



NEWS

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See MCI v. FCC, 515 F 2d 385 (D.C. Circ 1974).

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FCC SETS RULEMAKING TO ESTABLISH REMEDIAL MEASURES FOR UNEXCUSED FAILURE TO CONSTRUCT DIGITAL TELEVISION FACILITIES

Washington, DC – The Federal Communications Commission today initiated a rulemaking proceeding to examine what measures it should take regarding television broadcasters who fail to meet their digital television (“DTV”) construction deadlines. All commercial broadcasters were required to construct their digital facilities by May 1, 2002.

In the notice of proposed rulemaking (“NPRM”), the Commission affirmed its commitment to the “rapid build out of a nationwide DTV system,” and stated its intent to prevent undue delay in the transition to digital transmission. The NPRM seeks comment on tentative proposals for a series of graduated sanctions for licensees who do not demonstrate that their failure to construct their digital facilities has been due to circumstances that were either unforeseeable or beyond their control, or legitimate financial hardship for those entitled to make such a showing.

The tentative proposals contemplate an increasingly severe level of sanctions every six months the licensee fails to construct, beginning with admonishment, followed by issuance of notices of apparent liability for forfeiture, and culminating in rescission of the licensee’s DTV authorization. The Commission directed the staff to apply appropriate sanctions on a case-by-case basis during the pendency of the rulemaking. Comments in the NPRM are due 30 days after publication in the Federal Register; reply comments are due 45 days following publication in the Federal Register.

The Commission also took action with regard to the further extension requests filed by nine commercial television stations seeking an extension of their November 1, 1999 DTV construction deadline. Stations affiliated with ABC, CBS, Fox and NBC television networks were required to build DTV facilities in television markets eleven (11) through thirty (30) by November 1, 1999. The Commission granted the stations an extension of their DTV construction deadline to six months from the release date of the order. In addition, one licensee received reporting conditions and must submit a report to the Commission within ninety (90) days detailing its progress on its construction timetable.

Further, the Commission clarified that its “minimum-facilities” Special Temporary Authorization (“STA”) policy regarding licensees who construct less than their authorized facilities will not be applied to network-affiliated, top-thirty television market licensees. In its November 15, 2001 Memorandum Opinion and Order in the DTV periodic review proceeding, the Commission permitted television licensees subject to the May 1, 2002 (commercial) or May 1, 2003 (noncommercial) construction deadlines to build minimal initial facilities to satisfy their DTV build-out obligations. Licensees thus operating pursuant to a “minimum-facilities” STA by their respective deadlines (either May 1, 2002 or May 1, 2003) would be considered in compliance with their construction deadline and their outstanding construction permits will be automatically extended until such time as the Commission determines otherwise.

In its clarification, the Commission reaffirmed that the construction and operation of DTV facilities by network-affiliated, top-thirty television market licensees “is key to the development of a nationwide DTV system.” The Commission held that it will continue to review extension requests from these licensees on a case-by-case basis, and determine whether each station has demonstrated that a further extension is appropriate.

Action by the Commission May 16, 2002, by Order and Notice of Proposed Rulemaking (FCC 02-150). Chairman Powell, Commissioners Abernathy, Copps, and Martin, with Commissioners Abernathy, Copps and Martin issuing separate statements.

MM Docket 02-113

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**Network-Affiliated, Top 30 Television Market Stations Granted an Extension of their DTV
Construction Deadline**

Call Sign	City	ST	Reason for Delay
WBBM-DT	Chicago	IL	Interference to cable.
KTVT-DT	Ft. Worth	TX	Delay in manufacture of new antenna system.
WTVJ-DT	Miami	FL	Pending rulemaking.
KMGH-DT	Denver	CO	Zoning delays.
KCNC-DT	Denver	CO	Zoning delays.
KUSA-DT	Denver	CO	Zoning delays.
WFSB-DT	Hartford	CT	Pending rulemaking.
WTIC-DT	Hartford	CT	Zoning delays and pending rulemaking.
WVIT-DT	New Britain	CT	Zoning delays.