



PUBLIC NOTICE

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**DTV Channel Election Issues –
Compliance with the July 1, 2006 Replication/Maximization Interference Protection
Deadline; Stations Seeking Extension of the Deadline**

MB Docket No. 03-15

As part of the transition from analog to digital television (“DTV”), the Commission established deadlines for television broadcast licensees and permittees (hereinafter collectively referred to as “licensees”) to complete the construction of their replicated or maximized facilities or lose interference protection. In this Public Notice we describe the ways in which licensees may demonstrate compliance with the upcoming use-or-lose deadlines and the requirements for filing a request for waiver to extend the deadlines, if needed. We also specifically address the requirements for stations currently operating under DTV Special Temporary Authority (“STA”).

In paragraph 78 of the *Second DTV Periodic Review Report and Order*, the Commission established the following deadlines for licensees to construct and operate digital facilities in order to retain interference protection within their certified service areas (*i.e.*, replication or maximization service areas):

July 1, 2005 – Use-it-or-lose-it deadline for DTV licensees affiliated with the top-four networks (*i.e.*, ABC, CBS, Fox and NBC) in markets 1-100. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current DTV channel must serve at least 100 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.

July 1, 2006 – Use-it-or-lose-it deadline for all other commercial DTV licensees as well as noncommercial DTV licensees. Those licensees that receive a tentative DTV channel designation in the channel election process on their current digital channel must construct full, authorized DTV facilities. Those licensees that receive a tentative DTV channel designation on a channel that is not their current

DTV channel must serve at least 80 percent of the number of viewers served by the 1997 facility on which their replication coverage was based.¹

The term “full, authorized DTV facilities” refers to the facilities certified by the licensee on FCC Form 381, Digital Channel Election Pre-Election Certification Form.²

The *Order* states that a licensee that fails to satisfy the relevant replication/maximization requirements will lose interference protection to the unused portion of its proposed service area as of the applicable interference protection deadline. In addition, a licensee failing to meet the deadline will lose the ability to “carry over” that interference protection to its post-transition channel (e.g., its in-core NTSC channel or other channel awarded pursuant to the channel election process).³ However, the *Order* provides that the Commission may grant a waiver of the deadline, in the form of a six-month extension, if the licensee can demonstrate that it is unable to provide the required service because of severe financial constraints or circumstances beyond its control.⁴ The *Order* also states that licensees seeking a waiver on the basis of financial hardship must submit documentation and other evidence similar to the information required to obtain an extension of the DTV construction deadlines on financial hardship grounds.⁵

On June 15, 2005, the Commission issued a Public Notice regarding compliance with the July 1, 2005 replication/maximization interference protection deadline.⁶ A number of requests for waiver of that deadline were filed and are currently pending.

Compliance with the July 1, 2006 Deadline

We will apply the following policies to licensees subject to the July 1, 2006 interference protection deadline.⁷

¹ *Second Periodic Review of the Commission’s Rules and Policies Affecting the Conversion To Digital Television*, 19 FCC Rcd 18279, 18314-15, para. 78 (2004) (citations omitted) (“*Second DTV Periodic Review Report and Order*” or “*Order*”).

² *See Order*, 19 FCC Rcd at 18296, para. 41 and FCC Form 381.

³ *Order*, 19 FCC Rcd at 18317-18, para. 85. *See also id.* at 18296, para. 41 and n.81 (reminding licensees that false certifications may result in sanctions and that failure to replicate or maximize to the extent certified will result in loss of interference protection to the service areas not served).

⁴ *Order*, 19 FCC Rcd at 18318-19, para. 87.

⁵ *Id.*

⁶ Public Notice, DTV Channel Election Issues – Compliance with the July 1, 2005 Replication/Maximization Interference Protection Deadline; Stations Seeking Extension of the Deadline, DA 05-1636 (“*2005 Public Notice*”).

⁷ Because July 1, 2006 is a Saturday, we are extending all July 1, 2006 deadlines set forth herein to Monday, July 3, 2006.

If a licensee that is subject to the July 1, 2006 interference protection deadline has one of the following by that deadline, then it has satisfied the use-or-lose requirement and need not file a request for a waiver:

- a license to cover facilities that satisfy the requirements of paragraph 78 of the *Order* (“para. 78 facilities”);
- a construction permit (“CP”) for para. 78 facilities with a pending application for license to cover; or
- a CP for para. 78 facilities with a pending application for extension of time to construct.⁸

If a licensee subject to the July 1, 2006 deadline certified to operate at facilities different from those authorized in its current license or CP, and those facilities do not satisfy the requirements of paragraph 78, then the licensee must file an application for minor change to its licensed facility or for modification of its CP for para. 78 facilities by the July 1, 2006 deadline.⁹

- If such licensee has not received approval of its modification application prior to the July 1, 2006 deadline, then it should file a request for waiver of the interference protection deadline, as described below, if it wants to continue to receive interference protection.
- If such licensee has received approval of its modification application but has not filed an application for a license to cover its CP by the July 1, 2006 deadline, then it should file a request for waiver of the interference protection deadline if it wants to continue to receive interference protection.
- If such licensee has had its modification application approved prior to the July 1, 2006 deadline, and has filed an application for license to cover its CP by that deadline, then it need not file a request for waiver.

A number of licensees have been granted CPs with deadlines that are later than July 1, 2006. As stated in the *Order*, such licensees must meet the replication/maximization interference protection deadline by the expiration date specified in their CP rather than the July 1, 2006 deadline.¹⁰ Thus, for example, a licensee with a CP that expires on September 1, 2006 has until that date to satisfy the relevant replication/maximization requirements. If that licensee

⁸ *But see infra* discussion of circumstances that apply to stations that have been operating pursuant to STAs.

⁹ Conversely, if a licensee that is operating pursuant to a license or a CP with facilities smaller than required by paragraph 78 of the *Order* does not file an application for a CP or modification of a CP to comply with paragraph 78, then it should file a request for waiver of the interference protection deadline if it wants to continue to receive interference protection.

¹⁰ *Order*, 19 FCC Rcd at 18317, para. 84.

cannot do so, it must file an application for extension of its CP no later than the date on which the CP expires. The filing of the extension application will automatically toll the construction deadline and the replication/maximization interference protection deadline pending consideration of the application, and grant of the extension application will extend the use-or-lose deadline for that station until the CP expiration date. A licensee that has filed an application for extension of a CP and whose extension application is still pending as of the July 1, 2006 deadline is not required to file a request for waiver of the replication/maximization interference protection deadline. The interference protection deadline is tolled pending consideration of the application for extension of the CP.

DTV STAs

In the *First DTV Periodic Review MO&O*, the Commission permitted certain licensees to elect to begin digital operations pursuant to a DTV STA under which they would provide at least the minimum initial facilities required to serve the station's community of license. Such licensees were not required to build out to satisfy their CP until the Commission determined the timing for requiring construction of full replication or maximization facilities or relinquishing interference protection.¹¹ The "use-or-lose" deadlines established in August, 2004, in the *Second DTV Periodic Report and Order* reflect this determination. Accordingly, the July 1, 2006 replication/maximization interference protection deadline applies to licensees that took advantage of the STA policy established in the *First DTV Periodic Review MO&O*. A licensee that was granted a DTV STA pursuant to that policy no longer will receive automatic extensions of its outstanding CP as of the July 1, 2006 deadline. Therefore, if a licensee is operating facilities pursuant to a DTV STA that do not meet the criteria specified in paragraph 78 and is unable to complete the procedure described above for modifying its CP and filing an application for license to cover para. 78 facilities by the July 1, 2006 deadline, it should file a request for waiver of the interference protection deadline, as described below, if it wants to continue to receive interference protection.

If a licensee (1) has a tentative channel designation for a channel other than its current DTV channel; (2) is operating para. 78 facilities on its current DTV channel pursuant to an STA; and (3) does not intend to build out to its certified facilities on its current DTV channel prior to the end of the transition, it should file an application to modify its CP to match the STA facilities and, following FCC approval, file an application for a license to cover the CP by the July 1, 2006 deadline. It should not file a request for waiver of the interference protection deadline. If, instead, such licensee intends to increase its facilities on its current DTV channel in accordance with its existing CP prior to the end of the transition, it should apply for an extension of its CP and a renewal of its STA by the July 1, 2006 deadline in order to retain the right to construct these larger facilities on its current DTV channel.

¹¹ *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 16 FCC Rcd 20594 (2001) ("*First DTV Periodic Review MO&O*"). *Id.* at 20606-08.

Requests for Waiver of the Replication/Maximization Interference Protection Deadline

A licensee that wants to request a waiver of the July 1, 2006 replication/maximization interference protection deadline must demonstrate severe financial constraints or circumstances beyond its control. Because July 1, 2006 is a Saturday, such requests must be filed with the Commission no later than July 3, 2006. Waivers to extend the deadline may be granted on a six-month basis if good cause is shown.¹² The filing of a request to waive the replication/maximization interference protection deadline will toll automatically the deadline pending consideration of the request.

Requests should be made in letter format, should reference MB Docket No. 03-15, and should be filed electronically using the ECFS. A copy of each waiver request must also be delivered to Shaun Maher, Federal Communications Commission, Room 2-A820, 445 12th Street, S.W., Washington, D.C. 20554, or Shaun.Maher@fcc.gov. Licensees must file a separate application for extension of an outstanding CP, if necessary.

Several licensees have indicated that they may be able to come close to meeting the applicable replication or maximization requirements but cannot meet the precise requirements set forth in paragraph 78 of the *Order*. For example, some licensees with a top-mounted analog antenna and a side-mounted digital antenna state that they cannot replicate completely their analog signal in digital without switching the antennas, which would cause some analog viewers to lose service. For licensees in this situation, the following should be addressed in submitting a request for waiver of the interference protection deadline: (1) how close to full replication/maximization the licensee will be as of the deadline; (2) the reason the licensee is unable to comply fully; (3) the cost to the licensee and the impact on viewers if the licensee were required to comply fully; (4) whether the licensee will be able to modify its operation to comply fully after analog operation terminates (*e.g.*, relocate its DTV antenna to the top of the tower); and (5) any other relevant factors.

Satellite Stations

In paragraph 104 of the *Second DTV Periodic Review Report and Order*, the Commission stated that satellite station licensees that elect to return their DTV channel to the Commission before the end of the transition and to flash cut to digital operation on their analog channel at the end of the transition will retain until that time interference protection to the areas defined in their DTV replication or maximization applications on file with the Commission. To ensure that satellite station licensees that already had constructed digital facilities or that do so before the end of the transition receive the same policy benefit, the Commission also permitted these satellite licensees to retain replication and maximization interference protection for their digital stations until the end of the transition. Accordingly, satellite licensees are not subject to the

¹² *Order*, 19 FCC Rcd at 18318-19, para. 87.

July 1, 2006 interference protection deadline and are not required to seek a waiver of the deadline in order to retain their DTV interference protection.¹³

Impact of Other Build-Out Deadlines

In paragraph 111 of the *Order*, the Commission required licensees that had not received a DTV CP at the time the *Order* was released to build the facilities they were allotted in the 1998 DTV Table of Allotments (“checklist” facilities) by August 4, 2005. Licensees that were unable to meet that deadline should have filed a request for waiver of the deadline no later than August 4, 2005.¹⁴

For additional information, contact Nazifa Sawez, Video Division, Media Bureau, at (202) 418-7059 or nazifa.sawez@fcc.gov, or Shaun Maher, Video Division, Media Bureau, at 202-418-2324 or shaun.maher@fcc.gov. TTY: (202) 418-7172.

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¹³ This also applies to satellite station licensees with an analog channel outside the core that elected to retain their current in-core DTV channel for post-transition DTV service. *See Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18325, para. 103.

¹⁴ *See 2005 Public Notice*.