

kilometers.<sup>126</sup> Further, noting the Commission's statement, in the *Fifth Report and Order*, that we will be able to process in only a few days' time those construction permit applications that certify to a number of technical issues and noting that applications requesting deviations will take longer to process, MSTV asks that the Commission give top processing priority to such applications in major markets, where many stations face expedited buildout schedules and where such applications may have an impact on equipment purchases.<sup>127</sup>

71. Discussion. The October 16, 1997 Public Notice setting forth how DTV construction applications will be processed generally addresses issues such as those raised by the petitioners.<sup>128</sup> As we noted in the *Fifth Report and Order*, we intend to give processing priority to routine DTV applications, which are those in which the applicant can certify compliance with several key processing requirements. We also are expediting the processing of DTV applications in any of the television markets where broadcasters are subject to an accelerated construction timetable (*i.e.*, the top 30 markets). With regard to showings that a requested change is in compliance with the Commission's interference standards, all non-routine DTV applications will be processed pursuant to the criteria adopted in the *Sixth Report and Order* and its reconsideration order, and as set forth in OET Bulletin No. 69.

#### 4. Selection of Permanent DTV Channel

72. Petitions/Comments. APTS/PBS petitions the Commission to require stations with both their NTSC and their DTV channel within the core to select their permanent channel several years before the end of the transition period, such as at the end of the construction period or, at the latest, a year after they commence operation. APTS/PBS argues that this would give public television stations with both their NTSC and their DTV channels outside the core substantial advance notice of their permanent DTV channel. APTS/PBS asserts that this would allow non-core stations a reasonable opportunity to select their permanent channels. It adds that such non-core licensees should be protected and not be subject to competing applications when they apply for their permanent DTV channels.<sup>129</sup>

73. Discussion. The issue of whether we should require stations with both channels within the core to select their permanent channel early in the transition will be dealt with in the *Memorandum Opinion and Order* on reconsideration of the *Sixth Report and Order*. We take this opportunity to clarify that non-core licensees will not be subject to competing applications when they apply for their permanent DTV channels.

#### 5. Immediate Transition

74. Petitions/Comments. In the *Fifth Report and Order*, we contemplated that each broadcaster would operate its analog station while constructing its digital facilities, and then operate both facilities upon the completion of construction for the duration of the transition. However, several parties request that the Commission allow stations, at least under certain circumstances, to make an immediate and complete transition to DTV upon construction, so that they would not have to operate both digital and

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<sup>126</sup> Costa de Oro Petition at 2-3.

<sup>127</sup> MSTV Petition at 43.

<sup>128</sup> See n. 88, above.

<sup>129</sup> APTS/PBS Petition at 15-16.

analog facilities.<sup>130</sup> For example, Meyer Broadcasting Company ("Meyer"), Reiten Television, Inc. ("Reiten") and NDBA argue that, because of the transition's high cost to small market stations, the Commission should allow such stations to make an immediate transition from analog to digital, eliminating the need for them to build additional facilities.<sup>131</sup> Meyer states that three of its five stations have been assigned DTV channels that are outside of the core spectrum, and that it will be an excessive financial burden to purchase and install transmitters, line, and antennas for these channels to use only for four years. Meyer adds that the equipment would have no resale value because it will be for use outside of the core spectrum.<sup>132</sup>

75. APTS/PBS makes a similar argument for noncommercial, educational television stations, as a way to compensate for their unique funding difficulties. It asserts that, in order to give needed flexibility to smaller public TV stations, the Commission should allow public TV stations with both an NTSC and a DTV channel within the core to convert to DTV on their in-core NTSC channel, rather than having to spend the money to build a separate DTV station. Such licensees would be required to make this decision by the end of the construction period, and the DTV channel would then be reclaimed by the Commission. This will not undermine DTV development, APTS/PBS claims, since commercial stations will drive the transition. In the alternative, APTS/PBS asks that the Commission consider individual requests by stations to employ the immediate transition option where the licensee has been unable to raise the funds to construct the DTV station or lacks the resources to operate two stations simultaneously.<sup>133</sup> APTS/PBS's proposal to allow noncommercial stations to construct a DTV station on their NTSC channel without constructing on the DTV allotment is supported by Motorola. Motorola asserts that such a policy would recognize the financial difficulties faced by public television stations in constructing and operating a second station. In addition, Motorola claims that adoption of the proposal could accelerate the recovery of UHF channels 60-69 for public safety or other wireless use.<sup>134</sup>

76. MAP urges the Commission to prohibit a noncommercial educational station from making the instant transition before the end of the deadline for the return of NTSC channels (currently 2006).<sup>135</sup> Otherwise, according to MAP, local viewers without DTV equipment may be disenfranchised.<sup>136</sup>

77. Discussion. We recognize both the economic challenges facing small market broadcasters and the unique funding difficulties often experienced by noncommercial television stations. Indeed, we

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<sup>130</sup> See, e.g., North Dakota Broadcasters Association ("NDBA") Petition at 1-2; APTS/PBS Petition at 18-21. The parties generally refer to this as an "overnight switch" or a "hard switch." Several petitions relating to aspects of immediate transition that are not discussed in this section will be addressed on reconsideration of the *Sixth Report and Order*.

<sup>131</sup> Reiten Letter (June 13, 1997); NDBA Petition at 1-2; Meyer Petition at 1.

<sup>132</sup> Meyer Petition at 1.

<sup>133</sup> APTS/PBS Petition at 18-19.

<sup>134</sup> Motorola Comments (July 18, 1997) at 5. See also *Channels 60-69 Reallocation Report and Order*, cited at n. 116, above.

<sup>135</sup> See ¶ 45, above, citing the Balanced Budget Act of 1997, 47 U.S.C. § 309(j)(14).

<sup>136</sup> MAP Opposition at 7-8.

explicitly considered these concerns in the *Fifth Report and Order* when we set the construction schedule and adopted the service rules. It is exactly because of the matters raised by the petitioners that commercial small market broadcasters and all noncommercial broadcasters have a greater period of time within which to construct their facilities. As the network affiliates in the top 30 markets construct and begin to operate their DTV stations, we expect the market to drive construction costs down to a level that all commercial stations will be able to finance construction of their own facilities. This cost decrease should also assist noncommercial broadcasters.

78. However, adoption of these proposals could undermine the simulcasting policy set forth in the *Fifth Report and Order*, a policy that is premised on the idea that each licensee will be operating an NTSC and a DTV station until the end of the transition period. The simulcasting requirement is intended to ensure that broadcasters provide substantially the same programming to all their viewers, regardless of whether those viewers have acquired digital receiver equipment yet. Further, adoption of the proposals could disenfranchise some viewers who watch noncommercial television by removing their option to continue to watch NTSC television until the end of the transition period. Accordingly, we do not at this time believe that adopting the above proposals of Reiten, NDBA, or AAPTS/PBS would serve the public interest.<sup>137</sup> However, we note that we can revisit this conclusion during any of our biennial DTV reviews, should a change in circumstances warrant.

#### F. Recovery Date

79. Background. In the *Fifth Report and Order*, the Commission established a target date of 2006 for the cessation of analog service.<sup>138</sup> It stated that one of its overarching goals in this proceeding is the rapid establishment of successful digital broadcast services that will attract viewers from analog to DTV technology, so that the analog spectrum can be recovered. Accomplishment of this goal requires that the NTSC service be shut down at the end of the transition period and that spectrum be surrendered to the Commission. The Commission noted that Congress had required it to condition the grant of a digital license on the Commission's recovery of 6 MHz from each licensee.<sup>139</sup> The Commission further stated that it continued to believe that it is desirable to identify a target end-date of NTSC service, both to lend certainty to the introduction of digital service by making clear to the public that analog television service will indeed cease on a date certain, and to provide broadcasters and manufacturers with a defined planning horizon that will help them gauge their business plans to the introduction of DTV.<sup>140</sup> The Commission also noted that it would conduct reviews of the progress of DTV every two years, which will allow it to

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<sup>137</sup> As noted above, and as will be discussed in the *Memorandum Opinion and Order On Reconsideration of the Sixth Report and Order*, we will consider, on a case-by-case basis, requests by stations with both their analog and digital channels outside the core for permission to make an immediate transition to digital.

<sup>138</sup> Earlier in this proceeding, the Commission made the preliminary decision to establish a recovery date 15 years from the date of the adoption of an ATV system or the date a final Table of ATV Allotments is effective, whichever is later. At the end of this period, all analog broadcast would cease, and the spectrum used for NTSC would be returned to the Commission. The Commission emphasized that, given the uncertainties surrounding the conversion process and the possible changes in the data on which it relied, setting the recovery date at 15 years was necessarily preliminary. *Third Report/Further Notice*, 7 FCC Rcd at 6964-65. Upon further reflection, in the *Fifth Report and Order*, we modified the recovery date, as described above.

<sup>139</sup> *Fifth Report and Order* at 12849-50, citing 47 U.S.C. § 336(c).

<sup>140</sup> *Fifth Report and Order* at 12850.

monitor the progress of DTV and to make adjustments to the 2006 target, if necessary.

80. Subsequent to the release of the *Fifth Report and Order*, in the Balanced Budget Act of 1997, Congress directed the Commission to reclaim the analog spectrum by December 31, 2006.<sup>141</sup> Congress also required the Commission to grant an extension of that date to a station under a number of specific circumstances cited in that statute.<sup>142</sup>

81. Petitions. County of Los Angeles, CA ("Los Angeles") contends that the 2006 recovery deadline should be shortened for NTSC and DTV stations between channels 60-69 located in southern California, which it argues is necessary to alleviate the severe spectrum shortages facing Los Angeles area public safety agencies. According to Los Angeles, this will be particularly important if the Commission is unable to eliminate any of the allotments between channels 60-69 that affect public safety frequencies. Los Angeles advocates that, at a minimum, the Commission should adopt a very firm deadline so that public safety agencies can plan accordingly.<sup>143</sup>

82. San Bernardino objects to the 2006 recovery date, maintaining that too early a reversion date may hurt viewers in rural areas dependent on traditional translator services. According to San Bernardino, the Commission's computer channel selection process for DTV treated existing built-out TV translator systems such as San Bernardino's as though they did not exist.<sup>144</sup> San Bernardino argues that these rural locations, which are at or near full channel capacity, might lose one or two channels as the result of DTV allotments transmitting in distant markets, and would find the additional loss of channels 60-69 to be devastating. San Bernardino argues that it is obvious, even if the technology were affordable and available, that such community TV operators will not be able to double their systems and simulcast NTSC and DTV at any

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<sup>141</sup> See ¶ 45, above.

<sup>142</sup> The Commission shall extend the date described in subparagraph (A) for any station that requests such extension in any television market if the Commission finds that: (i) one or more of the stations in such market that are licensed to or affiliated with one of the four largest national television networks are not broadcasting a digital television service signal, and the Commission finds that each such station has exercised due diligence and satisfies the conditions for an extension of the Commission's applicable construction deadlines for digital television service in that market; (ii) digital-to-analog converter technology is not generally available in such market; or (iii) in any market in which an extension is not available under clause (i) or (ii), 15 percent or more of the television households in such market: (I) do not subscribe to a multichannel video programming distributor (as defined in section 602) that carries one of the digital television service programming channels of each of the television stations broadcasting such a channel in such market; and (II) do not have either: (a) at least one television receiver capable of receiving the digital television service signals of the television stations licensed in such market; or (b) at least one television receiver of analog television service signals equipped with digital-to-analog converter technology capable of receiving the digital television service signals of the television stations licensed in such market.

*Balanced Budget Act of 1997*, adding new paragraph 47 U.S.C. § 309 (j)(14)(B).

<sup>143</sup> Los Angeles Petition at 12.

<sup>144</sup> San Bernardino Petition at 2.

time during the transition.<sup>145</sup> San Bernardino also argues that if many rural areas are unable to receive a DTV signal throughout the transition, the residents (perhaps 2-4 million people) will not tolerate a "lights out" by a date certain for NTSC television.<sup>146</sup> Val Pereda ("Pereda") also objects to the 2006 date, contending it will make existing NTSC television sets obsolete and require consumers to buy expensive DTV converters and sets.<sup>147</sup>

83. Decision. As discussed above, the Balanced Budget Act requires us to reclaim the analog spectrum by December 31, 2006, and has established specific circumstances under which we are to grant stations an extension of that date. Although we have discretion to set an earlier deadline, we decline to grant in this proceeding the request of Los Angeles for an earlier recovery deadline for NTSC and DTV stations between channels 60-69. On reconsideration of the *Sixth Report and Order*, we are making adjustments to the DTV allotments, as suggested by MSTV, that will make some spectrum available for public safety in the southern California area. We have issued a Notice in another proceeding<sup>148</sup> to seek comment on the service rules for this spectrum that Congress designated for public safety services.<sup>149</sup> We also decline to grant the remaining petitioners' requests for reconsideration of the recovery date. Upon receipt of an appropriate petition, as specified in the Balanced Budget Act,<sup>150</sup> we will examine the circumstances of individual licensees and grant extensions to any that qualify.

#### G. Must-Carry and Retransmission Consent

84. Background. In the *Fifth Report and Order*, the Commission decided to defer consideration of the application of must-carry and retransmission consent requirements to DTV to a future proceeding, in order to obtain a full and updated record on these issues. We noted that, on March 31, 1997, the Supreme Court upheld the constitutionality of the must-carry provisions contained in the Cable Television Consumer Protection and Competition Act of 1992,<sup>151</sup> in *Turner II*.<sup>152</sup> The *Turner II* case, however, did not expressly address the issue of must-carry of digital television signals.<sup>153</sup>

85. Petition. Malrite Communications Group ("Malrite") urges the Commission to modify the "must carry" rules to require cable system operators to adopt "appropriate" digital technologies, *i.e.*, technologies compatible with broadcast DTV standards. Malrite acknowledges, however, that there is a separate

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<sup>145</sup> *Id.* at 15-16.

<sup>146</sup> *Id.* at 16.

<sup>147</sup> Letter from Val Pereda to Chairman Reed Hundt, Federal Communications Commission (July 18, 1997).

<sup>148</sup> *See Second Notice of Proposed Rulemaking* in WT Docket No. 96-86, 12 FCC Rcd 17706 (1997).

<sup>149</sup> *Balanced Budget Act of 1997*, adding new section 47 U.S.C. § 337.

<sup>150</sup> *See* n. 142, above.

<sup>151</sup> P.L. 102-385, 106 Stat. 1460, codified at 47 U.S.C. § 521 *et seq.*

<sup>152</sup> *Turner Broadcasting System v. FCC*, 117 S.Ct. 1174 (1997) ("*Turner II*").

<sup>153</sup> *Fifth Report and Order* at 12853.

proceeding that will allow the Commission to consider cable compatibility.<sup>154</sup>

86. Decision. We find that this reconsideration proceeding is not the proper forum in which to determine the applicability of the must-carry and retransmission consent provisions in the digital context. As discussed above, we intend to issue a Notice in a separate proceeding to seek additional comments regarding these issues. We believe that opening the record for further comments in that proceeding will allow us to reach a well-reasoned decision that will take into account the implications of the *Turner II* decision and the most current information with respect to must-carry and retransmission of DTV signals.

#### H. Sunshine Act

87. Background. The Commission adopted both the *Fifth Report and Order* and the *Sixth Report and Order* in the DTV proceeding at an open Commission meeting on April 3, 1997, and issued a Sunshine Agenda notice announcing the addition of these two items that morning. The Notice stated that, under Section 0.605(e) of the Commission's rules, "[t]he prompt and orderly conduct of the Commission's Business requires this change and no earlier announcement was possible."<sup>155</sup>

88. Petitions/Comments. The Community Broadcasters Association ("CBA") argues that the Sunshine Act requires seven days public notice for matters to be discussed at an open meeting.<sup>156</sup> CBA notes that the Sunshine Agenda notice went out on March 27 and did not mention the DTV docket, and that the notice adding the DTV items was not issued until the very day of the meeting.<sup>157</sup> As a result, CBA argues, there was effectively no advance notice that the DTV items would be discussed at the April 3, 1997 meeting as required by the Sunshine Act.<sup>158</sup> Asserting that this violated the Sunshine Act, CBA claims that adoption of the DTV rules at the April 3, 1997 was invalid.<sup>159</sup>

89. MSTV argues in opposition that the Sunshine Act was not violated as claimed by CBA. MSTV notes that the Commission complied with the statutory exception in the Sunshine Act, which allows a meeting without seven days prior notice if such late notice is necessary to conduct the agency's business. MSTV also observes that according to the legislative history of the Sunshine Act, when noncompliance is unintentional and does not harm the interests of any party, the underlying matter need not be reconsidered.<sup>160</sup>

90. Discussion. We find CBA's claim that we violated the Sunshine Act to be unwarranted. The Sunshine Act states that:

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<sup>154</sup> Malrite Petition for Reconsideration at 6, generally citing *Fourth Further Notice/Third Inquiry*.

<sup>155</sup> Sunshine Agenda Notice (released April 3, 1997).

<sup>156</sup> CBA Petition at 7-8, citing 5 U.S.C. § 552(e)(1).

<sup>157</sup> CBA Petition at 7-8.

<sup>158</sup> *Id.*

<sup>159</sup> *Id.* at 8-9.

<sup>160</sup> MSTV Opposition at 27-28.

[t]he subject matter of a meeting ... may be changed following the public announcement required by this subsection only if (A) a majority of the entire membership of the agency determines by a recorded vote that agency business so requires and that no earlier announcement of the change was possible, and (B) the agency publicly announces such change and the vote of each member upon such change at the earliest practicable time.<sup>161</sup>

Consistent with these statutory requirements, the April 3, 1997 Sunshine Agenda Notice made such a determination by recorded vote.

91. In addition, Section 0.605(e) of the Commission's rules, 47 C.F.R. § 0.605(e), makes clear that "[i]f the prompt and orderly conduct of agency business requires that a meeting be held less than one week after the announcement of the meeting, or before that announcement, the agency will issue the announcement at the earliest practicable time." We made such a finding in our April 3, 1997 Sunshine Agenda Notice. Further, CBA has not made a showing of how its or any other party's interests were harmed by the short notice. Accordingly, we believe that there is no basis for a finding that the adoption of the DTV rules at the April 3, 1997 meeting was in violation of the Sunshine Act or otherwise invalid.

## I. Other Issues

### 1. Channels 60-69

92. Petitions/Comments. As noted above, the Commission has recently concluded a rule making proceeding reallocating the spectrum from channels 60-69 to a variety of services, including broadcast television.<sup>162</sup> Motorola argues that all licensees should be able to decline to construct DTV facilities on channels 60-69, provided they so inform the Commission, so the spectrum can be used for public safety and other wireless purposes. Motorola seeks to have as few DTV channels as possible allotted to channels 60-69, to allow broadcasters that do have such allotments to change them, and to prevent the Commission from allotting future channels within that spectrum to DTV broadcasters. In this regard, Motorola states that each additional DTV allotment between channels 60 and 69 would preclude the use of at least 6 MHz of spectrum by new wireless users for nearly 8000 square miles, potentially denying new wireless service to millions of customers.<sup>163</sup>

93. Discussion. We do not believe that allowing broadcasters to decline to construct DTV facilities on channels 60 through 69 would necessarily serve the public interest. In the *Sixth Report and Order*, we allotted spectrum between channels 60 and 69 to the fewest number of broadcasters possible, in light of our then-pending proceeding examining whether that spectrum should be reallocated. As we noted in the *Channels 60-69 Reallocation Report and Order*, "the operation of some TV and DTV stations in this spectrum is clearly required to facilitate the DTV transition: and the Budget Act provides for this, stating '[a]ny person who holds a television broadcast license to operate between 746 and 806 megahertz may not operate at that frequency after the date on which the digital television service transition period

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<sup>161</sup> 5 U.S.C. § 552b(e)(2)

<sup>162</sup> See *Channels 60-69 Reallocation Report and Order*, above.

<sup>163</sup> Motorola Comments (July 18, 1997) at 3, 5-6.

*terminates* as determined by the Commission."<sup>164</sup> Had other channels been available, they would have been allotted to these broadcasters.

## 2. Line-of-Sight to City of License

94. Petitions/Comments. Hammett and Edison observes that Section 73.625(a)(2) of the rules adopted in the *Fifth Report and Order* requires DTV transmitter sites to be free of a major obstruction in the path over the principal community to be served, but does not require that line-of-sight coverage of the principal community be achieved. Petitioner indicates that the analog TV rule regarding selection of transmitter site (Section 73.685) includes such a corollary requirement and suggests that this apparently inadvertent oversight in the wording of Section 73.625(a)(2) be corrected by including the analog TV line-of-sight text. Hammett and Edison states that while engineers may reasonably differ in their opinions whether an obstruction is major, there is no ambiguity in the line-of-sight requirement.<sup>165</sup>

95. Discussion. We do not believe the requested change is warranted. In the *Fifth Report and Order*, we attempted to minimize the DTV rules we created to the extent possible. In so doing, we did not include provisions that are admonitory, describing a recommended practice instead of a mandatory requirement. The analog TV line-of-sight rule indicates that the transmitter location "should be so chosen that line-of-sight can be obtained..." This is not mandatory language.<sup>166</sup> For either NTSC or DTV, there are situations where line-of-sight coverage over the entire community is not possible. In such situations, licensees should avoid obstruction to the extent possible. This should be clear from the "major obstruction" rule we adopted, and we believe that it would not be reinforced by the requested additional admonitory language. The decision to exclude it from the new DTV rule was not inadvertent, and Hammett and Edison has not presented any justification for including it upon reconsideration.<sup>167</sup>

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<sup>164</sup> *Channels 60-69 Reallocation Report and Order* at ¶ 24 (emphasis in original) citing the Balanced Budget Act of 1997.

<sup>165</sup> Hammett and Edison further indicates that including this requirement would not mean that transmitter sites lacking line-of-sight to a station's principal community could not be proposed. Rather, it states that this requirement would mean that an application requesting a site that lacks line-of-sight coverage would need to include a supplemental engineering exhibit demonstrating that the terrain obstructions are not so severe as to prevent service to the principal community. Hammett and Edison also recommends that we revise the new DTV section of Form 301 accordingly. Hammett and Edison Petition at 10-11.

<sup>166</sup> Section 73.685(b) of the rules reads as follows:

Location of the antenna at a point of high elevation is necessary to reduce to a minimum the shadow effect on propagation due to hills and buildings which may reduce materially the strength of the station's signals. In general, the transmitting antenna of a station should be located at the most central point at the highest elevation available. To provide the best degree of service to an area, it is usually preferable to use a high antenna rather than a low antenna with increased transmitter power. The location should be so chosen that line-of-sight can be obtained from the antenna over the principal community to be served; in no event should there be a major obstruction in this path. . . .

<sup>167</sup> We also point out that we adopted this DTV rule in the context of establishing minimum construction requirements for DTV stations being built initially to provide less coverage than their associated analog TV station. It was intended to correspond more to the analog TV requirements for minimum power and antenna height, rather than to establish a universal DTV city grade service definition. Further evaluation of the requirements for service to a DTV station's community of license may be appropriate in other contexts, such as

### 3. Minor Corrections to the Rules

96. We also take this opportunity to correct errors in one of the rules adopted with the *Fifth Report and Order*. Specifically, we are correcting Section 73.624(c) of the rules to delete the word "telecommunications," which was inadvertently included in that section, and change the word "license" to "licensee" in the last sentence of subsection (c)(2). This correction is included in Appendix B hereto. As corrected, the rule is now consistent with paragraph 30 of the *Fifth Report and Order*. We are also making a grammatical change in wording in the sentence of Section 73.624(c) that precedes subsection (1), in order to make it easier to read; this change has no effect on the substance of the rule.<sup>168</sup> Finally, to better explain the scope of discretion that is given to the DTV licensee, we are taking this opportunity to make a minor substantive change in subsection (c)(2), which states that licensees must retain control over all material transmitted in a broadcast mode via the station's facilities. Specifically, we are clarifying the rule by changing the phrase "the right to reject any material that it deems inappropriate or undesirable" to "the right to reject any material in the sole judgment of the permittee or licensee."

### III. CONCLUSION

97. Our decisions in the *Fifth Report and Order* were designed to foster technological innovation and competition, while minimizing government regulation. We continue to believe that our decisions modified herein will ensure that we will soon see a digital television service that provides a host of new and beneficial services to the American public, while preserving free universal television service that serves the "public interest, convenience, and necessity."

### IV. ADMINISTRATIVE MATTERS

98. Paperwork Reduction Act of 1995 Analysis. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to contain no new or modified form, information collection and/or recordkeeping, labelling, disclosure or record retention requirements on the public. This decision would not increase or decrease burden hours imposed on the public.

99. Supplemental Final Regulatory Flexibility Analysis. In the *Fifth Report and Order*, we conducted a Final Regulatory Flexibility Analysis ("FRFA") as required by the Regulatory Flexibility Act, 5 U.S.C. § 603.<sup>169</sup> No petitions to reconsider the FRFA were filed. However, in its petition for reconsideration of the *Fifth Report and Order*, the Personal Communications Industry Association ("PCIA") asserted that the FRFA's discussion of small businesses that would be affected by the DTV rules and policies should

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in a future rule making for DTV stations not associated with an analog TV station, or in a two-year review consideration of establishing requirements for fully replicating an associated analog TV station's Grade B service contour.

<sup>168</sup> The rule had stated that "no video broadcast signal provided at no direct charge to viewers shall be considered ancillary or supplementary" (emphasis added). It now reads that "any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary" (emphasis added).

<sup>169</sup> *Fifth Report and Order* at 12867-78. This Supplementary Final Regulatory Flexibility Analysis incorporates the FRFA by reference, including its analysis of the number and types of small entities (*i.e.*, commercial and noncommercial broadcast television station licensees) that will be affected by the rules and policies adopted.

have included mobile licensees, not just other broadcast licensees.<sup>170</sup> Rejecting PCIA's argument, the Commission notes that the FRFA's scope is limited to small entities directly subject to administrative rules, rather than all entities that are indirectly affected by the results that any rules will produce.<sup>171</sup>

100. Also, the Commission on its own motion has made three minor technical changes to the rules adopted in the *Fifth Report and Order* and one minor substantive change, which are explained at ¶ 96, above. They do not affect the previous FRFA. These minor rule changes do not alter in any significant way the FRFA or the potential effect of the rules on any small entities that may be subject to them. The Commission shall send a copy of this Supplemental Final Regulatory Flexibility Analysis, along with this *Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order*, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. § 801 (a)(1)(A). A copy of this Supplemental Final Regulatory Flexibility Analysis will be published in the *Federal Register*.

#### Ordering Clauses

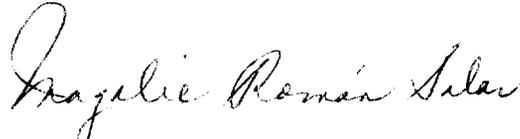
101. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934 as amended, 47 U.S.C. §§ 154(i), (j) 303(r), 307, 309, and 336, this Memorandum Opinion and Order is adopted.

102. IT IS FURTHER ORDERED that the Petitions for Reconsideration in this proceeding are GRANTED to the extent described above, and are otherwise DENIED.<sup>172</sup>

103. IT IS FURTHER ORDERED that the rule changes set forth in Appendix B SHALL BE EFFECTIVE 30 days after publication in the *Federal Register*.

104. IT IS FURTHER ORDERED that, upon release of this Memorandum Opinion and Order, this proceeding is hereby terminated.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas  
Secretary

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<sup>170</sup> PCIA Petition at 4.

<sup>171</sup> ¶ 30, above, citing *Mid-Tex Elec. Co-op v. FERC*, 773 F.2d 327, 342-43 (D.C. Cir. 1985).

<sup>172</sup> A list of petitioners and commenters is attached as Appendix A.

**APPENDIX A**  
**PETITIONING AND OPPOSING/COMMENTING PARTIES**

Parties Filing Petitions for Reconsideration

Abacus Television, Jose Luis Rodriguez, and the Video house, Inc. (Urban LPTV Parties)  
ABC, Inc.  
Acme Television Licenses of Oregon, L.L.C.  
Ad Hoc Group of 25 Low-VHF Stations  
A.H. Belo Corporation (KING-TV, Seattle, WA and others)  
AK Media Group, Inc.  
Alaska Broadcast Television, Inc.  
Allbritton Communications Company  
Board of Trustees of American University (radio station WAMU-FM, Washington, D.C.)  
John C. Anderson  
Association for Maximum Service Television, Inc., the Broadcasters' Caucus and other  
Broadcasters  
The Association of America's Public Television Stations and Public Broadcasting Service  
Association of Local Television Stations, Inc.  
Association of Public-Safety Communications Officials-International, Inc.  
Benedek License Corporation (WHSV-TV, Harrisonburg, VA)  
Blade Communications, Inc.  
Bowling Green State University  
Brazos Broadcasting Company (KBTX-TV, Bryan, TX)  
The Brechner Family (WMDT-TV, Salisbury, MD and KTKA-TV, Topeka, KS)  
Buck Owens Production Company, Inc.  
California Oregon Broadcasting, Inc.  
Cannell Cleveland L.P. (WUAB-TV, Lorain, OH)  
Capitol Broadcasting Company, Inc.  
Capital Television Corporation  
CBS, Inc.  
Central Michigan University  
Century Development Corporation (KGNS-TV)  
Channel 49 Acquisition Corporation (WJCB-TV)  
Channel 51 of San Diego, Inc.  
Chronicle Publishing Company (KRON-TV, San Francisco, CA)  
Citadel Communications Co., Ltd. (WHBF-TV, Rock Island, IL, WOI-TV, Ames, IA, and others)  
Clear Channel Television Licensees, Inc. (I) (KSAS-TV, Wichita, KS)  
Clear Channel Television Licensees, Inc. (II) (WAWS-TV, Jacksonville, FL)  
Clear Channel Television Licensees, Inc. (III) (WXXA-TV, Albany, NY)  
Coast TV  
Community Broadcasters Association  
Community Television of Southern California (KCET)  
Cordillera Communications Inc.  
Cornell University  
Cornerstone Television, Inc. (WPCB-TV, Greensburg, PA, and WQED-TV, Pittsburgh (WQEX-TV,  
Pittsburgh, PA)  
Cosmos Broadcasting Corporation

Costa de Oro Television, Inc.  
Davis Television Topeka, LLC, et. al.  
Delta Broadcasting, Inc.  
Department of California Highway Patrol  
Department of Special Districts, San Bernardino County, CA  
DeSoto Broadcasting, Inc. (WBSV-TV, Venice, FL)  
Dispatch Broadcast Group (WBNS-TV, Columbus, OH and WTHR-TV, Indianapolis, IN)  
Duhamel Broadcasting Enterprises (KOTA-TV, Rapid City, SD and others)  
Eagle III Broadcasting, L.L.C. (KKCO-TV, Grand Junction, CO)  
Eastern Washington and Northern Idaho DTV Channel Allocation Caucus  
Educational Broadcasting Corporation (WNET-TV, Newark, NJ)  
Educational Television Association of Metropolitan Cleveland (WVIZ-TV, Cleveland, OH)  
Entravision Holdings, LLC  
Family Stations, Inc. (KFTL-TV, Stockton, CA)  
Family Stations of New Jersey, Inc. (WFME-TV, West Milford, NJ)  
Fayetteville-Cumberland Telecasters, Inc. (WFAY-TV, Fayetteville, NC)  
Fireweed Communications Corporation (KYES-TV, Anchorage, AK)  
First Baptist Church, Paris, TX  
First Cullman Broadcasting, Inc.  
Flinn Broadcasting Corporation (WFBI-TV, Memphis, TN)  
Florida West Coast Public Broadcasting, Inc. (WEDU-TV, Tampa, FL)  
Fort Wayne Public Television, Inc. (WFWA-TV, Ft. Wayne, IN)  
Forum Communications Company (KMCY-TV, Minot, ND)  
Fouce Amusement Enterprises (KRCA-TV, Los Angeles, CA)  
Fox Television Stations Inc.  
Gannett Co., Inc.  
Gateway Communications Inc.  
Gilmore Broadcasting Corporation (WEHT-TV, Evansville, IL)  
GOCOM Licensee, L.L.C.  
Golden Empire Television Corporation (KHSL-TV, Chico, CA)  
Golden Link TV, Inc. (KPST-TV, Vallejo, CA)  
Granite Broadcasting Corporation (KNTV-TV, San Jose, CA and others)  
Grant Broadcasting Group (WNYO-TV, Buffalo, NY and others)  
Great Trails Broadcasting, Inc. (WHAG-TV, Hagerstown, MD and WFFT-TV, Fort Wayne, IN)  
Gulf California Broadcast Company (KESQ-TV, Palm Springs, CA)  
Guy Gannett Communications  
Hammett and Edison, Inc.  
Hardy & Carey, LLP (Hardy & Carey Clients)  
Harte-Hanks Television, Inc.  
Hearst Corporation  
Holston Valley Broadcasting Corporation (WKPT-TV, Kingsport, TN)  
HSN, Inc.  
Hubbard Broadcasting, Inc.  
Iberia Communications, L.L.C.  
Innovative Technologies, Inc.  
Island Broadcasting Co.  
Island Broadcasting, Inc. (KTGM-TV, Tamuning, Guam)  
Island Broadcasting Ltd.  
Jacksonville Educators Broadcasting, Inc. (WTCE-TV, Fort Pierce, FL)  
JDG Television, Inc.

Jefferson-Pilot Communications Company  
Jet Broadcasting Co.  
Joint Petition of Licensees (Entravision Communications Company, L.L.C., Paxson Communications Corporation, Univision Communications, Inc., Grant Broadcasting Group, Max Media Properties, L.L.C., Pappas Telecasting Companies, Kadn Broadcasting, Inc., Warwick Communications, Inc., Delta Media Corporation, Sullivan Broadcasting Company, Glencairn, Ltd., Bay Television, Inc., Channel 63, Inc., Harish Puri, Telemundo Group, Inc.)  
Journal Broadcast Group, Inc.  
Jovon Broadcasting Corp.  
KASA-TV, Inc. (KASA-TV, Santa Fe, NM)  
KCWB-TV, Inc. (KCWB-TV)  
Kentuckiana Broadcasting, Inc. (WFTE-TV, Salem, IN)  
KFBB-TV Corporation, L.L.C. (KFBB-TV, Great Falls, MT)  
KM Broadcasting, Inc.  
KM Communications, Inc.  
KMSB-TV, Inc. (KMSB-TV, Tucson, AZ)  
KMVT Television Inc. (KMVT-TV)  
KPDX License Partnership (KPDX-TV, Vancouver, WA)  
KSLS, Inc. (KSCI-TV, San Bernardino, CA)  
KVIE, Inc. (KVIE-TV, Sacramento, CA)  
KVOA Communications, Inc. (KVOA-TV)  
KWTX Broadcasting Company (KWTX-TV, Waco, TX)  
KXII-TV Broadcasters, Inc. (KXII-TV, Sherman, TX)  
La Dov Educational Outreach, Inc.  
Landmark Arts, Inc.  
Landmark Television of Tennessee, Inc. (WTVF-TV, Nashville, TN)  
Land Mobile Communications Council  
Lee Enterprises, Inc. and New Mexico Broadcasting, Inc.  
Lehigh Valley Public Television  
Lewis Broadcasting Corporation  
Liberty Christian Center  
Lincoln Broadcasting Company  
Lindsay Television, Inc.  
Longmont Channel 25, Inc. (KDEN-TV, Longmont, TX)  
The County of Los Angeles, California (L.A. County)  
Los Cerezos Television Company  
Louisiana Television Broadcasting Corporation (WBRZ-TV, Baton Rouge, LA)  
Malrite Communications Group, Inc.  
Maranatha Broadcasting Company, Inc. (WFMZ-TV, Allentown, PA)  
McAlister Television Enterprises, Inc. (KAMC-TV, Lubbock, TX)  
McPike Communications Inc.130.  
Media Access Project et. al.  
Media General, Inc. (WTVR-TV, Richmond, VA and others)  
Mid-South Public Communications Foundation  
Midwest Television, Inc. (KFMB-TV, San Diego, CA and WCIA-TV, Champaign, IL)  
Minnesota Broadcasting Association  
Mission Broadcasting I, Inc., and Mission Broadcasting II, Inc. (WUXP-TV, Nashville, TN and WUPN-TV, Greensboro, NC)  
Mississippi Authority for Educational Television  
Montgomery Communications, Inc.

Mountain Broadcasting Corp. (WMBC-TV, Newton, NJ)  
Mountain Lake Public Broadcasting (WCFE-TV, Plattsburgh, NY)  
Mt. Mansfield, Inc. (WCAX-TV, Burlington, VT)  
National Broadcasting Company  
National Public Radio  
National Radio Astronomy Observatory, Socorro, NM  
National Translator Association  
Nexstar Broadcasting Group, L.P.  
Estate of Hector Nicolau (WTIN-TV, Ponce, PR)  
North Carolina Broadcasting Partners  
Ohio State University (WOSU-TV, Columbus, OH)  
Oklahoma Educational Television Authority  
Ozark Public Telecommunications, Inc. (KOZK-TV, Springfield, MO)  
Pappas Stations Partnership I (KPTM-TV, Omaha, NE)  
Pappas Stations Partnership II (LPTV station K40DQ, Tulare, CA) and Valley Public Television, Inc.  
(KVPT-TV, Fresno, CA)  
Paxson Communications Corporation  
Paxson Communications LPTV, Inc.  
Pegasus Communication Corporation (WWLF-TV, Hazelton, PA and WLIF-TV, PA)  
Pensacola Junior College (WSRE-TV, Pensacola, FL)  
Pennsylvania State University (WPSX-TV, Clearfield, PA)  
Pennsylvania Telecasters, Inc.  
Prairie Public Broadcasting, Inc. (KFME-TV, Fargo, ND and others)  
Puerto Rico Public Broadcasting Corporation (WIPR-TV, San Juan, PR)  
Pulitzer Broadcasting Company (WDSU-TV, New Orleans, LA and others)  
Quincy Newspapers, Inc. (WREX-TV, Rockford, IL and others)  
Qwest Broadcasting, L.L.C.  
Rainbow Broadcasting Ltd.  
Ramar Communications, Inc. (KJTV-TV, Lubbock, TX and KASY-TV, Albuquerque, NM)  
Rapid Broadcasting Company  
Red River Broadcast Corp. (KBRR-TV, Thief River Falls, MN and KDLV-TV, Sioux Falls, SD)  
Reece Associates Limited (WZWY-TV, Orlando, FL)  
Retlaw Enterprises, Inc. (KJEO-TV, Fresno, CA and others)  
RGV Educational Broadcasting, Inc. (KMBH-TV, Harlingen, TX)  
Roberts Broadcasting of Cookeville, L.L.C. (WKZX-TV, Cookeville, TN)  
Ruarch Associates, L.P. (I)  
Ruarch Associates, L.P. (II)  
Rural California Broadcasting Corporation (KRCB-TV, Cotati, CA)  
Sainte Partners II, L.P.  
Sangre De Cristo Communications, Inc. (KOAA-TV, Pueblo, CO)  
Sarkes Tarzian, Inc.  
Scanlan Television, Inc.  
Scripps Howard Broadcasting Company (KNXV-TV, Phoenix, AZ)  
Shenandoah Valley Educational Television Corporation  
Sierra Broadcasting Company (KRNV-TV, Reno, NV)  
Siete Grande Television, Inc. (WSTE-TV, Ponce, PR)  
Mike Simons  
Sinclair Broadcasting Group, Inc.  
Skinner Broadcasting, Inc.  
SL Communications

Smith Broadcasting of Santa Barbara Limited Partnership (KEYT-TV, Santa Barbara, CA)  
Smoky Hills Public Television Corporation (KSWK-TV, Lakin, KS)  
Sonshine Family TV Corp. (WBPH-TV, Bethel, PA)  
South Central Communications Corp.  
Speer Communications Holdings I Limited Partnership (WNAB-TV, Nashville, TN)  
Sunbelt Television, Inc.  
Sunnycrest Media, Inc.  
Syracuse Minority Television, Inc.  
Telemundo Group, Inc. (KSTS-TV, San Jose, CA and others)  
Television Wisconsin, Inc. (WISC-TV, Madison, WI)  
Three Feathers Communications, Inc.  
Max A. Trevino  
Tribune Broadcasting Company  
Trinity Christian Center of Santa Ana, Inc./Trinity Broadcasting Network  
Tri-State Public Teleplex, Inc. (WINN-TV, Evansville, IN)  
T.V. 17 Unlimited, Inc. (WXMI-TV, Grand Rapids, MI)  
The University of Houston System (KUHT-TV, Houston, TX)  
University of New Hampshire d/b/a New Hampshire Public Television  
University of North Carolina Center for Public Television (WUNC-TV, Chapel Hill, NC and WUNE-TV, Linville, NC)  
Univision Communications Inc.  
US Broadcast Group Licensees, L.P.  
Venture Technologies Group (WTWB-TV, Johnstown, PA)  
Viacom Inc. (WPSG-TV, Philadelphia, PA and others)  
VictoriaVision, Inc. (KVCT-TV, Victoria, TX)  
Virgin Islands Public Television System  
W36BM TV-36  
Wabash Valley Broadcasting Corp. and IMS Broadcasting, LLC.  
Warwick Communications, Inc. (WCI I)  
Warwick Communications, Inc. (WCI II)  
WCTE-TV  
WCPX License Partnership (WCPX-TV, Orlando, FL)  
Weigel Broadcasting Co.  
WENY, Inc. (WENY-TV)  
Western New York Public Broadcasting Association  
West Tennessee Public Television Council, Inc.  
Westwind Communications, L.L.C.  
WGBH Educational Foundation (WGBH-TV, Boston, MA)  
WHNS License Partnership (WHNS-TV, Asheville, NC)  
Wichita Communications (KWCV-TV, Wichita, KS)  
Wichita License Subsidiary Corp.  
Withers Broadcasting Companies (KREG-TV, Glenwood Springs, CO and others)  
WLNY-TV, Inc. (WLNY-TV)  
WMTW Holdings Inc. (WMTW-TV)  
WNAC Argyle Television, Inc. (WNAC-TV)  
WRNN-TV Associates L.P. (WRNN-TV, Kingston, NY)  
WTKR, Inc. (WTKR-TV)  
WTNH Broadcasting, Inc. (WTNH-TV, New Haven, CT), K-W TV, Inc. (WBNE-TV, New Haven, CT), Post-Newsweek Stations, Connecticut, Inc. (WFSB-TV, Hartford, CT), and Tribune Broadcasting Company (WPIX-TV, New York, NY)

WXXI Public Broadcasting Council  
WWAC, Inc. (WWAC-TV, Atlantic City, NJ)  
Young Broadcasting of Sioux Falls, Inc. (KELO-TV, Sioux Falls, SD)

Parties Filing Oppositions/Comments

Advanced Television Systems Committee  
Advanced Television Technology Center  
AK Media Group, Inc. (Petition I)  
AK Media Group, Inc. (Petition II)  
Alamo Public Telecommunications Council  
Allbritton Communications Company  
Apple Valley Broadcasting, Inc., KHQ, Incorporated, and Spokane Television  
Association of Federal Communications Consulting Engineers  
Association of Local Television Stations, Inc. (II)  
The Association for Maximum Service Television, Inc. and the Broadcasters' Caucus  
Association of Public-Safety Communications Officials-International, Inc.  
Benedek License Corporation  
Blackstar Communications, Inc. (I)  
Blackstar Communications, Inc. (II)  
Board of Regents of the University of Wisconsin System (UWS), Maine Public Broadcasting Corporation (MPBC), Northeastern Educational Television of Ohio, Inc. (NETO), Ohio University (OU), and South Carolina Educational Television Commission (SCETV)  
Anthony R. Bucco, New Jersey Assemblyman  
Cannell Cleveland, L.P. (I)  
Cannell Cleveland, L.P. (II)  
Cannell Cleveland, L.P. (III)  
Cannell Cleveland, L.P. (IV)  
Cedar Rapids Television Company  
Central Virginia Educational Telecommunications Corporation  
Channel 3 of Corpus Christi, Inc. (CONDITIONAL SUPPORT)  
Channel 51 of San Diego, Inc. (KUSI) (I)  
Channel 51 of San Diego, Inc. (KUSI) (II)  
Citadel Communications Co., Ltd.  
Clark County School District  
Clear Channel Television Licenses, Inc.  
Cosmos Broadcasting Corporation (I)  
Cosmos Broadcasting Corporation (II)  
Dispatch Broadcast Group  
Diversified Communications  
Duhamel Broadcasting Enterprises (DBE)  
du Treil, Lundin and Rackley, Inc.  
The Electronic Industries Association and the EIA Advanced Television Committee  
Fisher Broadcasting Inc.  
Fouce Amusement Enterprises  
Fox Television Stations Inc.  
Gannett Co., Inc. (I)  
Gannett Co., Inc. (II)  
Garden State Communications, L.P.

GOCOM-Ouachita License, L.L.C.  
Guy Gannett Communications  
HDTV Grand Alliance  
The Hearst Corporation  
Heritage Media Corporation  
HSN, Inc.  
Hubbard Broadcasting, Inc.  
Huntsville Television Acquisition Corp.  
Independence Television Company  
Jefferson-Pilot Communications Company  
Journal Broadcast Group, Inc.  
Jovan Broadcasting Corporation (COMMENTS)  
KHQ, Incorporated  
KLAS, Inc. (KLAS-TV, Las Vegas, NV)  
Lewis Broadcasting Corporation  
County of Los Angeles  
John A. Lundin  
Maryland Public Broadcasting Commission (I)  
Maryland Public Broadcasting Commission (II)  
Max Television of Tyler L.P. (KETK-TV, Jacksonville, TX)  
Media Access Project et. al.  
Mid-South Public Communications Foundation (WKNO-TV, Memphis, TN)  
Motorola  
Mountain Broadcasting Corporation  
National Cable Television Association  
National Public Radio (two separate filings)  
Nebraska Educational Telecommunications Commission  
Oregon Public Broadcasting  
Paxson Media Group, Inc.  
Pulitzer Broadcasting Company (WDSU-TV, New Orleans, LA and other stations)  
Reece Associates Limited  
Rhode Island Public Telecommunications Authority  
Sangre de Cristo Communications, Inc.  
Sinclair Broadcast Group  
Southern Broadcast Corporation of Sarasota (WSB-TV, Sarasota, FL)  
South Florida Public Telecommunications, Inc.  
Speer Communications Holdings I Limited Partnership  
St. Lawrence Valley Educational Television Council, Inc.  
Telemundo Group, Inc.  
Third Avenue Television, Inc.  
Thomson Consumer Electronics, Inc.  
Tribune Broadcasting Company (I)  
Tribune Broadcasting Company (II)  
Tribune Company (III)  
University of Houston System  
University of North Carolina Center for Public Television  
Viacom Inc.  
Virginia Broadcasting Corp.  
Washburn University of Topeka  
WAVY Television, Inc.

WCPX License Partnership  
WSOC Television, Inc.  
Young Broadcasting Inc.

Parties Filing Replies to Oppositions/Comments

Ad Hoc Group of 25 Low-VHF Stations  
Association for Maximum Service Television, Inc. and the National Association of Broadcasters  
Association of America's Public Television Stations and the Public Broadcasting Service  
Association of Local Television Stations, Inc.  
Birmingham Broadcasting (WVTM TV), Inc.  
Community Broadcasters Association  
Cosmos Broadcasting Corporation (I)  
Cosmos Broadcasting Corporation (II)  
Cosmos Broadcasting Corporation (III)  
Duhamel Broadcasting Enterprises  
Innovative Technologies, Inc.  
Jefferson-Pilot Communications Company  
KM Communications, Inc.  
Maranatha Broadcasting Company, Inc.  
Media Access Project et. al.  
Midwest Television, Inc.  
National Public Radio, Inc.  
Pulitzer Broadcasting Company  
Rapid Broadcasting Company  
Ruarch Associates Limited Partnership  
Sangre de Cristo Communications, Inc.  
Shenandoah Valley Educational Television Corporation  
Sinclair Broadcast Group, Inc.  
Skinner Broadcasting, Inc. (I)  
Skinner Broadcasting, Inc. (II)  
Warwick Communications, Inc.  
WCPX License Partnership

## APPENDIX B

## MINOR CORRECTIONS TO THE RULES

Part 73 of Title 47 of the U.S. Code of Federal Regulations is corrected as follows:

## PART 73--RADIO BROADCAST SERVICES

1. Section 73.624(c) is corrected by deleting the word "telecommunications" throughout the section; changing the phrase "no video broadcast signal provided at no direct charge to viewers shall be considered ancillary or supplementary" to "any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary;" changing the word "license" to "licensee" in the last sentence in subsection (c)(2); and changing the phrase "that it deems inappropriate or undesirable" in subsection (c)(2) to "in the sole judgment of the permittee or licensee." As revised, Section 73.624(c) reads as follows:

## § 73.624 Digital Television Broadcast Stations

(c) Provided that DTV broadcast stations comply with paragraph (b) of this section, DTV broadcast stations are permitted to offer services of any nature, consistent with the public interest, convenience, and necessity, on an ancillary or supplementary basis. The kinds of services that may be provided include, but are not limited to computer software distribution, data transmissions, teletext, interactive materials, aural messages, paging services, audio signals, subscription video, and any other services that do not derogate DTV broadcast stations' obligations under paragraph (b) of this section. Such services may be provided on a broadcast, point-to-point or point-to-multipoint basis, provided, however, that any video broadcast signal provided at no direct charge to viewers shall not be considered ancillary or supplementary.

(1) DTV licensees that provide ancillary or supplementary services that are analogous to other services subject to regulation by the Commission must comply with the Commission regulations that apply to those services, provided, however, that no ancillary or supplementary service shall have any rights to carriage under Sections 614 or 615 of the Communications Act of 1934, as amended, or be deemed a multichannel video programming distributor for purposes of Section 628 of the Communications Act of 1934, as amended.

(2) In all arrangements entered into with outside parties affecting service operation, the DTV licensee or permittee must retain control over all material transmitted in a broadcast mode via the station's facilities, with the right to reject any material in the sole judgment of the permittee or licensee. The licensee or permittee is also responsible for all aspects of technical operation involving such services.

(3) In any application for renewal of a broadcast license for a television station that provides ancillary or supplementary services, a licensee shall establish that all of its program services on the analog and the DTV spectrum are in the public interest. Any violation of the Commission's rules applicable to ancillary or supplementary services will reflect on the licensee's qualifications for renewal of its license.

\* \* \* \* \*

## APPENDIX C

## ADDITIONAL ELIGIBLE BROADCASTERS

Addendum to Appendix E of the  
Fifth Report and Order in MM Docket No. 87-268

Television Licensees and Permittees Receiving Digital Television Channel Assignments

<u>Call Sign</u>	<u>Channel</u>	<u>Name of Licensee</u>	<u>Station Location</u>	<u>City</u>	<u>and State</u>
840720KG	38	Coast TV	Santa Barbara		CA
KAWJ(TV)	36	Three Feathers Communications, Inc.	Hutchinson		KS