre- and post-transition DTV channel have not yet constructed their full, authorized DTV facilities. Some of these stations currently have a CP for their full, authorized DTV facility, some are operating reduced facilities pursuant to an STA, and some may not have constructed at all. These stations must complete construction and, in some cases, may have to apply for a new CP or for modification of their CP to receive authorization for facilities that match the facilities defined in the new DTV Table Appendix B, as adopted.

69. It is possible that a station with the same pre- and post-transition channel does not want to complete construction of its full, authorized facilities as described in the new DTV Table Appendix B. These stations must apply to modify their existing CP or license to reflect the facility they intend to construct or have constructed.¹³⁰

70. For stations whose post-transition channel is the same as their pre-transition DTV channel, we propose that the deadline to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order* or *Use or Lose Order* (i.e., six months from the release date of those orders).¹³¹ For these stations, we believe it is appropriate to require that they complete construction of their final DTV facility by this deadline because they have already had a significant period of time in which to build their post-

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¹²⁷ We remind stations of their continuing obligation to notify the Commission concerning changes in their facilities. See, e.g., 47 C.F.R. §§ 1.65, 73.1690, 73.3533, 73.3538. Stations are expected to comply with the rules and may refer to adjustments in their facilities as described in the new DTV Table Appendix B in their comments in this docket. See *Seventh FNPRM*, 21 FCC Rcd at 12110 ¶ 28. To the extent that stations still need to modify their authorization, we propose to require them to file an application, as discussed below in section V.D. In addition, as we propose below, applications that match or closely approximate but do not exceed their new DTV Table Appendix B facilities will be eligible for expedited processing. See section V.D., *infra*.

¹²⁸ Stations may have certified facilities that were authorized by CPs they have not yet constructed, or that they requested in pending applications that have been held up by international coordination issues, or that are based on replication that their current CP or license does not exactly achieve. Stations may also have modified their CP or license since they filed their certification so that their currently authorized coverage no longer provides an exact match to their certified coverage.

¹²⁹ See, e.g., 47 C.F.R. §§ 73.1690 (modifications of facilities), 73.3533 (application for CP or modification of CP), 73.3538 (applications for changes in existing stations).

¹³⁰ Stations seeking to modify an existing license or authorization may use FCC Form 301 or 340; see 47 C.F.R. §§ 73.1615, 73.1690(b), 73.3533, 73.3538. Stations may also apply for an STA pursuant to 47 C.F.R. § 73.1635. Any such applications must be consistent with our proposals in section V.D., *infra*. See also *infra* section V.C.6., ¶ 89 (proposal to permit stations to temporarily build less than full, authorized post-transition facilities).

¹³¹ See *Construction Deadline Extension Order*, *supra* note 88, at ¶ 1, and section III.A.; and *Use or Lose Order*, *supra* note 88, at ¶ 1, and section III.A.

transition facilities and, indeed, should already have these facilities constructed. 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 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 post-transition facilities.

71. We invite comment on this approach. In particular, we invite comment on whether there are stations in this group that must apply for a new or modified CP because their current CP does not match the facilities specified in the proposed new DTV Table Appendix B. Are the changes in the CP such that little, if any, of the equipment necessary for the facility for which they currently have a CP could be used in the facility specified in the new DTV Table Appendix B, as adopted? If we were to give these stations more time to construct, should we do so only where the difference between the facilities specified on the current CP and those defined in the proposed new DTV Table Appendix B is significant? If so, how should we define a “significant” difference in this context?

3. Other Situations

72. In this section, we separately discuss the proposed treatment of stations with side-mounted digital antennas or facing other circumstances whereby the operation of the station’s analog service prevents the completion of the station’s full, authorized post-transition facility as defined in the proposed new DTV Table Appendix B. We also discuss the treatment of stations granted a waiver of the August 4, 2005 “checklist” deadline and stations denied an extension of time to construct a pre-transition DTV facility or a “use or lose” waiver request.

73. Stations Facing Unique Technical Challenges. In the *Construction Deadline Extension Order*, the Commission granted the extension applications of four stations because these stations faced unique technical challenges (*e.g.*, side-mounted antenna-related issues) preventing them from completing construction of their DTV facilities.¹³² 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. These stations were granted an extension until February 17, 2009 to complete construction of their DTV facilities.¹³³ Similarly, in the *Use or Lose Order*, the Commission identified 45 stations that have come close to meeting the applicable replication or maximization requirements but cannot fully satisfy those requirements because of unique technical challenges associated with operation of their analog, as well as construction of their digital, facilities.¹³⁴ Some of the stations in this latter group are stations with top-mounted antenna issues; others include 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

¹³² See *Construction Deadline Extension Order*, *supra* note 88, at ¶ 1, and section III.C.

¹³³ *Id.*

¹³⁴ See *Use or Lose Order*, *supra* note 88, at ¶ 1, and section III.C.

space at their antenna site for both analog and digital equipment. These stations were granted a similar waiver of the “use or lose” deadline.¹³⁵

74. For the 49 stations referenced above that were granted an extension request or “use-or-lose” waiver because they faced unique technical challenges, we propose that the deadline for these stations to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order* or *Use or Lose Order* (i.e., February 17, 2009).¹³⁶ In general, we established pre-transition DTV construction deadlines, and have proposed post-transition construction deadlines herein, based on whether a particular station was going to use its pre-transition DTV channel for post-transition operations.¹³⁷ However, in the *Construction Deadline Extension Order* or *Use or Lose Order*, we did not rely on this distinction because stations with a top-mounted antenna issue face a unique and insurmountable impediment to construction (i.e., they cannot put both an analog and a DTV antenna on top of the same tower). Accordingly, we propose to give all such stations until February 17, 2009 to complete their final, post-transition facilities. We also anticipate that these stations will take advantage of approaches proposed herein in the section concerning reduction in analog service prior to the end of the transition to facilitate construction of final, DTV facilities. We seek comment on this approach.

75. Stations Granted Waivers of the “Checklist” Deadline. In the *Use or Lose Order*, the Commission granted 10 requests for waiver of the August 4, 2005 deadline established for all television stations to construct and operate a “checklist” DTV facility.¹³⁸ For four of these stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these stations a “checklist” waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction and begin operation of their “checklist” facilities. For six of these stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these stations a “checklist” 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 and begin operation of their “checklist” facilities.

76. We propose for these stations an approach dependent upon whether their pre-transition DTV channel is the same as, or different than, their post-transition channel. For the six stations granted “checklist” waivers whose pre-transition DTV channel is different than their post-transition channel, we propose to apply the procedures outlined at section V.C.1., *supra*, for stations that are moving to a different channel post-transition. Thus, for these stations we propose not to require further construction of their pre-transition DTV facility and propose to establish February 17, 2009 as the deadline by which these stations must complete their final,

¹³⁵ *Id.*

¹³⁶ See *Construction Deadline Extension Order*, *supra* note 88, at ¶ 1, and section III.C.; and *Use or Lose Order*, *supra* note 88, at ¶ 1, and section III.C.

¹³⁷ See *supra* sections V.C.1. and V.C.2.

¹³⁸ See *Use or Lose Order*, *supra* note 88, at ¶ 2, and section III.E.

post-transition facilities.¹³⁹ These stations may cease further construction of their pre-transition facility. They may decide to operate the facilities they have constructed on their pre-transition channel for the remainder of the transition and, if so, they should apply to license those facilities and, if they do so, they would not be required to request further extensions of time to construct in order to retain full interference protection to their post-transition DTV channel. Alternatively, these stations could elect to pursue the options outlined in section V.A., *supra*, concerning reduction in analog service prior to the end of the transition. For the four stations granted “checklist” waivers whose pre-transition DTV channel is the same as their post-transition channel, we propose to apply the procedures outlined above at section V.C.2., *supra*, for stations with the same pre- and post-transition channels. Thus, these stations must complete their full, final post-transition facility by the deadline established in the *Use or Lose Order* (*i.e.*, six months from the release date of the *Use or Lose Order*). Any request for extension of time to construct beyond that date will be considered under the stricter extension criteria proposed herein.¹⁴⁰ We invite comment on these proposals.

77. Stations Denied An Extension of Time to Construct. In the *Construction Deadline Extension Order*, the Commission denied the extension applications of five stations, admonishing three of these stations for their continuing failure to timely construct and affording these stations additional time to comply with the DTV construction rule.¹⁴¹ The 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, while the 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 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.¹⁴² For these admonished stations,

¹³⁹ In the *Use or Lose Order*, these stations were granted a waiver of the “checklist” deadline 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. *See id.*

¹⁴⁰ *See infra* section V.C.4.

¹⁴¹ *See Construction Deadline Extension Order*, *supra* note 88, at ¶ 1, and at sections III.D. and III.E. The other two stations that were denied extensions were not admonished nor made subject to remedial measures because they met their DTV construction obligations albeit at a lower power and their extension requests were filed on a contingent basis. These stations shall be permitted to continue to operate their licensed facilities. *See id.* at section III.D.

¹⁴² *See id.* at section III.E. *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*”). The two admonished stations whose pre-transition DTV channel is the same as their post-transition channel were required to submit a report within 30 days of the release date of the Construction Deadline Extension Order outlining the steps they intend to take to complete construction and the approximate date by which they will reach each of these construction milestones. Sixty days after the initial report, these stations were directed to submit a report detailing their progress on meeting their proposed construction milestones and justifying any delays they may have encountered. If, at any time during the relevant period, these stations fail to comply with the reporting requirements or fail to demonstrate that they are taking all reasonable steps to complete construction, or we otherwise find that these stations have acted in bad faith, we will consider the imposition of additional sanctions. The two admonished stations whose pre-transition DTV channel is different from their post-transition channel were not required at this time to comply with the reporting and progress requirements described above for the other two admonished stations, given the (continued...)

we propose that we will not consider any future requests for extension of time to construct pre-transition facilities. We note that the *Construction Deadline Extension Order* admonished these stations and subjected them to remedial measures and noted that the stations could be subject to additional sanctions if they do not comply with the measures and requirements set forth in that Order. In that regard, we propose that for the one station who was admonished and whose pre-transition DTV channel is the same as their final, post-transition channel, if such a station does not complete construction of its DTV facility by the deadline established in the *Construction Deadline Extension Order*, the station would be subject to additional remedial measures, such as but not limited to the loss of its pre-transition channel, the loss of its ability to carry over to its post-transition channel interference protection for the area unserved by its pre-transition facility, and the issuance of forfeitures. For the other two admonished stations, whose pre-transition DTV channel is not the same as their post-transition channel, because these stations have been denied an extension of their construction deadline and have been required to follow remedial procedures, we believe it is appropriate to treat these stations more strictly than stations that have met the current standard and been granted an extension of the construction deadline. However, we believe requiring these two stations to build their pre-transition channel would be inconsistent with the policy advanced throughout this notice to shift our focus to construction of post-transition facilities.¹⁴³ Therefore, we propose that these stations will not be required to construct their pre-transition facilities but will remain admonished and on a remedial program with respect to construction of their post-transition facilities. If these stations fail to meet the construction deadline established for their post-transition facilities, we propose that these previously admonished stations would also be subject to additional remedial measures similar to those applicable to stations whose pre-transition channel is the same as their post-transition channel (e.g., the issuance of forfeitures). We request comment on these proposals. Our proposals here are not intended to conflict with the *Construction Deadline Extension Order* or the remedial measures or possible sanctions mentioned therein, but instead propose additional or alternative consequences for failure to construct by the applicable deadline.

78. Stations Denied a Waiver of the Use or Lose Deadline. In the *Use or Lose Order*, the Commission determined that seven stations were unable to show that good cause existed to allow them additional time to meet their applicable “use or lose” deadline and, thus, were denied their “use or lose” waiver requests.¹⁴⁴ Because these stations failed to meet the applicable replication/maximization requirements, they lost interference protection to the unused portion of the associated coverage area. In addition, these stations lost the ability to “carry over” their interference protection to their unserved DTV service area on their post-transition channel.¹⁴⁵ We remind these stations that, with respect to their pre-transition channel, they must submit an application to modify their DTV construction permit to specify their reduced facilities, as

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Commission’s ongoing consideration of this matter in this Third DTV Periodic Review proceeding. *Construction Deadline Extension Order*, supra note 88, at section III.E.

¹⁴³ See supra section V.C.1.

¹⁴⁴ See *Use or Lose Order*, supra note 88, at ¶ 1, and at section III.D. Three of the seven stations denied “use-or-lose” waiver requests are remaining on their current DTV channel for post-transition use. *Id.*

¹⁴⁵ See *id.*

directed in the *Use or Lose Waiver Order*.¹⁴⁶ Nevertheless, we recognize that the proposals in this Notice deemphasize the requirement that stations construct DTV facilities that will not be used for post-transition operations. Therefore, we seek comment on whether we should reevaluate the loss of interference protection for these stations with respect to their post transition channel.

4. Extension/Waiver of DTV Construction Deadlines

79. In light of the deadline for completion of the digital transition and in view of the changes proposed above to our construction deadline and use or lose policies, we believe it is appropriate at this time to consider the standard that should apply generally for grant of an extension of time to construct DTV facilities pre-transition.¹⁴⁷

80. 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.”¹⁴⁸ 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.”¹⁴⁹ These rules apply to stations granted a paired license for analog and digital operation during the transition. The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests must be referred to the Commission.¹⁵⁰

81. We propose to revise and tighten this standard for extension of DTV construction deadlines to ensure that stations complete their DTV facilities and commence operation.¹⁵¹ The current standard was adopted early in the DTV transition process when stations were first trying

¹⁴⁶ See *id.* The *Use or Lose Order* instructed the three stations denied waivers whose pre-transition DTV channel is the same as their post-transition channel to submit an application to modify their DTV construction permit to specify their reduced facilities within 30 days of the release date of this *Use or Lose Order*. However, the other four stations denied waivers whose pre-transition DTV channel is not the same as their post-transition channel were provided until 30 days after the effective date of the amendments to Section 73.624(d) adopted in the Report and Order in the Third DTV Periodic Review proceeding to submit an application to modify their DTV construction permit to specify their reduced facilities. *Id.*

¹⁴⁷ This new standard will not apply to digital LPTV facilities. See *supra* note 3.

¹⁴⁸ See 47 C.F.R. § 73.624(d)(3).

¹⁴⁹ 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 20610-12 ¶46.

¹⁵⁰ See 47 C.F.R. § 73.624(d)(3)(iii).

¹⁵¹ See proposed rule 47 C.F.R. § 73.624(d)(3) in Appendix A.

to build digital facilities and applies only to stations with a paired license.¹⁵² The standard was revised to include consideration of financial resources at a time when broadcasters were still trying to meet the initial construction deadlines.¹⁵³ At this point in time, however, the initial construction deadlines for DTV facilities passed several years ago and the deadline for completion of the transition is less than two years away. We believe that stations at this stage in the transition must finalize their construction plans and implement them. We tentatively conclude that we should 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.¹⁵⁴ Specifically, we propose to eliminate Section 73.624(d)(3)(ii)(B), 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. At this point in the transition, we believe stations have had ample time to order the equipment required to provide digital service and do not believe it is necessary or appropriate to grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. We also propose to revise Section 73.624(d)(3)(ii)(C), which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources. Specifically, in seeking a DTV extension, we propose 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.¹⁵⁵ Thus, we propose to eliminate the existing four-part test for financial hardship and replace it with a new test. Stations seeking an extension based upon financial considerations 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 also would be required to submit a schedule of when they expect to complete construction. We seek comment on this proposal. In particular, we seek comment on how this proposal should be applied to noncommercial educational stations, whose financial circumstances often differ from those of commercial stations.

82. Again, at this stage in the transition we believe all stations have had considerable time to address financial issues related to completion of their digital facilities and further consideration of such issues in connection with a request for additional time to construct should

¹⁵² See *Fifth Report and Order*, 12 FCC Rcd at 12841-12842 ¶ 77 (1997). The *Fifth Report and Order* added 47 C.F.R. § 73.624.

¹⁵³ See *First DTV Periodic MO&O*, 16 FCC Rcd 20610-20612 ¶¶ 41-46 (2001).

¹⁵⁴ See proposed rule changes in Appendix A.

¹⁵⁵ 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 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.

be limited to a situations like bankruptcy or receivership where a court generally controls the station's finances, or where the station can demonstrate severe financial hardship as discussed above. Thus, going forward, requests for extension of time to construct related to lack of equipment or the cost of meeting the build-out requirements other than where the station is in bankruptcy or receivership or is facing severe financial hardship as discussed above will not generally be granted.

83. However, we will continue to consider going forward 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, such as reasons related to international coordination. 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. In addition, we will continue to consider circumstances related to an act of God or terrorism. A proposed revised rule of Section 73.624(d) is attached in Appendix A. We will revise FCC Form 337, accordingly, and will continue to require that any request for extension of time be filed electronically using the revised form.¹⁵⁶ We propose to apply the revised rule concerning requests for extension of time to build DTV facilities to all requests for extension of construction deadlines occurring prior to February 17, 2009. This revised rule would apply, inter alia, to those stations whose pre-transition DTV channel is the same as their post-transition channel and that were granted extensions or waivers in the *Construction Deadline Extension Order* or the *Use or Lose Order*. We recognize that some stations may request further extensions of time to build and that other stations, whose deadlines have not yet expired, may request extensions of deadlines once their deadlines expire.¹⁵⁷ We tentatively conclude that we will apply the revised rule to any requests that are pending at the time the revised rule becomes effective. We seek comment on these proposals and on this tentative conclusion.¹⁵⁸

84. We note that while we propose to establish a stricter standard for requests for extension of time to construct DTV facilities, we are also proposing, as discussed above, to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. Taken as a whole, we believe these proposed changes will help many stations facing financial challenges to complete construction of DTV

¹⁵⁶ See proposed changes to FCC Form 337 in Appendix B.

¹⁵⁷ See *supra* ¶ 57 (discussing stations whose CPs or extended deadlines have not yet expired).

¹⁵⁸ We note that DTV singleton stations that were not eligible for a paired license for analog TV and DTV operation during the transition are not currently governed by 47 C.F.R. § 73.624(d)(3). These DTV singleton stations are currently subject to the tolling provisions of 47 C.F.R. § 73.3598(b) and we propose that these stations continue to be subject to the provisions of that section. 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 94-149; Report and Order, 13 FCC Rcd 23056, 23091 ¶ 85 (1998) (“*1998 Streamlining Order*”), *aff'd on reconsideration*, Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999) (“*Streamlining MO&O*”).

facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to end analog transmission by February 17, 2009.

85. Post-transition we intend to take a different approach with respect to requests for additional time to construct DTV facilities. While the transition to digital broadcasting was underway, analog broadcasting remained the primary method by which the vast majority of American consumers received over-the-air television. As a result, while it was important to the transition that stations begin transmitting a digital signal, it was not critical to the ability of over-the-air viewers to view broadcast television that they do so. Accordingly, our extension criteria permitted grant of extensions of time to construct DTV facilities based on a number of different criteria. Once the nation moves to an all-digital broadcast service, however, we believe that application of a stricter “tolling” standard for additional time to construct is appropriate. Once DTV is the sole broadcast service, we believe requests for additional time to construct should be treated as we now treat such requests for all analog stations and DTV singletons.¹⁵⁹

86. Specifically, for all requests for additional time to construct DTV facilities for construction deadlines occurring February 17, 2009 or later, we tentatively conclude that we will consider such requests under the tolling standard set forth in Section 73.3598(b) of our rules,¹⁶⁰ 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 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).¹⁶¹ The rule further provides that a permittee must notify the Commission of any event covered under the provision and provide supporting documentation in order to toll the construction deadline.¹⁶² Permittees are also 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 any construction progress and the steps the permittee has taken and proposes to take to resolve any remaining impediments.¹⁶³ Section 73.3598 further provides that 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

¹⁵⁹ See 47 C.F.R. § 73.3598(b).

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² See *id.* § 73.3598(c).

¹⁶³ See *id.* § 73.3598(d).

affirmative cancellation by the Commission.¹⁶⁴ We seek comment on this approach.¹⁶⁵ We also invite comment on whether it is necessary to amend Section 73.3598(a) to specify “DTV” or if the existing reference to “new TV” in this section will be adequate in conjunction with the clarification provided by the Order to be adopted in this proceeding.¹⁶⁶ We also seek comment on whether we should afford small television broadcasters additional time to construct DTV facilities.¹⁶⁷

87. We note that, under the current rules applicable to DTV stations, the Commission has permitted a station to justify an extension request if the Commission has not acted on the station’s modification application.¹⁶⁸ Under the tolling standard we propose to apply to all construction deadlines February 17, 2009 and later, the filing of an application for modification of a construction permit would not be grounds for tolling of the construction deadline. We believe that transitioning DTV stations to the rule applicable to construction of analog TV and all other broadcast stations in this regard is appropriate post-transition. However, we propose that delays due to international coordination would not generally be grounds for tolling of a DTV construction permit with two exceptions. First, the Commission would toll a construction permit for a DTV station where the station could demonstrate that a request for international coordination had been sent to Canada or Mexico on behalf of the station and no response from the country affected had been received. Second, the Commission would toll a DTV construction permit where the station could 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. We seek comment on these proposals and other changes to Section 73.3598.

¹⁶⁴ See *id.* § 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 *Streamlining MO&O*, 14 FCC Red at 17541 ¶ 42 (1999).

¹⁶⁵ We will consider further amendments after the transition is completed to eliminate rules that were adopted only for the construction of DTV stations during the transition. As part of that effort, we may eliminate 47 C.F.R. § 73.634(d)(3) and instead rely, as proposed herein, on 47 C.F.R. § 73.3598(b) for all construction, as we do today for the broadcast services. We also note that these proposals are for the full-power stations subject to the February 17, 2009 deadline. The rules pertaining to low power, translator and Class A stations will be the subject of another proceeding. See *supra* note 3.

¹⁶⁶ See 47 C.F.R. § 73.3598(a) (referencing original construction permits “for the construction of a new TV, AM, FM or International Broadcast; low power TV; TV translator; TV booster; FM translator; or FM booster station, ...”). As noted above, we also intend to initiate a proceeding to consider general rule revisions consistent with the eventual elimination of analog television broadcasting. See *supra* note 66.

¹⁶⁷ The Small Business Administration defines a television broadcast station as a small business if such station has no more than \$13.5 million in annual receipts; 13 C.F.R. § 121.201, NAICS Code 515120. See Appendix C, Initial Regulatory Flexibility Analysis (“IRFA”). We note that small TV stations, as well as larger stations, must terminate analog broadcasting by February 17, 2009, and, therefore, should have their digital facility completed by that date.

¹⁶⁸ See 47 C.F.R. § 73.624(d)(3).

5. Early Transition

88. Some stations that are moving to new post-transition channels (*i.e.*, not operating on either of their pre-transition channels) may want to begin operating on those new channels before the transition date. We seek comment from stations in this category on whether they believe they permissibly could operate on their post-transition channel before the February 17, 2009 deadline for terminating analog transmissions. We also invite comment on the potential benefits of early transition and the impediments that may exist. We believe that early transition could advance the transition if it provided improved DTV service and freed transition resources for those stations building later. Under what circumstances will stations be able to transition early without causing impermissible interference to another station (analog or digital)? We seek comment on whether there are any incentives we can or should provide to stations to operate on their post-transition channel early. We propose to allow early transition, provided such operations would not cause impermissible interference to another station. Consistent with our transitional interference protection policies, we propose that early transitioning stations must not cause more than 2.0 percent interference to any authorized analog-only TV station.¹⁶⁹ Stations interested in transitioning early should indicate their intent to do so in their CP or modification applications for post-transition facilities.¹⁷⁰ Because we tentatively conclude that stations cannot expand beyond their facilities defined in the new DTV Table Appendix B,¹⁷¹ as adopted, we believe early transitioning stations cannot cause additional interference to post-transition operations. We also propose to permit such stations to commence early post-transition operations that may be less than their full, authorized facilities, provided impermissible interference is not caused to another station (analog or digital). Broadcasters seeking to commence early post-transition operations would need to indicate whether doing so will result in a loss of their own analog or digital service and, if so, how they plan to address that loss in service. As discussed above in the analog service loss context, we seek comment on whether (and if so to what extent) a loss of service should be acceptable if it would help facilitate the transition.¹⁷² We seek comment on these proposals.

6. Additional Proposals to Provide Regulatory Relief

89. Alternative Buildout. We seek comment on whether to permit stations to request an STA to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Could such a proposal facilitate the transition without undermining viewers' over-the-air reception expectations after the transition date? We would apply the new construction deadlines and standard adopted in this proceeding for additional time to construct to the construction of such intermediate facilities that would meet the service requirement.¹⁷³ If we

¹⁶⁹ See *infra* discussion about pre-transitional interference standards in section V.F.2.

¹⁷⁰ We are proposing to revise FCC Forms 301 and 340 to allow stations to simultaneously apply for both pre- and post-transition facilities. See proposed form changes in Appendix B.

¹⁷¹ See *infra* discussion in section V.E.

¹⁷² See *supra* discussion in section V.A.

¹⁷³ See *supra* discussion in section V.C.4.

adopt such a proposal, when must these stations construct their full, authorized post-transition facilities? If we do not afford such relief generally, should we afford such relief to small television broadcasters because of unique challenges they may face in completing their transition?

90. Temporary Use of In-core Pre-Transition DTV Channels. We believe 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. We propose to afford these stations with this opportunity if doing so would facilitate their transition. We propose to allow these stations to choose to temporarily remain on their pre-transition DTV channel if:

- (1) they serve at least the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service;¹⁷⁴ and
- (2) they do not cause impermissible interference to other stations or prevent other stations from making their transition. We tentatively conclude that the 0.5 percent interference standard proposed for post-transition operations in section V.F.1., below, would apply because such operations would occur after the transition deadline.

We seek comment on this proposal. We propose for stations to make such requests in accordance with the rules for STA.¹⁷⁵ We believe affording such regulatory flexibility to these stations will facilitate the transition. We seek comment on this proposal, including its usefulness to stations and on whether it is consistent with the statutory transition deadline.¹⁷⁶ Can a station readily determine whether its continued operation after February 17, 2009 on its pre-transition DTV channel would interfere with another station's transition or operation? If we adopt this proposal, how long should we allow stations to remain on their in-core pre-transition channel and when must these stations construct their full, authorized post-transition facilities?¹⁷⁷ What effect would this proposal have on the operation of DTV receiver equipment, including D-to-A converter boxes?¹⁷⁸ Finally, we seek comment on the implications of our proposal with respect to the adoption of the new DTV Table.

¹⁷⁴ 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.

¹⁷⁵ See 47 C.F.R. § 73.1635.

¹⁷⁶ We note that out-of-core DTV stations are prohibited by statute from remaining on their original allotted DTV channel after the transition deadline. Therefore, this flexibility would not apply to DTV stations operating out-of-core.

¹⁷⁷ Whatever post-transition construction deadline is established for these stations, we propose to apply the new tolling standard adopted in this proceeding. See *supra* discussion in section V.C.4.

¹⁷⁸ It is our understanding that whenever a station changes channels, an over-the-air viewer using a D-to-A converter box (or DTV tuner-equipped set) will have to manually rescan for available channels in order to receive that channel.

91. Channel Priority. 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 11 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 ensure that all stations will be able to provide digital service on their post-transition channels at the transition date. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009, unless they have applied for and been granted authority to remain on a pre-transition channel. We seek comment on whether and, if so, what steps the Commission should take to ensure a smooth transition in these circumstances.

D. Applications to Construct or Modify DTV Facilities

92. Stations that need to request authority to construct or modify their post-transition facilities must file CP or modification applications (*i.e.*, FCC Form 301 or 340).¹⁷⁹ 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.¹⁸⁰ Stations that have a license to operate or a CP to construct the facilities they want to retain for post-transition use should file applications if their licensed facilities or CP do not match the proposed new DTV Table Appendix B unless they have previously filed comments to amend the Table or Appendix B in

¹⁷⁹ See 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538. The 634 stations that need to construct their post-transition facilities because they will not be using their currently authorized DTV channel for post-transition operations are expected to file after the DTV Table is adopted. Any of the 1,178 stations that will use their currently authorized DTV channel for post-transition operations but need to change their facilities because they do not have an authorization for their intended operations should also file an application. For example, a station that intends to operate its post-transition facility pursuant an existing STA operation must file an application to modify its CP. 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 better reach their new DTV Table Appendix B coverage if such was based on a certification that differs from their current license or CP (for example, more than 200 stations staying on their pre-transition DTV channel certified to replication facilities and their currently authorized licenses or CPs are unlikely to exactly match the new DTV Table Appendix B facilities that are derived from the replication coverage). Stations that already have a license to operate or a CP to construct their post-transition channel that matches their new DTV Table Appendix B facilities do not need to file any additional CP applications. This group includes those stations discussed in ¶ 17 that will use their currently authorized DTV channel for post-transition operations and that will use facilities that exactly match those defined in the new DTV Table Appendix B. These stations are building their post-transition facilities on the CPs granted for pre-transition operation. Once they have completed construction, they should file for a license to cover (FCC Form 302) as required by 47 C.F.R. § 73.3536; *see also infra* ¶ 96.

¹⁸⁰ 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. 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"). See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

the *Seventh FNPRM*, MB Docket No. 87-268.¹⁸¹ Appendix D lists the stations that are ready for post-transition operations and do not need to apply for a CP or modification based on current records. We invite comment on this list and whether there are stations that should be added or deleted.

93. Filing Requirements. Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification¹⁸² and submit the appropriate fee.¹⁸³ NCE stations must file FCC Form 340. We propose that stations must limit their applications to those facilities specified in the new DTV Table Appendix B, as adopted. Pursuant to this proposal, applications requesting facilities that would serve a larger area than stations' new DTV Table Appendix B facilities would not be accepted at this time.¹⁸⁴ Because the new DTV Table will have resolved the interference conflicts raised during the channel election process, we believe we would be able to process these applications without having to conduct interference analyses and without having to consider whether any applications are mutually exclusive. We seek comment on this proposal. Specifically, we seek input from any stations that may be unable to build precisely the facilities specified in the new DTV Table Appendix B (for example, if an antenna producing the exact antenna pattern described in Appendix B is not available). If such stations are prohibited from expanding beyond their DTV Table Appendix B facilities (as proposed *infra* in section V.E.), will they instead be required to reduce their facilities so significantly that they will be unable to provide adequate service? If so, should we allow stations that fall into this situation to expand beyond their DTV Table Appendix B facilities to the extent necessary to address the difference between the theoretical facilities specified in the new DTV Table Appendix B and the actual facilities which they are able to build?

94. Expedited processing. 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, 2009.¹⁸⁵ Thus, stations have a great incentive to promptly file their applications as

¹⁸¹ The facilities defined in the proposed new DTV Table Appendix B were intended to allow stations to serve geographic areas based on licensees' certification forms (FCC Form 381) and, in some cases, on conflict resolution forms (FCC Form 383 and 385). If the DTV facility that a station intends to license for post-transition operation did not match the facilities described in the proposed new DTV Table Appendix B, but does match the facility in the revised new DTV Table Appendix B when adopted, the station need not file an application.

¹⁸² Applications to construct or modify post-transition facilities specified in the new 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. 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 will be established in the Report and Order in MB Docket No. 87-268, so 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. *See supra* note 10.

¹⁸³ *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.

¹⁸⁴ *See infra* discussed in section V.E.

¹⁸⁵ We note that some stations may need to complete their facilities significantly before February 17, 2009, because, for example, they will not be able to build during the winter months.

soon as possible in order to have the maximum time to order equipment and build their facilities. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we propose to process expeditiously certain applications, provided they are filed no later than 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. Stations whose channel assignments or facilities are not finalized at that time will receive expedited processing if they file their applications no later than the deadline specified in their individual channel resolutions. We believe this application filing deadline of 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding will give stations ample time to prepare for these filings and to complete construction prior to the deadline.¹⁸⁶ Specifically, we propose to offer expedited processing to stations that timely apply for a CP to build their post-transition channel, provided that their application (i) does not seek to expand the station's facilities beyond its new DTV Table Appendix B facilities; and (ii) specifies facilities that match or closely approximate those new 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 deviate no more than five percent from those Appendix B facilities with respect to predicted population). We believe we can quickly determine which stations are applying for facilities that do not extend in any direction beyond their DTV Table Appendix B facilities and then expeditiously review those stations' applications without conducting a significant interference analysis because those applications will either match or closely approximate their DTV Table Appendix B facilities.¹⁸⁷ Further, we believe the creation of this process will allow us to grant qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not mean they will receive an expeditious grant.¹⁸⁸ Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station.¹⁸⁹ We seek comment on this proposal. We also seek comment on alternative methods to streamline the application process.

95. Revisions to FCC Form 301 and 340. To accommodate filings related to stations' post-transition facilities, we propose to modify the FCC Forms 301 and 340, as attached.¹⁹⁰ The

¹⁸⁶ The 45-day application deadline will not become effective until OMB approval is obtained for the filing of these applications.

¹⁸⁷ In other words, we will not allow them to exceed what is specified in the new DTV Table Appendix B. *See* section V.E., below.

¹⁸⁸ 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.

¹⁸⁹ In addition to the proposed requirements discussed, an application cannot be granted unless certain other criteria are met. These include certifying 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. 47 C.F.R. § 73.622(f)(2) (checklist criteria).

¹⁹⁰ *See* proposed changes to FCC Form 301 in Appendix B.

form changes will allow stations to indicate that they are applying for post-transition facilities. They also will facilitate the expedited processing discussed above. We seek comment on our proposed forms and if additional changes to the forms are needed.

96. Program tests/License to Cover CP. 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 rules¹⁹¹ and coordinate with any affected stations when they do the testing. Each station is responsible for determining which other stations may be affected and coordinating 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,¹⁹² 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.¹⁹³ We do not believe any rule changes are necessary here.

E. Expanding Facilities

97. 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. Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that authorized by a license, CP or STA. This was precluded by the Commission's freeze on the filing of maximization applications in order to provide a stable database for developing the new DTV Table.¹⁹⁴

98. We recognize that stations may want to apply to expand their facilities to serve a larger area than defined in the new DTV Table Appendix B, as adopted. Stations' new channel assignments may 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. It may save some stations time and money if they are able to file only one application for expanded facilities.

99. We believe, however, 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

¹⁹¹ 47 C.F.R. § 73.1620(a).

¹⁹² 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.

¹⁹³ 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).

¹⁹⁴ See *supra* note 180 (explaining the Commission's filing freeze).

maximization applications. We thus tentatively decide not to allow stations to apply for expanded facilities at this time. We propose to consider the issue of expanded facilities after all stations have had an opportunity to apply for their facilities as specified in the new DTV Table Appendix B. We seek comment on this approach and on our tentative conclusions. We also invite comment on ways in which stations could seek expanded facilities at this time without delaying the transition or overburdening the scarce resources needed by other stations to transition.

F. Interference Standards

100. Although we have proposed, above, not to allow stations to apply to maximize their facilities at the same time that we will be accepting applications for construction permits for the new DTV Table Appendix B facilities, we do intend to allow stations to apply for maximization once it is appropriate to do so. At that point, we will need to have our post-transition interference standards in place. In addition, it is our understanding that knowing what those post-transition interference standards will be in advance may enable stations to anticipate future equipment needs and allow them to minimize their capital expenditures by buying equipment that can be used both now and in the future.¹⁹⁵ Accordingly, we believe it is appropriate at this time to propose what those post-transition interference standards will be. In this section, we consider interference protection methodologies and requirements for application processing, as well as for rulemaking petitions to add a new DTV allotment or change the channel of an existing allotment.

101. In adopting the initial DTV Table in the 1997 *Sixth Report and Order*, the Commission concluded that it would apply geographic spacing standards in determining whether to permit the addition of DTV allotments in the Table.¹⁹⁶ The Commission noted that geographic spacing provides a clear and simple measure of acceptability of an allotment proposal without the need to engage in extensive analysis of interference and has been used successfully in the television service for many years.¹⁹⁷ The Commission recognized, however, that engineering criteria may allow more efficient use of the spectrum and stated it would revisit the allotment criteria at an appropriate point later in the DTV transition process. The Commission also determined in the *Sixth Report and Order* that a party applying for a modification of the DTV

¹⁹⁵ We cannot provide any guarantees regarding whether and/or to what extent any particular broadcaster may be able to expand their facilities in the future.

¹⁹⁶ See 47 C.F.R. §§ 73.623(d), 73.623(c) and 73.622(e). In particular, 47 C.F.R. § 73.623(d) specifies the minimum geographic spacing requirements for DTV allotments not included in the initial DTV Table. 47 C.F.R. § 73.623(c) sets forth the criteria for applications to modify assignments in the initial DTV Table, including the thresholds of desired-to-undesired (D/U) ratios at which interference is considered to occur. 47 C.F.R. § 73.622(e) defines a DTV station's service area as the geographic area within the stations' noise-limited F(50,90) contour where its signal is predicted to exceed the noise-limited service level. The F(50,90) designator indicates that a specified field strength necessary for the provision of DTV service is expected to be available at 50 percent of the locations 90 percent of the time. *Id.* A station's noise-limited contour is computed using its actual transmitter location, ERP, antenna HAAT, and antenna radiation pattern.

¹⁹⁷ The Commission considered but ultimately rejected an alternative approach whereby a party requesting an addition to, or modification of, the DTV Table would be required to show that a station operating at the maximum permissible ERP and antenna height on the proposed allotment would not exceed the engineering interference criteria with regard to any other existing allotment. *Sixth Report and Order*, 12 FCC Rcd at 14688 ¶ 211.

Table would need to show that its proposed modification would not result in any new predicted interference to other DTV allotments or existing NTSC stations, based on the engineering technical criteria used to develop the initial DTV Table.¹⁹⁸ On reconsideration, the Commission replaced this no new interference standard with a *de minimis* standard pursuant to which stations may make changes in their operation where the requested change would not result in more than a 2.0 percent increase in interference to the population served by another TV or DTV broadcast station, and provided that the protected station is not, or will not be, receiving interference in excess of 10 percent of its population from all combined interfering stations.¹⁹⁹ This *de minimis* standard for permissible new interference was adopted to provide flexibility for broadcasters in the implementation of DTV by allowing additional opportunities for stations to maximize their DTV coverage and/or service by increasing power and/or making other changes in their facilities.²⁰⁰

102. The Commission has also relied on other interference standards in the DTV context. For example, applicants seeking facilities modifications of full-service NTSC stations are allowed to cause a 0.5 percent margin above a prediction of no reduction in the population served by a DTV station to account for rounding and calculation tolerances.²⁰¹ Applicants for analog TV translator and low power TV (“LPTV”) stations must propose facilities that do not exceed specified threshold D/U ratios at a DTV station’s noise-limited contour or at all points within the noise-limited area in the case of adjacent channel stations proposing to locate inside the DTV noise-limited contour.²⁰² In addition, in the channel election process that led to the proposed new DTV Table for post-transition operation, an interference conflict was determined to exist when it was predicted that more than 0.1 percent new interference would be caused to another station.²⁰³

¹⁹⁸ See 47 C.F.R. § 73.623(c).

¹⁹⁹ 47 C.F.R. § 73.623(c)(2); *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7450 ¶ 79. Parties requesting such changes are required to submit an engineering showing that the change comports with the *de minimis* standard.

²⁰⁰ *Id.* at 7450-51 ¶ 80.

²⁰¹ Public Notice, “Additional Application Processing Guidelines for Digital Television (DTV),” 1998 WL 458391 at 8 (MB rel. Aug. 10, 1998) (“*DTV Application Processing Guidelines PN*”).

²⁰² Similarly, a licensee requesting DTV facilities modifications that would expand its station’s service area in any direction must meet D/U protection requirements at the protected contour of Class A TV stations authorized on the same or first adjacent channel. In all cases in which the interference standard is based on signal contour protection, applicants are permitted to base requests to waive the standard on the DTV protection standards and methodology in 47 C.F.R. § 73.623(c) and OET Bulletin No. 69.

²⁰³ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294 ¶¶ 37-38. New interference was considered to constitute a conflict when the new interference affected more than 0.1 percent of the population predicted to be served by the station in the absence of that new interference. *Id.* at 18302-03 ¶ 56. In the *Second DTV Periodic Report and Order*, the Commission permitted the 0.1 percent additional interference limit to be exceeded on a limited basis in order to afford stations with an out-of-core DTV channel to elect to operate its post-transition station on its in-core analog channel. *Id.* See also *Seventh FNPRM*, 21 FCC Rcd at 12107-08 ¶ 22.

1. Proposed Interference Criteria

103. When evaluating applications to construct post-transition facilities, we propose to use an interference protection requirement based on engineering criteria (e.g., permissible interference) rather than a geographic spacing requirement.²⁰⁴ We believe this will allow for a more flexible design of proposed stations while offering a high level of protection to existing authorized service. By their nature, geographic spacing requirements do not take into account intervening terrain features (or the lack of such features). Stations separated by the same distance may create significant mutual interference in areas of flat terrain while no interference is predicted in circumstances where intervening terrain limits the signals from either or both stations. Where authorized DTV stations wish to change their assigned DTV channel through a rulemaking petition, we also believe applying the proposed engineering criteria is appropriate. On the other hand, we continue to believe that geographic spacing requirements represent a preferred approach for evaluating a petition for rulemaking requesting a new DTV allotment. In such new allotment cases, information about actual transmitter site locations and facilities are generally not available. We propose to apply an engineering criteria approach in all cases involving applications and to use geographic spacing requirements only for rulemaking petitions seeking new DTV channel allotments. We seek comment on these proposals and tentative conclusions, as well as on alternative methods of providing interference protection.

104. Our proposed engineering criteria to evaluate all post-transition applications would limit the predicted interference that a station may cause to 0.5 percent of the protected station's service population. This proposed 0.5 percent interference standard is stricter than the 2 percent/10 percent criteria that has applied since early in the DTV transition. The 2 percent/10 percent rules were established in order to accomplish the difficult task of accommodating every existing TV station with a second channel for DTV operation within the spectrum already allocated for TV broadcasting and heavily used in some areas. As indicated above, the Commission initially adopted a stricter "no interference" standard, but on reconsideration recognized that stations would need flexibility as they attempted to implement their second channels in this congested spectrum environment. The flexibility provided under the 2 percent/10 percent standard allowed many stations to propose increased coverage, helping to provide DTV signals to more viewers early in the transition.

105. In addition, we note that our 0.5 percent proposal is not as strict as the 0.1 percent new interference criterion that was employed for determining interference conflicts in the channel election process.

106. Our proposed requirement that interference from a DTV application for post-transition use not exceed 0.5 percent is the same requirement as we have used during the transition for analog TV stations protecting DTV stations.²⁰⁵ It can be viewed as a "no new interference" criteria when the amount of predicted interference is rounded to the nearest whole percent (*i.e.*, any determination of less than 0.5 percent interference would be considered to be 0 percent, while an interference determination greater than 0.5 percent would round up to 1.0

²⁰⁴ See proposed rule 47 C.F.R. § 73.616 in Appendix A.

²⁰⁵ See *DTV Application Processing Guidelines PN*, *supra* note 201.

percent.) This level of rounding is more reflective of the accuracy of the interference prediction model than the 0.1 percent criterion.²⁰⁶

107. Because our proposed 0.5 percent interference limit is significantly less than the 2 percent limit that we now use, we do not believe it is necessary to continue to impose the 10 percent cap on total interference from all sources.²⁰⁷ The new DTV Table has fewer stations than the initial Table that exceed the 10 percent limit and many of those stations elected their proposed channel knowing that the amount of interference would exceed that amount. In lieu of the 10 percent component of the current standard, we propose to limit the total interference any station would receive from all sources by requiring that stations already predicted to cause more than 0.5 percent interference to another station will not be allowed to increase the interference they are authorized to cause.²⁰⁸

108. We seek comment on our proposals to limit permissible interference to 0.5 percent and to not allow *any* increase in situations where the amount of interference currently caused exceeds 0.5 percent, as well as on any other methods to limit total interference. Does 0.5 percent reflect the right balance between protecting established DTV service and affording adequate flexibility to stations seeking to establish post-transition operations? Would another amount be more appropriate?

109. We propose to evaluate compliance with the 0.5 percent standard using the Office of Engineering and Technology's OET Bulletin No. 69 ("OET 69") methodology,²⁰⁹ but using 2000 census data as was done during the channel election process.²¹⁰ We seek comment on whether other changes to the OET 69 methodology are necessary here. For example, the standard OET 69 analysis evaluates "cells" within a station's coverage area which are squares 2 kilometers on a side. We have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably more accurate. As a result, we understand that some applications have been based on evaluating many possible smaller cell sizes until the

²⁰⁶ The 0.5 percent allowable predicted interference level is also used for Class A TV stations protecting DTV stations pursuant to 47 C.F.R. § 73.6013 and for determination of LPTV and TV translator protection of full service DTV.

²⁰⁷ In the initial DTV Table, the Commission necessarily exceeded the 10 percent limit with respect to a significant number of stations. *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7450-51 ¶ 80. In contrast to the initial Table, the new Table will not be as congested because stations will be returning one of their paired channels.

²⁰⁸ For example, an application would not be granted for a station that is authorized to cause 1.8 percent predicted interference if the facilities proposed in the application are predicted to raise the amount of interference caused to 1.9 percent.

²⁰⁹ See *OET Bulletin No. 69*, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," (Feb. 6, 2004) ("OET Bulletin No. 69"), available at www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf. See also Public Notice, "Office of Engineering and Technology Releases Update of OET Bulletin No. 69," 19 FCC Rcd 2208 (2004).

²¹⁰ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294 ¶ 38. The more up-to-date population data from the year 2000 census was used to provide a more accurate indication of the station service and impacts of interference on that service than the older year 1990 population data used in computing the service data for the initial DTV Table. *Id.*

desired result is obtained.²¹¹ Such “shopping” for advantageous cell sizes does not improve the accuracy of the evaluation. Should standards for allowable smaller cell sizes be established (for example only allowing 1.0 km or 0.5 km cell sizes to be requested)?

110. We also note that, in other proceedings, we have received comments that it may be useful to adopt variable D/U ratios for adjacent channel interference depending upon the received signal levels predicted for the desired signals because the D/U interference ratios employed for upper and lower first-adjacent channels are based on test results for weak desired signal strengths and may produce inaccurate predictions where the interfering station is located in an area that receives a strong desired signal strength.²¹² Thus, we seek comment on whether a change should be adopted to reflect this concern in situations where adjacent-channel transmitters are proposed to be located inside a desired station’s noise-limited service contour.²¹³

111. For new DTV allotments, we propose to continue to use the DTV-to-DTV geographic separation requirements contained in Section 73.623(d) of the rules.²¹⁴ We note that these distances were developed to be analogous to the long-standing analog TV geographic spacing rules. We intend that our consideration of petitions for rule making requesting new DTV allotments will be consistent with the process we have used for analog TV allotments in that short-spacing waivers will not be allowed. However, as with analog spacing distances, the DTV spacing distances allow regular occasions of predicted interference to occur. After a new DTV allotment has been approved, we propose to regulate the extent of this interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications. This method of allowing flexibility for applicants seeking a new DTV allotment while protecting existing DTV stations’ service is consistent with our analog TV application practice of considering applications that require a waiver of the geographic spacing requirements.²¹⁵ We seek comment on this proposal, as well as on alternative methods for evaluating requests for new DTV allotments.

112. Going forward, we propose to protect each station’s new DTV Table Appendix B facilities’ coverage only until it 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 recognize, however, that we are proposing to require that stations initially apply for facilities that do not

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.

²¹² 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).

²¹³ 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).

²¹⁴ 47 C.F.R. § 73.623(d).

²¹⁵ See *Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Pueblo, Colorado)*, MM Docket No. 93-191, Report and Order, 10 FCC Rcd 7662, 7666-67 (MMB 1995), *app. for rev. denied*, Memorandum Opinion and Order, 11 FCC Rcd 19649 (1996), *aff’d on remand*, Memorandum Opinion and Order on Remand, FCC 99-162, 1999 WL 459314 (rel. Jul. 7, 1999) at ¶¶ 22-25 (explaining that the Commission has long applied stricter standards to short-spaced allotments than to short-spaced application waivers). *Id.* at ¶ 23.

expand their certified coverage and some stations would need to specify facilities that create a predicted service contour that is smaller in some directions than their certified coverage contour in order to comply with that proposal. When the filing freeze is lifted, we expect many such stations will file maximization applications. To avoid penalizing stations in such a situation, we propose to temporarily continue to require that other stations' maximization applications protect the new DTV Table Appendix B facilities of stations, even though most stations should have a CP or license at that time. At an appropriate time, the Media Bureau would announce the change to limit the required protection to CPs and licenses for stations that have such authorizations. We seek comment on this proposal.

2. Pre-Transitional Operations

113. We continue to process applications for analog and DTV new stations, and changes to existing or authorized stations that comply with the freeze. With respect to these applications for pre-transition operation, we intend to continue using the current interference protection rules.²¹⁶ We seek comment on this conclusion. In particular, the current requirements provide that an application for a new or modified analog TV station must not cause more than 0.5 percent interference to any authorized DTV station or allotment. Such an analog TV application must protect other analog TV stations by meeting the distance spacing requirements.²¹⁷ An application for a new or modified DTV station must not cause more than 2.0 percent interference to any authorized analog TV station, DTV station or DTV allotment. Such DTV applications also must not cause the total cumulative interference received by any protected station to exceed 10.0 percent.²¹⁸ Calculations of predicted interference percentages will continue to be based on the standard OET 69 methodology, including use of 1990 Census data.²¹⁹ The current database of authorized or applied for stations would also continue to be used.

²¹⁶ See 47 C.F.R. § 73.623.

²¹⁷ Analog TV applications also must protect Class A TV stations, as provided in 47 C.F.R. § 73.613, and stations in the land mobile radio service, pursuant to the requirements established in *Amendment of Parts 2, 89, 91, and 93; Geographic Reallocation of UHF-TV Channels 14 Through 20 to the Land Mobile Radio Services For Use Within the 25 Largest Urbanized Areas of the United States; Petition Filed by the Telecommunications Committee of the National Association of Manufacturers to Permit Use of TV Channels 14 and 15 by Land Mobile Stations in the Los Angeles Area*, Docket No. 18261, First Report and Order, 23 FCC 2d 325 (1970).

²¹⁸ DTV applications also must protect Class A TV stations as provided in 47 C.F.R. § 73.623(c)(5) and stations in the land mobile radio service pursuant to 47 C.F.R. § 73.623(e).

²¹⁹ Although new population data is available, we believe it is appropriate to continue to use the 1990 census data for the predicting the populations to be served by the remaining analog and new digital television stations to be processed during the transition and the interference those stations would cause to other stations. The predictions of population served and interference received used in developing initial DTV transition assignments in 1998 were based on the 1990 census and that population base has been relied on subsequently in processing of applications for analog and DTV modifications and new stations. Our continued use of the 1990 census data for processing the few remaining transition applications will provide for treatment of these applications on the same basis as other stations during the transition. We also do not believe that the differences in population patterns between the 1990 and 2000 census are of sufficient significance for TV service purposes in the short remaining time of the transition as to warrant recomputation of the service and interference predictions for all analog and DTV stations operating during the transition.

G. Other Issues

1. DTV Transmission Standard (ATSC A/53)

114. In the *Second DTV Periodic Report and Order*, the Commission revised its DTV transmission standard, contained in Section 73.682(d) of the rules,²²⁰ to specify the use of the August 7, 2001 Advanced Television Systems Committee (“ATSC”) DTV transmission standard A/53 Revision B with Amendment 1 and Amendment 2 (“A/53-B”).²²¹ The Commission also stated that it would 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 the Commission’s rules. We propose to update Section 73.682(d) to reflect revisions to the ATSC DTV transmission standard A/53-B since the *Second DTV Periodic Report and Order*. We seek comment on this proposal.

115. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order*, ATSC has continued to update the ATSC DTV transmission standard; the current version is A/53 Revision E, with Amendments No. 1 and 2 (“A/53-E”).²²² A/53-E differs from A/53-B in several respects. First, A/53-E offers several improvements over A/53-B, including the specifications for Enhanced 8-VSB (E8-VSB”) for terrestrial broadcast.²²³ E8-VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main Service data and Enhanced Services data.²²⁴ 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.²²⁵ A/53-E further describes the coding constraints that apply to the use of the MPEG-2 systems specification²²⁶ in the DTV system, including mandatory main and optional enhanced

²²⁰ 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).”

²²¹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42 ¶ 145.

²²² A/53 Revision E (with Amendments No. 1 and 2) is available at http://www.atsc.org/standards/a_53e-with-Amend-1-and-2.pdf.

²²³ *Id.* at 55 (“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.”).

²²⁴ *Id.* at 67.

²²⁵ *Id.* at 56.

²²⁶ ISO/IEC IS 13818-1-2000 (E), International Standard, Information technology – Generic coding of moving pictures and associated audio information system.

services.²²⁷ It also improves the Active Format Description (“AFD”) specifications by revising and clarifying the relevant standards.²²⁸ In light of these advantages, we believe that updating the Commission’s rules to specify A/53-E will benefit both broadcasters and consumers by allowing broadcasters the flexibility to offer new technological services. We seek comment on this tentative conclusion.

116. In the *Second DTV Periodic Report and Order*, the Commission declined to mandate that broadcasters use the AFD when the active video portion picture does not completely fill the coded picture. The Commission stated that the revisions in the new standard were developed through careful consideration and deliberation within the technical committees of ATSC and thus reflected a consensus agreement based on the input of parties from various segments of the industry.²²⁹ As a result, broadcasters were given the option to use AFD, but if a station included AFD data it had to follow the ATSC standard. The Commission noted, however, that as more consumers acquired widescreen aspect ratio sets, the problem of “postage stamp video”²³⁰ would become more prevalent if not addressed by broadcasters. At the time, the Commission believed that broadcasters would want to make their programming attractive to viewers as they begin to adopt DTV. A coordinated effort on clarifying AFD and bar data standards between ATSC, CEA and the Society of Motion Picture and Television Engineers (“SMPTE”) resulted in a CEA recommended practice (CEA-CEB16) titled “Active Format Description (AFD) & Bar Data Recommended Practice,” and a proposed SMPTE 2016-1 standard for television – Format for Active Format Description and Bar Data.²³¹ These efforts were designed to encourage the use of AFD by broadcasters. We thus seek comment on whether these voluntary, industry driven efforts are sufficient, or if, instead, we should require broadcasters to provide AFD and bar data. If we do impose such a requirement, should broadcasters be required to provide AFD data for all programming broadcast, regardless of its source? Should such a requirement extend to live programming (e.g., sports and other events where a combination of SD and HD equipment may be used)? Assuming that we did require the inclusion of AFD, what effect would the imposition of such a requirement have on small broadcasters? We seek comment on these issues.

²²⁷ A/53 Revision E at 107.

²²⁸ A/53 Revision E at 127.

²²⁹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42 ¶ 145.

²³⁰ See, e.g., TVTechnology.com discussion of DTV Aspect Ratio Signaling (dated Oct. 3, 2001) available at <http://www.tvtechnology.com/features/Tech-Corner/f-rh-aspect-ratio.shtml> (“And up-converted commercials and other non-program material are often integrated into HDTV programs. This typically produces a pillar boxed image in a 16:9 field that, in turn, is letterboxed onto a 4:3 display. The result: black bars all around the image with the viewers seeing a ‘postage-stamp’-sized picture afloat in a sea of black.”).

²³¹ A/53 Revision E at 127 (referencing CEA: “Active Format Description (AFD) & Bar Data Recommended Practice,” Doc. CEA-CEB16, Consumer Electronics Association, Arlington, VA, 31 July 2006; and SMPTE: “Proposed SMPTE 2016-1 [in development]: Standard for Television — Format for Active Format Description and Bar Data,” Society of Motion Picture and Television Engineers, White Plains, NY).

2. Program System and Information Protocol (“PSIP”) Standard

117. In the *Second DTV Periodic Report and Order*, the Commission revised Section 73.682(d) to require the use of the ATSC Program System and Information Protocol (“PSIP”) standard A/65-B.²³² 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.²³³ 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. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.²³⁴

118. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order*, ATSC has updated the ATSC PSIP standard; the current version is A/65-C. This new revision further enhances the PSIP standard and support for delivery of data. The updated ATSC PSIP standard now requires broadcasters to populate the Event Information Tables (“EITs”) with accurate information about each event and to update the EIT if more accurate information becomes available. Currently, under version A/65-B, 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. We propose to update Section 73.682(d) to reflect these revisions to the ATSC PSIP standard since the *Second DTV Periodic Report and Order*. We seek comment on this proposal. In particular, we request input regarding the burden that compliance with A/65-C would place on broadcasters – especially small broadcasters.

119. We also seek comment from broadcasters and others as to the need to include more accurate, detailed, and up-to-date information about each event under this new PSIP standard. We also seek comment about whether PSIP information is being passed through to

²³² *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18345-46 ¶ 152.

²³³ See ATSC website at 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.”).

²³⁴ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18343-44 ¶ 149.

cable and satellite subscribers.²³⁵ If satellite carriers are not passing through PSIP information, is the information otherwise being reflected adequately in the electronic program guide and signal they provide to subscribers?

3. Fees for Ancillary and Supplementary Services

120. In this section, we seek 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 to pay a fee of five percent of gross revenues derived from certain of those services. As currently written, this rule refers to the payment of such fees by "DTV licensees." We seek comment on whether the Commission can and should revise its rules to require that all DTV broadcasters, including permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions, that earn revenue from feeable ancillary and supplementary services, are subject to the provisions of Section 73.624(g).²³⁶

4. Station Identification

121. In 2004, the Commission established rules generally requiring DTV stations to follow the same rules for station identification as analog stations.²³⁷ 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.

122. A station choosing to include its channel number in its station identification must use the major (analog) channel number.²³⁸ 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 allocated digital broadcast channel.²³⁹ The Commission permitted stations choosing to multicast to include additional information in their station announcements identifying each program stream.²⁴⁰ The Commission's rules require that

²³⁵ 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).

²³⁶ 47 C.F.R. § 73.624(g).

²³⁷ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18353-18355 ¶¶ 169-173. See also 47 C.F.R. § 73.1201.

²³⁸ 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.*

²³⁹ 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.*

²⁴⁰ 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 CW network channel"). Stations simulcasting their analog programming on their digital channel are permitted to make (continued...)

the station that is transmitting the multicast stream is the station whose identification must appear on the program stream.²⁴¹

123. Now that stations have some experience in applying these station identification rules to digital stations, we invite comment on whether these rules provide sufficient clarity to broadcasters and viewers. We specifically invite 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. As the Commission has previously noted, 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.²⁴² We invite comment on any and all aspects of the Commission's station identification rules, whether any changes to or clarifications of the rules are appropriate, and, if particular problems implementing the rules have arisen, specific proposals for how the rules should be changed.

5. Coordination with Cable Operators, Satellite Systems and Other MVPD Providers

124. We recognize that the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors ("MVPDs").²⁴³ Because a majority of television viewers receive their broadcast signals via an MVPD,²⁴⁴ if these providers have problems receiving and retransmitting digital signals when analog signals are turned off, that could have a significant adverse impact on the digital transition. We seek comment here on the issues specifically related to MVPD readiness to receive and retransmit digital signals to their subscribers when analog service ends on February 17, 2009.²⁴⁵ We also invite comment on what steps, if any, are necessary to allow consumers to continue to receive over-the-air television signals in a variety of settings outside their homes, such as hotels, restaurants, universities and offices.

(Continued from previous page) _____

station identification announcements simultaneously for both stations as long as the identification includes both call 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.*

²⁴¹ *See id.* Thus, if station WXXX-DT is transmitting programming provided by WYYY-TV or WYYY-LP on one of WXXX-DT's multicast streams, the identification on that stream must be the frequency and location of WXXX-DT. *Id.*

²⁴² *See Second DTV Periodic Report and Order*, 19 FCC Rcd at 18354 ¶ 171.

²⁴³ *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).

²⁴⁴ *See Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503 (2006) ("2005 Competition Report"). As of June 2005, approximately 94.2 million TV households, or almost 86 percent of TV households, subscribe to an MVPD service. *Id.* at 2506-07 ¶ 8.

²⁴⁵ General issues regarding mandatory carriage of digital broadcast signals are being addressed in other dockets. *See* MB Docket Nos. 98-120 and 00-96.

125. In this regard, we solicit comment from cable operators, satellite carriers, and private cable operators (also known as Satellite Master Antenna Television or “SMATV” providers) regarding steps they are taking to ensure that their subscribers will continue to receive local broadcast stations after the termination of over-the-air analog broadcast signals from full power stations. Moreover, we request comment on whether and what type of coordination is needed between broadcast television stations and MVPDs to facilitate a timely and smooth transition, whether this coordination is underway, and what actions the Commission could take to facilitate that coordination. For example, will cable and satellite operators have technical difficulties receiving digital signals from local television stations on new channels (and in some cases from different transmission facilities)? Are changes needed at cable and SMATV headends and satellite local receive facilities to receive these signals? Have MVPDs experienced difficulties receiving and retransmitting local digital broadcast signals thus far? Will MVPDs be able to handle all the various channel changes and other modifications that will be necessary, many of which will occur at midnight on February 17, 2009? Do MVPDs need to test reception and retransmission capabilities in advance of the transition, and, if so, when, and how, in light of construction deadlines?

VI. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

126. The Initial Regulatory Flexibility Analysis is attached to this Notice as Appendix C.

B. Initial Paperwork Reduction Act of 1995 Analysis

127. This Notice has been analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”),²⁴⁶ and contains proposed new and modified information collection requirements, including the following proposals: (1) Applications detailing stations’ plans for completing their transitions;²⁴⁷ (2) Applications to construct or modify post-transition facilities (using FCC Forms 301 and 340);²⁴⁸ (3) Requests to reduce analog TV service;²⁴⁹ (4) Requests to terminate analog TV service;²⁵⁰ (5) Requests to flash cut;²⁵¹ (6) Requests for STA to use analog translators to offset loss of analog service;²⁵² (7) Requests for extension of time to construct (using FCC Form

²⁴⁶ 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.).

²⁴⁷ See *supra* section V., ¶ 35.

²⁴⁸ See *supra* section V.D. See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340).

²⁴⁹ See *supra* section V.A. See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340).

²⁵⁰ See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340). See also OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

²⁵¹ See *supra* section V.B. and 47 C.F.R. §§ 73.1690 and 73.1750. See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340).

²⁵² See *supra* section V.A. See note 86.

337), or to toll the construction deadline for, DTV facilities;²⁵³ (8) Requests to transition early to their post-transition channel;²⁵⁴ (9) Requests for STA to temporarily remain on their in-core pre-transition DTV channel;²⁵⁵ (10) Requests for STA to build less than full, authorized post-transition facilities by the deadline;²⁵⁶ (11) Applications for a license to cover post-transition facilities (using FCC Form 302 DTV);²⁵⁷ and (12) 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.²⁵⁸ The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (“OMB”) to comment on the proposed information collection requirements contained in this Notice, as required by the PRA.

128. Written comments on the PRA proposed information collection requirements must be submitted by the public, the OMB, and other interested parties on or before **60 days from date of publication of this Notice in the Federal Register**. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²⁵⁹ we seek specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”

129. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov; and also to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, N.W., Washington, D.C. 20503, or via Internet to Kristy.L.LaLonde@omb.eop.gov, or via fax at 202-395-5167.

²⁵³ See *supra* section V.C.4. See also OMB Control Nos. 3060-1001 (Form 337) and 3060-0407 (47 C.F.R. § 73.3598).

²⁵⁴ See *supra* section V.C.5. See also OMB Control Nos. 3060-0374 (47 C.F.R. § 73.1690), 3060-0216 (47 C.F.R. § 73.3538), 3060-0027 (Form 301) and 3060-0029 (Form 340).

²⁵⁵ See *supra* section V.C.6. See also OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

²⁵⁶ See *supra* section V.C.6. See also OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

²⁵⁷ See *supra* section V.D. See also OMB Control 3060-0029 and 3060-0837 (Form 302DTV).

²⁵⁸ See *supra* section V.G.2.

²⁵⁹ 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).

130. Further Information. For additional information concerning the PRA proposed information collection requirements contained in this Notice, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

C. Ex Parte Rules

131. Permit-But-Disclose. This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under section 1.1206(b) of the Commission’s rules.²⁶⁰ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required.²⁶¹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

132. Comments and Replies. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,²⁶² interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) the Commission’s Electronic Comment Filing System (“ECFS”), (2) the Federal Government’s eRulemaking Portal, or (3) by filing paper copies.²⁶³

133. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

134. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue

²⁶⁰ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

²⁶¹ See *id.* § 1.1206(b)(2).

²⁶² See *id.* §§ 1.415, 1.419.

²⁶³ See *Electronic Filing of Documents in Rulemaking Proceedings*, GC Docket No. 97-113, Report and Order, 13 FCC Rcd 11322 (1998).

to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington DC 20554.

135. Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.

136. Accessibility Information. To request information in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). This document can also be downloaded in Word and Portable Document Format (PDF) at: <http://www.fcc.gov>.

137. Additional Information. For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120; Gordon Godfrey, Gordon.Godfrey@fcc.gov, of the Media Bureau, Engineering Division, (202) 418-7000; Nazifa Sawez, Nazifa.Sawez@fcc.gov, of the Media Bureau, Video Division, (202) 418-1600; or Alan Stillwell, Alan.Stillwell@fcc.gov, of the Office of Engineering and Technology, (202) 418-2470.

VII. ORDERING CLAUSES

138. Accordingly, IT IS ORDERED that pursuant to 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 NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this *Notice of Proposed Rulemaking*, including the proposed amendments to Part 73 of the Commission's rules, as set forth in Appendix A.

139. IT IS FURTHER ORDERED that the Reference Information Center, Consumer Information Bureau, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX A

PROPOSED RULE CHANGES

1. Add a new § 73.616 to read as follows:

Section 73.616 Post-transition DTV station interference protection.

(a) 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 section 73.623(d)(2) 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 (d) of this section; the land mobile protection requirements of section 73.623(e); and the FM radio protection requirement of 73.623(f).

(1) 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.

(b) An application for a new post-transition DTV broadcast station or for changes in an authorized post-transition DTV station will not be accepted for filing unless it protects all land mobile operation on channels 14-20 in accordance with section 73.623(e) and all other post-transition DTV stations from interference in excess of the limits established in this section. An application must not cause interference to more than: the greater of either 0.5 percent the population served by the other station or the amount of interference already predicted to be caused by the applicant's authorized facilities.

(1) 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.

(2) For evaluating compliance with this requirement, 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. 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.

(c) 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)).

(d) 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 (b)(2) of this section.

(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.

2. Amend § 73.623 by adding a note before paragraph (a) to read as follows:

Section 73.623 DTV applications and changes to DTV allotments

NOTE: 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.

(a) * * *

3. Amend § 73.624 by adding paragraph (d)(1)(v) and revising paragraph (d)(3) 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) February 17, 2009 is the deadline for the 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. For purposes of this construction deadline, the post-transition facilities to be constructed are those 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).

* * * * *

(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) Such circumstances ~~shall~~**may** include, 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;~~ **(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) 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.

(iv) 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.

* * * * *

4. Amend § 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 Doc. A/53~~B~~, Revision ~~E B~~ with Amendment 1 and Amendment 2: "ATSC Digital Television Standard," (**September 13, 2006**) except for Section 5.1.2 ("Compression format constraints") of Annex A ("Video Systems Characteristics") and the phrase "see Table ~~A3~~" in Section 5.1.1. Table ~~A2~~ and Section 5.1.3 ~~2~~ Table ~~A4~~ (incorporated by reference, see [§ 73.8000](#)), and ATSC A/65~~C B~~: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable," (Revision ~~C B with Amendment 1~~) **May 9, 2006** ~~2003~~ (incorporated by reference, see [§ 73.8000](#)). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, **Recommended Practice**, Guide to Use of the ATSC Digital Television Standard, **including Corrigendum No. 1 (December 4, 2003, Corrigendum No. 1 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](#))).

5. Amend § 73.8000(b)(2) and (3) to read as follows:

Section 73.8000 Incorporation by reference.

* * * * *

(b) * * *

(1) * * *

(2) ATSC A/53~~B~~: "ATSC Digital Television Standard," dated August 7, 2001, Revision ~~E B~~, with Amendment 1 dated **April 18** ~~May 23, 2006~~ and Amendment 2 dated **September 13** ~~May 19, 2006~~, IBR approved for [§ 73.682](#), except for section 5.1.2 of Annex A, and the phrase "see Table ~~A-3~~" in section 5.1.1. Table~~A2~~ and section 5.1.3 ~~2~~ Table ~~A4~~.

(3) ATSC A/65~~C B~~: "ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable," (Revision ~~C B~~) **January 2** ~~March 18, 2006~~, **with Amendment 1 dated May 9, 2006**, and IBR approved for [§ 73.682](#), IBR approved for [§§ 73.9000-73.9001](#).

* * * * *

APPENDIX B

PROPOSED CHANGES TO FCC FORMS

The Federal Communications Commission proposes to revise 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 Section 73.616 of the rules adopted in 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 proposes to revise 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 proposes to revise 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 proposes to create 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]:

NOTE: This Form must be filed by all full-power broadcast television stations (licensees and permittees) on or before December 1, 2007. Consistent with Section 1.65 of the rules, 47 C.F.R. § 1.65(a), each Licensee/Permittee is responsible for the continuing accuracy and completeness of the information furnished in this Form. Whenever the information furnished in this Form is no longer substantially accurate and complete in all significant respects, the Licensee/Permittee shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of this Form so as to furnish such additional or corrected information as may be appropriate. For example, a significant change would include a change in a Licensee/Permittee's transition plans or status.

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 and www.dtv.gov.

19. The Instructions to the new Form will explain the data elements noted above.

APPENDIX C

INITIAL REGULATORY FLEXIBILITY ACT ANALYSIS

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (“IRFA”) concerning the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking* (“Notice”). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments indicated on the first page of the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).² In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.³

A. Need for and Objectives of the Proposed Rules

2. This Notice begins the Commission’s third periodic review of the transition of the nation’s broadcast television system from analog to digital television (“DTV”). The Commission conducts 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. 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. The purpose of this Notice, generally, is to (1) provide a progress report on the DTV transition; (2) describe the status and readiness of existing stations to complete the transition; (3) consider and propose the procedures and rule changes necessary to complete the transition; and (4) address other issues related to the transition. In particular, the Notice proposes (1) rules for applying to construct final, DTV facilities and (2) construction deadlines for the completion of final, DTV facilities.

4. The primary objectives of this Notice is to ensure that, by the February 17, 2009 transition date, all full-power television broadcast stations (1) cease analog broadcasting and (2) have completed construction and begun operating their final, DTV facilities. In addition, the Notice considers proposals to provide broadcasters with the regulatory flexibility necessary to meet these goals.⁴

¹ 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”).

² See 5 U.S.C. § 603(a).

³ See *id.* § 603(a).

⁴ See discussion in Section D. of this IRFA.

B. Legal Basis

5. The authority for the action proposed in this rulemaking is 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.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. 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 proposed rules, if adopted.⁵ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁶ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁷ 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.⁸

7. We believe that full-power television broadcast stations will be directly and primarily affected by the proposed rules, if adopted. Although the proposed rules will not apply to Class A TV stations, low power television (LPTV) stations, and TV translator stations, it is still possible that these entities may be affected by the proposed rules. For example, the proposed rules, if adopted, would permit applications for analog translators to be filed under specific circumstances and in that way may affect TV translator stations. Otherwise, we do not believe any other types of entities will be directly affected by the proposed rules; however, request comment on this tentative conclusion. A description of the small entities that may be directly affected, as well as an estimate of the number of such small entities, is provided below.

1. Entities Directly Affected By Proposed Rules

8. Television Broadcasting. The proposed rules and policies 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 \$13.5 million in annual receipts.⁹ Business concerns included in this industry are those “primarily engaged in

⁵ *Id.* § 603(b)(3).

⁶ 5 U.S.C. § 601(6).

⁷ *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).

⁸ 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.

⁹ See 13 C.F.R. § 121.201, NAICS Code 515120.

broadcasting images together with sound.”¹⁰ The Commission has estimated the number of licensed commercial television stations to be 1,376.¹¹ According to Commission staff review of the BIA Financial Network, MPro Television Database (“BIA”) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹² (or about 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380.¹³ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁴ 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.

9. 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.

10. Class A TV, LPTV, and TV translator stations. The proposed rules and policies 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 \$13.5 million in annual receipts.¹⁵ Currently, there are approximately 567 licensed Class A

¹⁰ *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.

¹¹ 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/>.

¹² We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* IRFA note 11; however, we are using BIA’s estimate for purposes of this revenue comparison.

¹³ See *Broadcast Station Totals*, *supra* IRFA note 11.

¹⁴ “[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).

¹⁵ See 13 C.F.R. § 121.201, NAICS Code 515120.

stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators.¹⁶ 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 \$13.5 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 That May Be Indirectly Affected By Proposed Rules

11. Because the rules proposed in this Notice pertain to the transition from analog to digital broadcasting of full-power television broadcast stations, we do not believe the rules proposed will directly affect any other entities. We seek comment on this tentative conclusion. Certain entities may believe they would be affected by the proposed rules. For example, the proposed rules may, in the opinion of cable operators, satellite carriers other multichannel video programming distributors ("MVPDs"), indirectly affect these entities. In addition, the proposed rules may indirectly affect electronics equipment manufacturers. Although such comment is not required by the RFA¹⁷, we invite comment from any small cable operators, small satellite carriers or other small MVPDs, as well as from small equipment manufacturers, who believe they might be directly affected by our proposed rules contained in the Notice.

12. Cable and Other Program Distribution. Cable system operators fall within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually.¹⁸ According to the Census Bureau data for 1997, there were a total of 1,311 firms that operated for the entire year in the category of Cable and Other Program Distribution. Of this total, 1,180 firms had annual receipts of under \$10 million and an additional 52 firms had receipts of \$10 million or more, but less than \$25 million.¹⁹ In addition, limited preliminary census data for 2002 indicates that the total number of Cable and Other Program Distribution entities increased approximately 46 percent between 1997 and 2002.²⁰ The Commission estimates that the majority of providers in this category of Cable and Other Program Distribution are small businesses.

¹⁶ See *Broadcast Station Totals*, *supra* IRFA note 11.

¹⁷ 5 U.S.C. § 603(a).

¹⁸ 13 C.F.R. § 121.201, NAICS code 517510.

¹⁹ U.S. Census Bureau, 1997. Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, 1997 Economic Census, Subject Series – Establishment and Firm Size, Information Sector 51, Table 4 at 50 (2000). The amount of \$10 million was used to estimate the number of small business firms because the relevant Census categories stopped at \$9,999,999 and began at \$10,000,000. No category for \$12.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

²⁰ See U.S. Census Bureau, 2002 Economic Census, Industry Series: "Information," Table 2, Comparative Statistics for the United States (1997 NAICS Basis): 2002 and 1997, NAICS code 513220 (issued Nov. 2004). The preliminary data indicate that the number of total "establishments" increased from 4,185 to 6,118. In this context, (continued....)

13. Cable System Operators (Rate Regulation Standard). The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide.²¹ We last estimated that there were 1,439 cable operators that qualified as small cable companies at the end of 1995.²² Since then, some of those companies may have grown to serve more than 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

14. Cable System Operators (Telecom Act Standard). The Communications Act also contains a size standard for a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."²³ The Commission has determined that there are 67.7 million subscribers in the United States.²⁴ Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed \$250 million in the aggregate.²⁵ Based on available data, we estimate that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,²⁶ and therefore is unable at this time to estimate more accurately the number of cable

(Continued from previous page) _____

the number of establishments is a less helpful indicator of small business prevalence than is the number of "firms," because the latter number takes into account the concept of common ownership or control. The more helpful 2002 census data on firms, including employment and receipts numbers, will be issued in late 2005.

²¹ 47 C.F.R. § 76.901(e). The Commission developed this definition based on its determinations that a small cable system operator is one with annual revenues of \$100 million or less. For "regulatory simplicity," the Commission established the company size standard in terms of subscribers, rather than dollars; in the cable context, \$100 million in annual regulated revenues equates to approximately 400,000 subscribers. *See Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, MM Doc. Nos. 92-266 and 93-215, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393, 7408-7409 ¶¶ 28-30 (1995).

²² Paul Kagan Associates, Inc., Cable TV Investor, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

²³ 47 U.S.C. § 543(m)(2).

²⁴ *See* Public Notice, "FCC Announces New Subscriber Count for the Definition of Small Cable Operator," 16 FCC Rcd 2225 (2001) ("2001 Subscriber Count PN"). In this Public Notice, the Commission established the threshold for determining whether a cable operator meets the definition of small cable operator at 677,000 subscribers, and determined that this threshold will remain in effect until the Commission issues a superceding Public Notice. We recognize that the number of cable subscribers was recently estimated by the Commission to be 65.4 million in June 2005; *see Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Eleventh Annual Report*, 20 FCC Rcd 2755, 2507 ¶ 10 (2006) ("2006 Cable Competition Report"). However, because the Commission has not issued a public notice subsequent to the 2001 Subscriber Count PN, we propose to rely on the subscriber count threshold established by the 2001 Subscriber Count PN.

²⁵ 47 C.F.R. § 76.901(f).

²⁶ The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. *See* 47 U.S.C. § 573.

system operators that would qualify as small cable operators under the size standard contained in the Communications Act.

15. Direct Broadcast Satellite (“DBS”) Service. DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic “dish” antenna at the subscriber’s location. Because DBS provides subscription services, DBS falls within the SBA-recognized definition of Cable and Other Program Distribution.²⁷ This definition provides that a small entity is one with \$13.5 million or less in annual receipts.²⁸ Currently, only three operators hold licenses to provide DBS service, which requires a great investment of capital for operation.²⁹ All three currently offer subscription services. Two of these three DBS operators, DirecTV³⁰ and EchoStar Communications Corporation (“EchoStar”),³¹ report annual revenues that are in excess of the threshold for a small business. The third DBS operator, Dominion Video Satellite, Inc. (“Dominion”), offers religious (Christian) programming and does not report its annual receipts.³² The Commission does not know of any source which provides this information and, thus, we have no way of confirming whether Dominion qualifies as a small business. Because DBS service requires significant capital, we believe it is unlikely that a small entity as defined by the SBA would have the financial wherewithal to become a DBS licensee. Nevertheless, given the absence of specific data on this point, we acknowledge the possibility that there are entrants in this field that may not yet have generated \$13.5 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

16. Private Cable Operators (“PCOs”), also known as, Satellite Master Antenna Television (“SMATV”) Systems. PCOs, also known as SMATV systems or private communication operators, are video distribution facilities that use closed transmission paths without using any public right-of-way. PCOs acquire video programming and distribute it via terrestrial wiring in urban and suburban multiple dwelling units such as apartments and condominiums, and commercial multiple tenant units such as hotels and office buildings. The SBA definition of small entities for Cable and Other Program Distribution Services includes PCOs and, thus, small entities are defined as all such companies generating \$13.5 million or less in annual receipts.³³ Currently, there are more than 150 members in the Independent Multi-Family Communications Council (IMCC), the trade association that represents PCOs.³⁴ Individual PCOs often serve approximately 3,000-4,000 subscribers, but the larger operations

²⁷ 13 C.F.R. § 121.201, NAICS code 517510.

²⁸ *Id.*

²⁹ *2006 Cable Competition Report*, 20 FCC Rcd 2538-38 ¶ 70.

³⁰ DirecTV is the largest DBS operator and the second largest MVPD, serving an estimated 14.67 million subscribers nationwide, as of June 2005; *see 2006 Cable Competition Report*, 20 FCC Rcd at 2540 ¶ 73.

³¹ EchoStar, which provides service under the brand name Dish Network, is the second largest DBS operator and the third largest MVPD, serving an estimated 11.45 million subscribers nationwide, as of June 2005. *Id.*

³² Dominion, which provides service under the brand name Sky Angel, serves fewer than one million subscribers. *Id.*

³³ 13 C.F.R. § 121.201, NAICS code 517510.

³⁴ *See 2006 Cable Competition Report*, 20 FCC Rcd 2564-65 ¶ 130.

serve as many as 15,000-55,000 subscribers. In total, PCOs currently serve approximately one million subscribers.³⁵ Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten PCOs, we believe that a substantial number of PCO qualify as small entities.

17. Home Satellite Dish (“HSD”) Service. Because HSD provides subscription services, HSD falls within the SBA-recognized definition of Cable and Other Program Distribution, which includes all such companies generating \$13.5 million or less in revenue annually.³⁶ HSD or the large dish segment of the satellite industry is the original satellite-to-home service offered to consumers, and involves the home reception of signals transmitted by satellites operating generally in the C-band frequency. Unlike DBS, which uses small dishes, HSD antennas are between four and eight feet in diameter and can receive a wide range of unscrambled (free) programming and scrambled programming purchased from program packagers that are licensed to facilitate subscribers’ receipt of video programming. There are approximately 30 satellites operating in the C-band, which carry over 500 channels of programming combined; approximately 350 channels are available free of charge and 150 are scrambled and require a subscription. HSD is difficult to quantify in terms of annual revenue. HSD owners have access to program channels placed on C-band satellites by programmers for receipt and distribution by MVPDs. Commission data shows that, as of June 2005, there were 206,358 households authorized to receive HSD service.³⁷ The Commission has no information regarding the annual revenue of the four C-Band distributors.

18. Wireless Cable Systems. Wireless cable systems use the Broadband Radio Service (“BRS”), formerly Multipoint Distribution Service (“MDS”),³⁸ and Educational Broadband Service (“EBS”), formerly Instructional Television Fixed Service (“ITFS”),³⁹ frequencies in the 2 GHz band to transmit video programming and provide broadband services to residential subscribers.⁴⁰ These services were originally designed for the delivery of multichannel video programming, similar to that of traditional cable systems, but over the past

³⁵ See *id.*

³⁶ 13 C.F.F. § 121.201, NAICS code 517510.

³⁷ See *2006 Cable Competition Report*, 20 FCC Rcd 2544 ¶ 80.

³⁸ MDS, also known as Multichannel Multipoint Distribution Service (“MMDS”), is regulated by Part 21 of the Commission’s rules; see 47 C.F.R. Part 21, subpart K; and has been renamed the Broadband Radio Service (BRS); 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; Part 1 of the Commission’s Rules - Further Competitive Bidding Procedures; Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of Parts 21 and 74 of the Commission’s Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; 19 FCC Rcd 14165 (2004) (“*MDS/ITFS Order*”).

³⁹ ITFS systems are regulated by Part 74 of the Commission’s rules; see 47 C.F.R. Part 74, subpart I. ITFS, an educational service, has been renamed the Educational Broadband Service (EBS); see *MDS/ITFS Order*, 19 FCC Rcd 14165. ITFS licensees, however, are permitted to lease spectrum for MDS operation.

⁴⁰ See *2006 Cable Competition Report*, 20 FCC Rcd 2565 ¶ 131.

several years licensees have focused their operations instead on providing two-way high-speed Internet access services.⁴¹ We estimate that the number of wireless cable subscribers is approximately 100,000, as of March 2005. *Id.* Local Multipoint Distribution Service (“LMDS”) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications.⁴² As previously noted, the SBA definition of small entities for Cable and Other Program Distribution, which includes such companies generating \$13.5 million in annual receipts, appears applicable to MDS, ITFS and LMDS.⁴³

19. Wireless Cable Systems (Commission Auction Standard). The Commission has defined small MDS (now BRS) and LMDS entities in the context of Commission license auctions. In the 1996 MDS auction,⁴⁴ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁴⁵ This definition of a small entity in the context of MDS auctions has been approved by the SBA.⁴⁶ In the MDS auction, 67 bidders won 493 licenses. Of the 67 auction winners, 61 claimed status as a small business. At this time, the Commission estimates that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that have gross revenues that are not more than \$40 million and are thus considered small entities.⁴⁷ MDS licensees and wireless cable operators that did not participate in the MDS auction must rely on the SBA definition of small entities for Cable and Other Program Distribution. Information available to us indicates that there are approximately 850 of these licensees and operators that do not generate revenue in excess of \$13.5 million annually. Therefore, we estimate that there are approximately 850 small MDS (or BRS) providers as defined by the SBA and the Commission’s auction rules.

20. Educational institutions are included in this analysis as small entities; however, the Commission has not defined a small business size standard for ITFS (now EBS).⁴⁸ We estimate that there are currently 2,032 ITFS (or EBS) licensees, and all but 100 of these licenses are held by educational institutions. Thus, the Commission estimates that at least 1,932 ITFS licensees are small businesses.

⁴¹ *Id.*

⁴² See Local Multipoint Distribution Service, 12 FCC Rcd 12545 (1997) (“*LMDS Order*”).

⁴³ 13 C.F.R. § 121.201, NAICS code 517510.

⁴⁴ MDS Auction No. 6 began on November 13, 1995, and closed on March 28, 1996. (67 bidders won 493 licenses.)

⁴⁵ 47 C.F.R. § 21.961(b)(1).

⁴⁶ See *ITFS Order*, 10 FCC Rcd at 9589.

⁴⁷ 47 U.S.C. § 309(j). Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. § 309(j). For these pre-auction licenses, the applicable standard is SBA’s small business size standards for “other telecommunications” (annual receipts of \$12.5 million or less). See 13 C.F.R. § 121.201, NAICS code 517910.

⁴⁸ In addition, the term “small entity” under SBREFA applies to small organizations (nonprofits) and to small governmental jurisdictions (cities, counties, towns, townships, villages, school districts, and special districts with populations of less than 50,000). 5 U.S.C. §§ 601(4)-(6). We do not collect annual revenue data on ITFS licensees.

21. In the 1998 and 1999 LMDS auctions,⁴⁹ the Commission defined a small business as an entity that had annual average gross revenues of less than \$40 million in the previous three calendar years.⁵⁰ Moreover, the Commission added an additional classification for a “very small business,” which was defined as an entity that had annual average gross revenues of less than \$15 million in the previous three calendar years.⁵¹ These definitions of “small business” and “very small business” in the context of the LMDS auctions have been approved by the SBA.⁵² In the first LMDS auction, 104 bidders won 864 licenses. Of the 104 auction winners, 93 claimed status as small or very small businesses. In the LMDS re-auction, 40 bidders won 161 licenses. Based on this information, we believe that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission’s auction rules.

22. Open Video Systems (“OVS”). In 1996, Congress established the open video system (“OVS”) framework, one of four statutorily recognized options for the provision of video programming services by local exchange carriers (“LECs”).⁵³ The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services,⁵⁴ OVS falls within the SBA-recognized definition of Cable and Other Program Distribution Services, which provides that a small entity is one with \$13.5 million or less in annual receipts.⁵⁵ The Commission has certified 25 OVS operators with some now providing service. Broadband service providers (“BSPs”) are currently the only significant holders of OVS certifications or local OVS franchises.⁵⁶ As of June 2005, BSPs served approximately 1.4 million subscribers, representing 1.5 percent of all MVPD households.⁵⁷ Affiliates of Residential Communications Network, Inc. (“RCN”), which serves about 371,000 subscribers as of June 2005, is currently the largest BSP and 14th largest MVPD.⁵⁸ RCN received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. The Commission does not have financial information

⁴⁹ The Commission has held two LMDS auctions: Auction 17 and Auction 23. Auction No. 17, the first LMDS auction, began on February 18, 1998, and closed on March 25, 1998. (104 bidders won 864 licenses.) Auction No. 23, the LMDS re-auction, began on April 27, 1999, and closed on May 12, 1999. (40 bidders won 161 licenses.)

⁵⁰ See *LMDS Order*, 12 FCC Rcd at 12545.

⁵¹ *Id.*

⁵² See Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

⁵³ 47 U.S.C. § 571(a)(3)-(4). See *2006 Cable Competition Report*, 20 FCC Rcd 2549 ¶ 88.

⁵⁴ See 47 U.S.C. § 573.

⁵⁵ 13 C.F.R. § 121.201, NAICS code 517510.

⁵⁶ See *2006 Cable Competition Report*, 20 FCC Rcd 2549 ¶ 88. BSPs are newer firms that are building state-of-the-art, facilities-based networks to provide video, voice, and data services over a single network.

⁵⁷ See *id.* at 2507 ¶ 14.

⁵⁸ See *2006 Cable Competition Report*, 20 FCC Rcd 2549 ¶ 89. WideOpenWest is the second largest BSP and 16th largest MVPD, with cable systems serving about 292,000 subscribers as of June 2005. The third largest BSP is Knology, which currently serves approximately 170,800 subscribers as of June 2005. *Id.*

regarding the entities authorized to provide OVS, some of which may not yet be operational. We thus believe that at least some of the OVS operators may qualify as small entities.

23. Electronics Equipment Manufacturers. The rules adopted in this proceeding may indirectly affect manufacturers of digital receiving equipment and other types of consumer electronics equipment. The appropriate small business size standard is that which the SBA has established for manufacturers of radio and television broadcasting and wireless communications equipment. This category encompasses entities that primarily manufacture radio, television, and wireless communications equipment.⁵⁹ Under this standard, firms are considered small if they have 750 or fewer employees.⁶⁰ Census Bureau data for 2002 indicate that, for that year, there were a total of 1,041 establishments⁶¹ in this category.⁶² Of those, 1,023 had employment under 1,000. Given the above, the Commission estimates that the great majority of equipment manufacturers are small businesses.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

24. The proposals set forth in this *Notice*, if adopted, would impose mandatory compliance and reporting requirements on full-power television broadcast stations, including requiring that such stations: (1) must cease analog broadcasting on or before the February 17, 2009 transition date;⁶³ (2) if they do not have an existing construction permit for their final, DTV facility, or if they need to modify their existing construction permit, must file an application for a new or modified construction permit for their final, DTV facility;⁶⁴ (3) must construct their DTV facility by the construction deadline proposed for them;⁶⁵ (4) must file a form with the Commission detailing their current transition status, the additional steps necessary in order to be prepared for digital-only operation on February 17, 2009, and a timeline for making those steps;⁶⁶ and (5) must populate, and update as necessary, the Event Information Tables (“EITs”) in

⁵⁹ NAICS code 334220.

⁶⁰ *Id.*

⁶¹ The number of “establishments” is a less helpful indicator of small business prevalence in this context than would be the number of “firms” or “companies,” because the latter take into account the concept of common ownership or control. Any single physical locations for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses.

⁶² U.S. Census Bureau, 2002 Economic Census, Industry Series: Manufacturing, “Industry Statistics by Employment Size,” Table 4, NAICS code 334220 (issued May 2005).

⁶³ 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 Notice.

⁶⁴ *See supra* section V.D. of Notice.

⁶⁵ *See supra* section V.C. of Notice.

⁶⁶ *See supra* section V., ¶ 35 of the Notice.

PSIP data with accurate information about each event, in accordance with the current version of the ATSC PSIP standard, A/65-C.⁶⁷

25. In addition, certain proposals set forth in this *Notice*, if adopted, would provide for voluntary compliance and reporting requirements. Because these voluntary requirements may afford small television broadcast stations the opportunity for regulatory flexibility and reduced burdens, they are discussed in Section E. of this IRFA.⁶⁸

26. 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.⁶⁹ 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.

27. 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.⁷⁰ Commercial stations must file FCC Form 301 and NCE stations must file FCC Form 340.⁷¹ 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.⁷²

28. According to the Notice, 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.⁷³ Thus, both these groups of stations will need to file applications for their final, post-transition facilities.

29. Given the number of stations that will need to file CP or modification applications and the fast-approaching transition date, the Notice proposes to offer expedited processing to a station applying for a CP to build or modify its post-transition channel, provided that its application (i) does not seek to expand the station's noise-limited service contour in any direction

⁶⁷ See *supra* section V.G.2. of the Notice. 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.*

⁶⁸ To request various opportunities for regulatory flexibility, stations would have to file applications with the Commission. See, *e.g.*, section VI.B. of the Notice (listing proposed information collections contained in the Notice).

⁶⁹ 47 U.S.C. §§ 309(j)(14).

⁷⁰ See 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538.

⁷¹ See 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538.

⁷² See *supra* section V.D. of the Notice.

⁷³ See *id.*

beyond that established by the new DTV Table Appendix B; (ii) specifies facilities that match or closely approximate those new 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 deviate no more than five percent from those new DTV Table Appendix B facilities with respect to predicted population); and (iii) is filed within 45 days of the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding.⁷⁴ The Notice tentatively concludes that it will not accept applications to expand post-transition facilities until it has completed processing the applications to build authorized facilities.⁷⁵ The Notice also tentatively concludes to adopt a new 0.5 percent interference standard to apply to maximization applications and to new channel allotments after the transition.⁷⁶

30. Construction deadlines for DTV facilities. The Notice proposes deadlines for all full-power television broadcast stations to complete construction of their final, DTV facilities in order to ensure that DTV stations will be providing service on their final, post-transition channels by the February 17, 2009 transition date.⁷⁷ The Notice proposes 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. First, the Notice proposes that February 17, 2009 will be the construction deadline for stations whose DTV channel for pre-transition operation is not the same as their channel for post-transition use.⁷⁸ These are stations that will be starting over with a new channel for DTV service. Second, for stations whose post-transition channel is the same as their pre-transition channel, the Notice proposes to require completion of stations' post-transition facilities by the deadlines established for them in the *Construction Deadline Extension Order* and *Use-or-Lose Order*.⁷⁹ Most stations (whose post-transition channel is the same as their pre-transition channel) that received a grant of their extension request or use-or-lose waiver request were provided six months from the release date of the *Construction Deadline Extension Order* or *Use-or-Lose Order*, whichever is applicable, to complete construction of their final, DTV (post-transition) facilities. The other stations (whose post-transition channel is the same as their pre-transition channel) that received a grant of their extension request or use-or-lose waiver request were provided until February 17, 2009 to complete construction of their final, DTV (post-transition) facilities, because they faced unique technical challenges, such as needing to switch their top-mounted analog transmitter with their side-mounted digital transmitter. Unlike the first group, stations whose post-transition channel is the same as their pre-transition channel have long been assigned the channel that they will use for post-transition operations. Third, notwithstanding the first two groups, the Notice proposes that February 17, 2009 will be the construction deadline for stations with side-mounted

⁷⁴ See *supra* section V.D. of the Notice (discussing proposal for expedited processing).

⁷⁵ See *supra* section V.E. of the Notice.

⁷⁶ See *supra* section V.F. of the Notice.

⁷⁷ See *supra* section V.C. of the Notice.

⁷⁸ See *supra* section V.C.1. of the Notice.

⁷⁹ See *supra* section V.C.2. of the Notice.

digital antennas or similar situations in which the operation of their analog service prevents the completion of their full, authorized digital facilities.⁸⁰

31. The Notice also proposes to limit the situations in which stations may obtain more time to satisfy the proposed new construction deadlines for completion of final, DTV facilities.⁸¹ For requests for additional time to construct DTV facilities filed before February 17, 2009 (but after the effective date of the proposed new rule), the Notice proposes to revise and apply Section 73.624(d) of the rules.⁸² Specifically, the proposed Section 73.624(d), if adopted, would no longer grant stations additional time to construct because of equipment delays, absent extraordinary circumstances.⁸³ The proposed rule would also require a stronger demonstration of financial hardship than is now required.⁸⁴ The proposed financial hardship standard would require 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 test 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 also would be required to submit a schedule of when they expect to complete construction.⁸⁵ As is currently required by the rule, stations making such requests must electronically file FCC Form 337.⁸⁶ With respect to a deadline of February 17, 2009 or later, the Notice proposes to apply Section 73.3598 of the rules, which now applies to DTV singletons, analog TV, and other broadcast services.⁸⁷ Stations must file a notification to inform the Commission of the circumstances that it believes should toll its construction period.⁸⁸

32. Transition Status Form. The Notice proposes that every full-power television broadcast station must file a form with the Commission 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 switch-over deadline; and (3) a plan for how it intends to meet that deadline.⁸⁹ These

⁸⁰ See *supra* section V.C.3. of the Notice.

⁸¹ See *supra* section V.C.4. of the Notice.

⁸² See proposed rule 47 C.F.R. § 73.624(d) in Appendix A, *supra*, of the Notice. See also *supra* section V.C.4. of the Notice.

⁸³ See proposed rule 47 C.F.R. § 73.624(d) (proposing to eliminate paragraph (d)(3)(ii)(B)) in Appendix A. 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).

⁸⁴ See proposed rule 47 C.F.R. § 73.624(d) (proposing to revise paragraph (d)(3)(ii)(C)) in Appendix A.

⁸⁵ See *supra* section V.C.4. of the Notice.

⁸⁶ 47 C.F.R. § 73.624(d). See OMB Control No. 3060-1001.

⁸⁷ See proposed rule 47 C.F.R. § 73.3598 in Appendix A, *supra*. See also *supra* section V.C.4. of the Notice.

⁸⁸ 47 C.F.R. § 73.3598(c), (d). A station must notify the Commission as promptly as possible and, in any event, within 30 days, of the act of God that has blocked construction, or the initiation of a relevant administrative or judicial review. This notification procedure, which replaced the use of FCC Form 307, was established in the 1998 *Streamlining Order*, 13 FCC Rcd at 23091 ¶ 86.

⁸⁹ See *supra* section V., ¶ 35 of the Notice.

filings will be posted on the Commission's website. These forms will assist the Commission, industry, and the public in assessing progress and making plans for the digital switchover 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.

33. Program System and Information Protocol ("PSIP") standard. The Notice proposes to update 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.⁹⁰ 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 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.⁹¹ The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.

34. 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.⁹² 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.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

35. 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.⁹³

36. 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

⁹⁰ See *supra* section V.G.2. of the Notice. See also proposed rule 47 C.F.R. § 73.682(d) in Appendix A, *supra*.

⁹¹ *Id.*

⁹² See *supra* section V.G.2. of the Notice.

⁹³ 5 U.S.C. § 603(c)(1)-(c)(4)

must ensure that all full-power television broadcast stations, including small stations, cease analog broadcasting as of the February 17, 2009 transition date.

37. The *Notice*, however, does propose opportunities for regulatory flexibility with respect to the other mandatory compliance requirements.

38. With respect to applications for post-transition facilities, the Notice proposes to offer expedited processing (as discussed above).⁹⁴ 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. This option may well benefit smaller entities.

39. With respect to the proposed construction deadlines to build final, post-transition facilities, the Notice proposes to offer 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 transition date.⁹⁵

40. While proposing to establish a stricter standard for requests for extension of time to construct DTV facilities, the Notice also proposes to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel.⁹⁶ 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 Notice also asks whether it should afford small television broadcasters additional time to construct DTV facilities.⁹⁷ The Notice also proposes to allow stations to operate on newly allotted post-transition facilities before the transition deadline provided they would not interfere with existing, pre-transition service.⁹⁸

41. The Notice also requests comment on whether to permit stations to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receive their current analog TV and DTV service so that over-the-air viewers will not lose TV service. In particular, if such relief is not afforded to all stations, the Notice asks whether to afford such relief to small television broadcasters because of the unique challenges they may face in completing their transition.⁹⁹

42. The Notice requests comment on whether to allow stations to temporarily remain on their pre-transition DTV channel (even though it is not their post-transition channel) if: (i) they serve at least the same area and population that receives their current analog TV service so that over-the-air viewers will not lose TV service; (ii) they do not cause impermissible

⁹⁴ See *supra* IRFA ¶ 27.

⁹⁵ See, e.g., *supra* section V.C.6. of the Notice.

⁹⁶ See *supra* section V.C.4. of the Notice.

⁹⁷ See *id.*

⁹⁸ See *supra* section V.C.5. of the Notice.

⁹⁹ See *supra* section V.C.6. of the Notice.

interference to other stations or prevent other stations from making their transition; and (iii) doing so would facilitate the transition.¹⁰⁰ Stations making such requests would do so in accordance with the rules for STA. This opportunity may afford additional regulatory relief to small television broadcasters.

43. To facilitate the construction of, and commencement of operations on, post-transition facilities, the Notice also examines the circumstances in which a station may reduce or terminate its analog service to facilitate construction of post-transition facilities.¹⁰¹ This opportunity may afford additional regulatory relief to small television broadcasters. The Notice also considers whether and, if so, under what circumstances it should accept new requests by stations to return their pre-transition-only DTV channel (i.e., a DTV channel that is not their final, post-transition channel) before the end of the transition and “flash cut” from their analog channel to their post-transition channel.¹⁰² This flash-cut option may provide financial relief to small stations, such as satellite stations, by freeing station to focus their efforts on completion of their final, post-transition facilities.

44. With respect to the proposed updating of Section 73.682(d) to reflect the new revisions to the ATSC PSIP standard, the Notice seeks comment on the burden that compliance with the new standard, A/65-C, would place on small broadcasters, in particular.¹⁰³

45. 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, broadcasters are encouraged to suggest alternative proposals that would avoid the imposition of significant and unreasonable burdens on small TV broadcasters.

F. Federal Rules Which Duplicate, Overlap, or Conflict with the Commission’s Proposals

46. None.

¹⁰⁰ See *supra* section V.C.6. of the Notice.

¹⁰¹ See *supra* section V.A. of the Notice.

¹⁰² See *supra* section V.B. of the Notice.

¹⁰³ See *supra* section V.G.2. of the Notice.

APPENDIX D

**LIST OF STATIONS BELIEVED READY
TO COMMENCE POST-TRANSITION DTV OPERATIONS**

[Note: This appendix is 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 (MB Docket No. 07-91)

Today we take another step in our effort to facilitate a timely digital transition. With this Notice of Proposed Rulemaking, we begin our third periodic review to assess the progress of broadcast television stations as they transition from analog to digital systems. We also ask broadcasters to update us on their progress toward completion of their own digital transition and how they plan to meet the statutory deadline for that transition. The Commission will make any necessary adjustments to the Commission's technical rules and policies to facilitate the transmission of digital broadcast signals by February 17, 2009. 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.

I am hopeful that the proceeding we initiate today will assist in making the digital transition proceed as swiftly and smoothly as possible.

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07-91)

We are now less than two years from the end of the digital television transition on February 17, 2009. Unlike the previous "85% test," this is a hard deadline. There are no exceptions, no second chances. We have one opportunity to get this right.

The stakes could not be higher for everyone with an interest in the DTV transition – consumers readying themselves for the end of analog broadcasting; public safety authorities counting the minutes until they can use their spectrum; advanced wireless providers preparing to bid in the 700 MHz auction; consumer electronics manufacturers and retailers projecting consumer equipment needs; and broadcasters hoping to launch themselves into the digital future.

With so much hinging on the DTV transition staying on schedule, one would think that the switchover would be a national priority. Well—not yet. I was involved in the planning for Y2K, so I know what it looks like when an issue is taken seriously. Compared to Y2K, the transition to digital television is a stealth operation.

Broadly speaking, two things have to happen for the transition to succeed: broadcasters have to be ready to transmit digital signals, and consumers have to be ready to receive them.

Much of the initial focus has rightly been on consumers – how to make them aware that the transition is coming and what they need to do to prepare themselves. We're way behind the curve in this regard. According to a recent survey by the Association of Public Television Stations, 61% of consumers said they had "No Idea" that the DTV transition was taking place, and another 10% expressed only "Limited Awareness." NTIA will spend \$5 million for consumer education. As anyone who has conducted a national campaign knows, that is far from what is needed to get this job done. The hope is apparently that industry will take up the slack. We shall see.

The second part of getting consumers ready is ensuring that they don't wake up to a blank screen on February 18, 2009. That involves the converter box subsidy program for over-the-air viewers and ensuring that our mandatory carriage rules are updated to protect cable and satellite subscribers from losing access to broadcast signals.

This item, however, is about getting *broadcasters* ready for the switchover date. I think this problem is often overlooked because people see the number of stations broadcasting in digital and it sounds pretty good. But the fact of the matter is that most stations need to take significant action between now and the end of the transition. Over 600 stations will be moving to different channels than they are operating on now, and hundreds more are operating at low power and will need to ramp up. It means the possibility of hundreds of new transmitters, antennas, filters, exciters, and other types of equipment. It means the construction of new towers. It means scheduling tower crews and coordinating with other stations. It means lining up financing, zoning approvals, and international coordination. It means getting Commission

applications on file and granted. And it means doing it all in less than two years in a country in which construction is impossible in numerous areas for much of the year.

That's why I'm pleased that the Commission adopted the proposal to require every broadcast station in the U.S. to file a DTV Transition Plan with the FCC. First, the stations will tell us where they are today. Second, stations will tell us what they need to do by February 17, 2009 – the equipment they need, the construction that needs to take place, the regulatory and other hurdles they need to clear. Third, stations will provide us with a timeline for how they plan to be ready by the switchover date. Finally, these plans will be available on our website so everyone can review them. I thank the Chairman and my colleagues for working with me on this.

Might things still go wrong? Sadly, yes. Even if we closely monitor what's going on and try to address problems as they arise, there is no guarantee of success. But our odds are infinitely better than if we sit back and hope for the best. I recognize this effort may absorb substantial Commission time and resources over the next two years. Given the other pressing issues before us, I do not take that prospect lightly. But the effort is worth it. This is not a drill—it's the real deal.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07-91)

The national transition to digital broadcasting is the Commission's single biggest responsibility in recent history. Similar to the nation's preparedness for the unrealized Year 2000 computer threat that captivated our attention just seven years ago, the only proper response is to over-prepare. The DTV transition will impact everyone in the United States, yet the primary responsibility to make this transition successful rests principally on the Commission and its regulated entities. Accordingly, I am pleased to support this item because it advances our national preparedness for the impending digital transition, but there is much more work ahead.

That analog broadcasting *as we know it* will end forever on February 17, 2009, is made eminently clear throughout this item. This hard deadline was created by Congress, and the Commission does not have the authority, the discretion or the inclination to change it. In very real terms, the transition is far too important, and far too much is riding on its success.

It is too important because the terrorist attacks of 2001 revealed the underlying weakness of our public safety communications infrastructure. First responders are eagerly waiting for the 24 MHz of spectrum that Congress has allocated to serve as the foundation of a potentially inoperable system. And far too much – including far too much money – is riding on the deadline to cause any uncertainty. The Commission is statutorily required to commence an auction of the reclaimed 700 MHz broadcast spectrum no later than January 28, 2008, and to deposit the proceeds in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. The estimated market value of the reclaimed broadcast analog spectrum is upwards of \$10 billion, according to the Congressional Budget Office.

I am pleased that this item informs full-power television broadcasters that the transition deadline is firm. In today's item, the Commission proposes that February 17, 2009, will be the construction deadline for all stations that are building digital facilities on new channels. And for stations whose pre-transition channels are the same as their post-transition assignments, we propose that those stations will have six months to complete construction. The Commission also proposes to heighten the standard by which we will grant extensions to time to construct digital facilities. I support these and many other proposals, such as developing an expedited procedure to process construction permits, because they should establish a regulatory framework that is firm and flexible.

I am especially pleased that we decided to develop a simple form that will allow every full-power television broadcast station to inform the Commission of their status and what the additional steps the station needs to take to meet the February 17, 2009 deadline. While the form itself is important, what we do with them is even more important. It is not sufficient to simply post them on a website. I believe the Commission, as the principal agency in charge of the digital transition, needs to prepare a comprehensive report that aggregates and details where every single station is exactly one year before the transition ends. Our failure to know and report

this information to the American people and Congress would be an abrogation of our responsibility.

Finally, while I am pleased that we are marching on with the mechanics of the digital transition, I am concerned that we have not yet provided broadcasters and the public with a concrete understanding of broadcasters' public interest obligations in the digital age. This necessary piece of the transition continues to lag further and further behind. Congress made clear that broadcasters continue to have public interest obligations in the digital world, but left it up to us to specify how to apply them.

As we continue to speed the arrival of the best possible digital television service to the public, an important proceeding that could bring certainty continues to linger at the Commission. More than seven years ago, the Commission inquired generally how it should update broadcasters' public interest obligations for the digital age. In the *Second Periodic Report and Order*, we sought additional comment and stated our goal for prompt resolution. Yet, no further action has been taken on this issue of enormous public and consumer importance. Especially in light of our interest curtailment on broadcast television, I urge my colleagues to act on clarifying the public interest obligations of digital broadcasters as soon as possible. A crystal clear digital picture is important, but quality programming is just as, if not more, important.

We owe it to the public and to broadcasters to devote sufficient time and resources of this Commission to establishing concrete, measurable public interest obligations to fulfill Congress's vision of this enhanced digital viewing experience. Let us not leave the public behind as we continue finalizing the blueprints for digital television.

**STATEMENT OF
COMMISSIONER DEBORAH TAYLOR TATE**

*Re: Third Periodic Review of the Commission's Rules and Policies Affecting the
Conversion to Digital Television (MB Docket No. 07-91)*

With this *Notice of Proposed Rulemaking*, we begin our third periodic review of the digital television (“DTV”) transition. We all have a role to play in order to make the transition a smooth one and realize the benefits that it promises, freeing up spectrum for incredible new applications and services, including the deployment of broadband across rural areas of this country. I applaud the Digital TV Transition Coalition comprised of business, trade, industry and grassroots organizations for their commitment to help educate and inform consumers regarding this exciting move to a dazzling truly digital world. Our role, in addition to our own education and outreach, is to provide broadcasters the regulatory flexibility they need to focus their attention on the planning, coordination, and construction of their final, post-transition DTV facilities. Unlike our previous periodic reviews, we conduct this one knowing that Congress has set February 17, 2009 as the date certain for the end of the transition, underscoring our need to work cooperatively with broadcasters and the public alike so that we will continue to get news, information and entertainment without interruption in 664 days.

**STATEMENT OF
COMMISSIONER ROBERT M. MCDOWELL**

Re: Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 07-91)

This Notice provides a progress report on the digital transition, proposes 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. Since Congress established the transition deadline, the Commission has moved beyond simply ensuring that stations were capable of operating in digital to focus on facilitating broadcasters' construction of their final, post-transition channel facilities. In this Notice, we analyze and consider the specifics on 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 we can provide to ensure that the complicated, coordinated switch to DTV becomes a reality.

I thank Media Bureau for their diligent and tireless efforts to produce this comprehensive notice. Much more work remains to be done, but we are all striving to make the transition as smooth as possible for the industry and for consumers so that the benefits of digital television technology can be enjoyed by the public without TV sets going dark. I thank the Chairman for his leadership on these issues and support this Notice.