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Federal Communications Commission
Washington, D.C. 20554

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In the Matter of
Advanced Television Systems
and Their Impact upon the
Existing Television Broadcast
Service

MB Docket No. 87-268 FCC mail room

SEVENTH FURTHER NOTICE OF PROPOSED RULE MAKING

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I. INTRODUCTION

1. By this action, the Commission undertakes the final step in the channel election process established in its *Second DTV Periodic Report and Order*¹ and begins the final stage of the transition of the nation's broadcast television system from analog to digital television ("DTV"). Specifically, in this *Seventh Further Notice of Proposed Rule Making* ("Notice" or "*Seventh FNPRM*"), the Commission proposes a new DTV Table of Allotments ("DTV Table"),² providing all eligible stations with channels for DTV operations after the DTV transition.

2. In developing the proposed new allotments, the Commission has attempted to accommodate broadcasters' channel preferences as well as their replication and maximization service area certifications (made via FCC Form 381).³ Our proposed DTV Table is based upon the tentative channel designations ("TCDs") announced for eligible broadcast licensees and permittees (collectively, "licensees") through the channel election process, along with our efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public, including service to local communities.⁴ Once effective, the proposed DTV Table will guide stations in determining their build-out obligations. The proposed DTV Table⁵ will ultimately replace the existing DTV Table⁶ at the end of the DTV transition, when analog transmissions by full-power television broadcast licensees must cease.⁷ The current DTV Table will govern stations' DTV operations until the end of the DTV transition.

II. BACKGROUND AND SUMMARY

A. The DTV Transition

3. The Commission established the existing DTV Table in the 1997 *Sixth Report and Order* as part of its DTV transition plan.⁸ In creating the existing DTV Table, the Commission sought to accommodate all eligible, full-service broadcasters with a second channel to provide DTV service in

¹ *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*").

² See *infra*, Appendix A: Proposed Rule Changes (proposed revision to 47 C.F.R. § 73.622); Appendix B: Proposed DTV Table of Allotments Information.

³ See *infra* note 18.

⁴ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307, ¶ 65.

⁵ See *infra*, Appendix A: Proposed Rule Changes (proposed revision to 47 C.F.R. § 73.622(b)).

⁶ The current DTV Table of Allotments is contained in Section 73.622(b) of the Commission's rules; 47 C.F.R. § 73.622(b). We note that, at the end of the transition, the current NTSC Table, contained in Section 73.606 of the Commission's rules, 47 C.F.R. § 73.606(b), will become obsolete. We will address any rule amendments necessitated by the end of analog service in a later proceeding.

⁷ 47 U.S.C. § 309(j)(14)(A) ("A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.")

⁸ *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*"); see also 47 C.F.R. § 73.622. 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 *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Fifth Report and Order, 12 FCC Rcd 12809, 12892, app. E (1997) ("*Fifth Report and Order*").

addition to their existing, analog service.⁹ In addition, the Commission initiated a process by which the amount of spectrum devoted to the television broadcast service¹⁰ would eventually be reduced. As a result, television broadcast operations will be limited to the “core spectrum” (*i.e.*, channels 2-51) after the end of the transition,¹¹ enabling the recovery of a total of 108 MHz of spectrum (*i.e.*, channels 52-69).¹²

4. As required by statute, the second channel allotted in the existing DTV Table is for use during the DTV transition, after which each licensee must return to broadcasting on a single, six MHz channel.¹³ In specifying the second channels that broadcasters received for transitional use, the Commission attempted to enable stations to “replicate” the service area of their existing NTSC operations, *i.e.*, to provide DTV service to an area that is comparable to their existing NTSC service area. The existing DTV Table also was designed to minimize interference to both existing analog TV and new DTV service. The existing DTV Table, codified in Section 73.622(b) of the Commission’s rules, was developed using the policies adopted in the *Sixth Report and Order* and a computer allotment methodology.¹⁴ The details of each station’s channel assignment under the existing 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”).¹⁵

⁹ Eligibility to receive a second channel for DTV operations was limited to existing broadcasters. See 47 U.S.C. § 336(a)(1); see also *Fifth Report and Order*, 12 FCC Rcd at 12815, ¶ 13.

¹⁰ See 47 U.S.C. § 153(49) (defining “television service” as encompassing both “analog television service” and “digital television service”). See also 47 U.S.C. § 336 and note (describing the licenses and regulations associated with the “advanced television service” to transition from analog to digital service).

¹¹ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18292, ¶ 33. 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. In order to protect sensitive radio astronomy operations, TV Channel 37 is not used for NTSC or DTV service. See *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7419, ¶ 5; see also 47 C.F.R. § 73.603(c).

¹² 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). Broadcast licensees must cease operations outside the core spectrum after February 17, 2009, thereby making that spectrum available for public safety and commercial wireless uses. 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.”).

¹³ See 47 U.S.C. § 336(c) (requiring “that either the additional license or the original license held by the licensee be surrendered to the Commission”); see also *Fifth Report and Order*, 12 FCC Rcd at 12849-50, ¶ 97. In practice, some licensees’ ultimate DTV channels will be entirely different channels – not their NTSC channels or the channels allotted to them for DTV transmission during the transition.

¹⁴ 47 C.F.R. § 73.622(b).

¹⁵ See *Sixth Report and Order*, 12 FCC Rcd at 14693, app. B. The initial Appendix B was amended in 1998. See *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 Sixth Report and Order, 13 FCC Rcd 7418 (1998) (“*DTV Sixth Memorandum Opinion and Order*”) and *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1998).

B. The Channel Election Process

5. Broadcast licensees selected their ultimate (*i.e.* post-transition) DTV channel inside the core spectrum through the channel election process established by the Commission in the *Second DTV Periodic Report and Order*. Under this process, licensees elected their preferred post-transition channel during one of three rounds. Channel elections that could be approved, as well as “best available” channels selected by Commission staff, were locked in as TCDs and protected against new interference from subsequent channel elections with a strong presumption that a station’s TCD would be its channel assignment proposed in the new DTV Table.¹⁶ Because the final channel allotments can be established only through a rulemaking proceeding, we propose the new DTV Table as an amendment to Section 73.622 in this *Seventh FNPRM* in the DTV docket.

6. The channel election process was designed to be carried out in seven steps, culminating in this rulemaking, the seventh and final step. In order to facilitate the selection of channels and the development of a final DTV Table, prior to the commencement of the first step of the channel election process, the Media Bureau announced a freeze on the filing of certain NTSC and DTV requests for allotment or service area changes.¹⁷

7. The first step of the channel election process addressed preliminary matters and required all licensees to file a certification (via FCC Form 381) in order to define their post-transition facility.¹⁸ In these certifications, licensees had to decide whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities,¹⁹ or (3) reduce to a currently authorized smaller facility.

8. The second step of the channel election process was the first round of channel elections, in which only in-core licensees – those with at least one in-core channel – could participate. In-core licensees that participated in round one filed their channel elections (via FCC Form 382) by February 10,

¹⁶ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18298, ¶ 46 n.96.

¹⁷ 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*”). Pursuant to the freeze, parties were precluded from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. In the *Second DTV Periodic Report and Order*, the Commission noted that it would continue to process rulemakings in which a Notice of Proposed Rulemaking (“NPRM”) had been issued prior to the adoption of the *Second DTV Periodic Report and Order*, but ordered the dismissal of all pending petitions to change the NTSC Table of Allotments (“NTSC Table”) in which a NPRM had not yet been issued. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18308, ¶ 68. We note that petitions for reconsideration are pending before the Commission on this issue in MB Docket No. 03-15. See, e.g., *ACME Communications Petition for Reconsideration*; *Television Capital Corporation of Portland Petition for Reconsideration*; and *Ramar Communications Petition for Reconsideration*, all filed on Nov. 3, 2004.

¹⁸ Licensees were required to file their certifications (via FCC Form 381) by November 5, 2004. 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.

¹⁹ Many stations have applied for and been granted authorization to operate at facilities that are different from the facilities that were specified for their operation in the initial DTV Table and Appendix B, as amended in 1998. In most cases, the facilities allowed under these new authorizations allow stations to “maximize” their service coverage to reach a larger population than the facilities specified in the initial DTV Table and Appendix B.

2005. First-round electors were not permitted to elect a channel that was not assigned to them unless rights to that channel were obtained through a negotiated channel agreement (“NCA”) with another licensee. At the close of the first round elections, the Commission announced 1,554 TCDs,²⁰ which included channels elected through 25 NCAs.²¹

9. In the third step, the Commission analyzed the interference conflicts arising out of the first round and offered licensees an opportunity to resolve them (via FCC Form 383). After reviewing the first round conflicts, the Commission announced an additional 159 TCDs, bringing the total number of TCDs to 1,713.²²

10. The fourth step of the channel election process was the second round of elections, in which the remaining licensees made their elections. Licensees that participated in this round filed their channel elections (via FCC Form 384) by October 31, 2005.

11. In the fifth step, the Commission analyzed the interference conflicts arising out of the second-round elections and announced 75 TCDs, which included channels elected through two NCAs.²³ The Commission subsequently announced the consolidated total of first- and second-round TCDs to be 1,789.²⁴

12. The sixth step of the channel election process was the third and final round of elections, in which licensees without a TCD after rounds one and two, as well as certain other eligible licensees,²⁵ filed a final channel election preference.²⁶ Licensees that participated in the third round filed their channel elections (via FCC Form 386) by May 26, 2006. At the close of the third round, the Commission announced 20 TCDs for eligible licensees, leaving only four eligible stations without a TCD.²⁷

²⁰ Public Notice, “DTV Tentative Channel Designations for 1,554 Stations Participating in the First Round of DTV Channel Elections,” 20 FCC Rcd 10983 (MB 2005).

²¹ By Order released on June 8, 2005, the Media Bureau approved 25 NCAs for the first round and rejected 12 NCAs, sending those licensees to their contingent round one election or, if necessary, to round two. *Negotiated Channel Election Arrangements*, MM Docket No. 03-15, Report and Order, 20 FCC Rcd 10141, 10142 (MB 2005) (“*Round One NCA Order*”).

²² Public Notice, “Tentative Digital Channel Designations for Stations Participating in the First Round of DTV Channel Elections and Second Round Election Filing Deadline,” 20 FCC Rcd 15735 (MB 2005) (“*First Round TCD PN*”).

²³ Public Notice, “Tentative Digital Channel Designations for Stations Participating in the Second Round of DTV Channel Elections and Third Round Election Filing Deadline,” DA 06-991 at 2-4 (MB rel. May 5, 2006) (“*Second Round TCD PN*”). The Commission received two NCAs: one for Philadelphia, Pennsylvania and the other for San Francisco, California. The Commission approved the Philadelphia NCA in full, and the San Francisco NCA in part.

²⁴ Public Notice, “Tentative Digital Channel Designations for Stations Participating in the First and Second Rounds of the DTV Channel Election Process,” DA 06-1082 (MB rel. May 23, 2006). One additional first round TCD was announced in addition to the 75 second round TCDs.

²⁵ Licensees with a TCD were eligible to seek an alternative designation in the third round if they received a TCD for a low-VHF channel (channels 2-6) or if their TCD was subject to international coordination issues which the Commission has been unable to resolve with the Canadian and Mexican governments. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18306, ¶ 63.

²⁶ In the third round, we received seven channel elections from stations that did not have a TCD, 14 from stations that had a low-VHF TCD, and one from a station that had an international coordination issue.

²⁷ Public Notice, “Third Round of the DTV Channel Election Process: Tentative Channel Designations,” DA 06-1675 (MB rel. Aug. 29, 2006) (“*Third Round TCD PN*”). The four eligible stations without TCDs after the third (continued....)

III. PROPOSED DTV TABLE OF ALLOTMENTS

13. In this *Seventh FNPRM*, we now undertake the seventh and final step of the channel election process by proposing a new DTV Table. The proposed DTV Table includes a channel for each eligible broadcast television station and is set forth in the proposed rules in Appendix A. The specific technical facilities – effective radiated power (“ERP”), antenna height above average terrain (“antenna HAAT”), antenna radiation pattern, and geographic coordinates at which stations would be allowed to operate under this Table – are set forth in Appendix B. Appendix B also includes information on service area and population coverage.

14. We believe that our proposed new DTV Table achieves the goals set forth for the channel election process.²⁸ First, the proposed new DTV Table provides all eligible stations with channels for DTV operations after the DTV transition. Second, we believe that our proposed new DTV Table is the result of informed decisions by licensees when making their channel elections and that licensees benefited from the clarity and transparency of the channel election process. Third, we believe our proposed new DTV Table recognizes industry expectations by protecting existing service and respecting investments already made, to the extent feasible. Finally, we believe the proposed new DTV Table reflects our efforts to promote overall spectrum efficiency and ensure the best possible DTV service to the public.

15. The channel assignments in the proposed DTV Table are primarily based on the TCDs previously announced through the channel election process;²⁹ however, in order to promote overall spectrum efficiency and ensure the best possible DTV service to the public, in some cases Commission staff found it necessary to assign a different channel for post-transition operation in order to minimize interference and maximize the efficiency of broadcast allotments in the public interest.³⁰

16. We invite comment on our proposed new DTV Table.³¹ We seek comment on whether the channel assignments in the proposed DTV Table will serve the Commission’s goals of promoting overall spectrum efficiency and ensuring the best possible DTV service to the public. We ask that licensees review the accuracy of their information contained in the proposed DTV Table and Appendix B, (Continued from previous page) _____

round were: WABC-TV (New York, New York), WEDH-TV (Hartford, Connecticut), KTFK(TV) (Stockton, California), and KVIE(TV) (Sacramento, California). In the *Third Round TCD PN*, the Media Bureau said that the Commission would resolve these situations in a subsequent proceeding. *Id.* at 2. We do so here in Section III.B., *infra*, and include these final TCDs in our proposed new DTV Table.

²⁸ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18291, ¶ 31.

²⁹ We estimate that more than 98 percent of licensees participating in the channel election process received a TCD for the channel they elected. Approximately 10 licensees requested that the Commission identify a “best available” channel for them. In addition, approximately 30 licensees did not file a channel election form when required. Each of these licensees was given a TCD either (1) on its in-core DTV channel, if it had one, or (2) on its in-core NTSC channel if it did not have an in-core DTV channel, and the NTSC channel did not cause impermissible interference to another station. The remaining stations generally were provided channels that would allow them to serve the full population the station would reach with its certified facilities. In several cases, however, it was necessary to provide stations with channels and facilities that would enable service to a population less than that which could be reached with their certified facilities. In those cases, stations were provided with facilities that would at least enable replication of their service coverage as set forth in the initial DTV Table. Such stations (upon demonstration that they cannot construct their full, authorized DTV facilities because doing so would cause impermissible interference) may file requests for alternative channel assignments, as discussed below in Section III.B., *supra* ¶ 22.

³⁰ *Id.* at 18288, ¶ 23.

³¹ See *infra*, Appendix A: Proposed Rule Changes (proposed revision to 47 C.F.R. § 73.622); see also Appendix B: Proposed DTV Table of Allotments Information (proposed allotment for each station, including information about each station’s technical facilities and predicted service and interference information).

including whether it properly reflects any conflict-resolving amendments to their certifications, and comment on any inaccuracies or discrepancies. The proposed DTV Table will ultimately replace the existing DTV and NTSC Tables after the transition.³² We request comment on how best to time the adoption and effective date of the proposed DTV Table so that it is available for stations' reference and reliance in applying for construction permits or modifications needed to implement their post-transition facilities. We do not seek comment here on issues related to the DTV transition other than the channel assignments in the proposed DTV Table, as such issues will be addressed in a later proceeding.

A. Allotment Methodology and Evaluation of Interference Conflicts

17. In the *Second DTV Periodic Report and Order*, the Commission stated that the staff would evaluate channel elections after each channel election round in order to identify potential interference conflicts. Interference conflicts were found to exist only where licensees elected channels other than their current DTV channel, most often for stations that elected their NTSC channels.³³

18. In developing the proposed DTV Table and Appendix B (which sets forth the channel assignment, operating facilities, and service information for individual stations), the staff used objective computer analysis to perform the engineering evaluations for determining station service coverage and interference. In performing these evaluations, the staff relied on the technical standards and methods set forth in Sections 73.622(e) and 73.623(c) of our rules, which (1) define the geographic service area of DTV stations, and (2) provide minimum interference technical criteria for modification of DTV allotments included in the initial DTV Table.³⁴ Specifically, Section 73.622(e) defines a DTV station's service area as the geographic area within the station's noise-limited F(50,90) contour where its signal is predicted to exceed the noise-limited service level.³⁵ A station's noise-limited contour is computed using its actual transmitter location, ERP, antenna HAAT, and antenna radiation pattern. Section 73.623(c) sets forth the thresholds of desired-to-undesired (D/U) ratio at which interference is considered to occur.

19. Consistent with Sections 73.622(e) and 73.623(c), the staff used the procedure set forth in Office of Engineering and Technology's *OET Bulletin No. 69* to make predictions of service coverage and interference.³⁶ This procedure uses the terrain-dependent Longley-Rice point-to-point propagation model for predicting the geographic areas and populations served by stations. Under the procedure in *OET Bulletin No. 69*, the predicted geographic area and population served by a TV station are reduced by any interference it receives from other stations. In these evaluations, the staff examined interference resulting from co-channel and first adjacent channel relationships in accordance with the interference criteria for DTV allotments specified in Section 73.623(c). The computer software used in this work is similar to that used in performing the service coverage and interference evaluations for the initial DTV Table and that the Media Bureau has used to evaluate requests for modification of DTV facilities and changes in channel allotments in the initial DTV Table. This software provides analysis of service coverage and interference on both a cumulative and individual-station basis.

³² 47 C.F.R. §§ 73.606(b) and 73.622(b). *See supra* note 6.

³³ It was not necessary to determine the amount of interference caused by stations that elected their current DTV channel because operation on those channels would not result in new interference.

³⁴ *See* 47 C.F.R. §§ 73.622(e), 73.623(c).

³⁵ 47 C.F.R. § 73.622(e). 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.*

³⁶ *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.

20. As indicated above, the staff used a database composed of TV station authorizations to which licensees certified as of November 5, 2004 (the “certification database”),³⁷ including both analog and digital stations, in processing channel elections. This database was used to determine and evaluate existing DTV service populations, the benchmark amounts of existing interference, and the new interference that would result from specific channel elections. In deciding to rely on this database in the *Second DTV Periodic Report and Order*, the Commission indicated that basing stations’ service evaluations on currently authorized facilities would more accurately reflect current service to viewers than the parameters specified for the initial DTV Table adopted in 1997, and amended in 1998, and would at the same time preserve the service areas of those stations that constructed and are operating in accordance with the DTV build-out schedules.³⁸

21. The Commission performed interference-conflict analyses in only two circumstances: (1) where a station elected a channel that was different from its current DTV channel, and (2) to identify a “best available” channel.³⁹ In doing so, the staff calculated values for the ERP and the directional antenna radiation pattern that would allow a station to match its coverage area based on its certified facilities or replication facilities, as appropriate.⁴⁰ New interference to post-transition DTV operations was defined as interference beyond that caused by existing analog and DTV operations, as set forth in the certification database information.⁴¹ Evaluations of service coverage and interference conflicts were based only on the populations determined to be receiving service and new interference.⁴² The staff used population data from the year 2000 census. In performing conflict analyses, the staff applied the standard that an interference conflict exists when it was predicted that more than 0.1 percent new interference would be caused to another station. That is, the standard was that new interference was considered to constitute a conflict when that 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.⁴³

22. In the *Second DTV Periodic Report and Order*, the Commission recognized that a special accommodation was necessary if a station with an out-of-core DTV channel elected to operate its post-transition DTV station on its in-core analog channel.⁴⁴ The Commission stated that the 0.1 percent

³⁷ The certification database was made available in tables attached to the Public Notice, “DTV Channel Election Information and First Round Election Filing Deadline,” 19 FCC Rcd 24141 (MB 2004).

³⁸ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294, ¶ 37.

³⁹ See ¶ 24, *infra*, for a discussion of the process by which “best available” channels were determined.

⁴⁰ Calculations of new ERP and antenna patterns for stations’ elected channels were performed in the same manner as those performed by the Commission to match DTV facilities to analog facilities; see *Sixth Report and Order*, 12 FCC Rcd at 14693, app. B.

⁴¹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18294, ¶ 37.

⁴² *Id.* at 18294, ¶ 38.

⁴³ *Id.* at 18302-03, ¶ 56.

⁴⁴ The Commission’s goal was to facilitate a station’s election of its in-core analog channel if the station did not have an in-core DTV channel. To this end, the Commission recognized that the interference relationships between DTV-to-DTV and NTSC-to-DTV operations are such that a DTV station serving the same geographic area as its associated analog station would have a 1 dB greater interference impact on a co-channel DTV station than it would have had as an analog station and an 8 dB greater impact on an adjacent channel DTV station than it would have had as an analog station, assuming the same coverage and locations for all stations. Thus, DTV operation on a station’s analog channel could result in new interference. Unlike a station that has its DTV channel inside the core, and therefore could avoid this new interference by electing its in-core DTV channel, a station with an out-of-core DTV channel by definition could not elect its DTV channel for post-transition use. A station that did not have an in-core (continued....)

additional interference limit could be exceeded on a limited basis in order to afford these stations an improved opportunity to select their own NTSC channel. The Commission indicated that such allowance is justified because these licensees have only one in-core option available (*i.e.*, their NTSC channel) and may need this additional accommodation to be able to operate on their in-core channel after the end of the transition.⁴⁵ In developing the proposed DTV Table, the staff allowed stations that were eligible to participate in the channel election process and that had either an out-of-core DTV channel or no DTV channel (*i.e.*, a singleton with only an in-core analog channel) to select their in-core NTSC channel for post-transition DTV operation if it would cause no more than 2.0 percent new interference to a protected DTV station. Any such stations that certified to their maximized facilities, however, would be permitted to use the 2.0 percent standard only to the extent that the predicted new interference also would not exceed the amount of interference that would have been caused by replication facilities.⁴⁶ Where post-transition use of its NTSC channel by such a station was predicted to cause interference to a protected station in excess of 2.0 percent of the protected station's population coverage, the electing station was then made subject to the normal conflict-resolution procedures.⁴⁷

23. Where a station in round one or round two elected and received a TCD for a DTV channel that was not its current NTSC or DTV channel, the interference potential of that new channel was included in the service coverage and interference evaluations of subsequent elections. That is, new channels elected and tentatively designated in round one under approved NCAs⁴⁸ were included in the service coverage and interference evaluations of channels elected in rounds two and three. Similarly, channels elected and tentatively designated in round two were included in the service coverage and interference evaluations in round three.

24. In cases where the licensee requested, or was given, a Commission-determined "best available" channel for its station, the staff used an ordered approach that balanced treatment of the station for which a channel was to be provided and other stations, as follows. The staff first analyzed the station's possible post-transition operation on each in-core channel. On each channel, the staff examined the interference impact and service coverage based on the station's certified facilities. If there was a channel or channels where the station could operate without causing new interference to another station and provide adequate service, the staff gave it a TCD on that channel. If there was more than one such channel, the staff generally chose the lowest channel that was outside of the low-VHF band. In cases where there was no channel that would allow the station to satisfy these criteria when operating at its certified maximized facilities, the staff re-examined the station's possible post-transition operation on each in-core channel at its replication facilities. The staff then selected a channel for the station that would result in the minimum amount of new interference to protected stations. In these cases, the objective was to achieve a balance that would minimize the amount of interference that the subject station would cause to and receive from other stations. In every "best available" channel determination, the interference that other stations would receive from the TCD was less than 2.0 percent.

(Continued from previous page) _____
analog channel could not make use of this special accommodation. *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56.

⁴⁵ *Id.*

⁴⁶ See Public Notice, "DTV Channel Election: First Round Conflict Decision Extension and Guidelines For Interference Conflict Analysis," 20 FCC Rcd 13415 (MB 2005); *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18301-04, ¶ 53-7 (describing conflict analysis).

⁴⁷ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302-03, ¶ 56.

⁴⁸ *Id.* at 18297-98, ¶ 45 (describing NCAs).

B. Requests for Alternative Channel Assignments

25. At this stage in the DTV channel election process, we will consider requests for alternative channel assignments only from (1) licensees unable to construct full, authorized DTV facilities⁴⁹ on the TCDs that they requested and received because, in order to avoid causing impermissible interference to other TCDs and still obtain their preferred channel, they had to agree to construct facilities on their TCD that are smaller than those to which they had certified on FCC Form 381,⁵⁰ (2) licensees with international coordination issues which the Commission has been unable to resolve with the Canadian and Mexican governments,⁵¹ (3) licensees with TCDs for low-VHF channels (channels 2-6); and (4) new licensees and permittees that attained such status after the start of the channel election process and to which we assigned a TCD for post-transition DTV operations because their assigned NTSC or DTV channel was determined to cause impermissible interference to existing licensees.⁵² Licensees that want to change their DTV allotment, but which are not in any of these categories (*e.g.*, are technically able to construct their full, authorized DTV facilities on their existing TCD) may request a change in allotment only after the proposed DTV Table is finalized and must do so through the existing allotment procedures, as set forth in Section 1.420 of our rules.⁵³ Parties seeking alternative channel assignments consistent with this paragraph should file their requests in accordance with the filing procedures set forth in Section IV.D., *infra*.

26. In assessing proposed alternative channel assignments, we will also consider requests that include the consensual substitution of the TCD of another station that is not otherwise eligible to request an alternative channel assignment. We will consider such requests if it is demonstrated that the additional channel substitution is technically necessary to implement the eligible licensee's requested alternative channel assignment. We will review requests involving a channel substitution to assure compliance with the public interest and will reject any such request if it would require acceptance of a significant level of interference by, or result in a loss of service to, one or both of the requesting stations. Licensees unable to construct their full, authorized DTV facilities may also submit a technical showing that a modification of the licensee's pre-freeze authorized DTV facility – such as a change in transmitter site or an increase in power – would permit construction of their full, authorized DTV facilities with their present TCD or a substitute channel.⁵⁴ We will continue to limit additional interference to DTV stations to 0.1 percent during this seventh and final stage of the DTV channel election process. Any request for an alternative channel assignment that causes excess interference must be accompanied by a request for a waiver of the 0.1 percent limit or the signed written consent of the affected licensee. We propose to grant waivers of the 0.1 percent limit where doing so would promote our overall spectrum efficiency objectives and ensure the best possible service to the public, including service to local communities.⁵⁵

⁴⁹ The term “full, authorized DTV facilities” here refers to the original facilities certified by the licensee in its FCC Form 381. We will not preclude requests for alternative channel assignments from licensees that modified their certified facilities after receiving a conflict letter in the first and second channel election rounds.

⁵⁰ We will consider only engineering demonstrations here. Requests based on financial or other reasons will not be considered.

⁵¹ See Section III.E., *infra* ¶¶ 41-42.

⁵² See Section III.F., *infra*.

⁵³ 47 C.F.R. § 1.420.

⁵⁴ Licensees requesting alternative channel assignments will be required to continue to protect the full, authorized DTV facilities of other licensees.

⁵⁵ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307, ¶ 65.

27. At this time, we are continuing the 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 full-service television and Class A television stations.⁵⁶ From our past experience when we adopted the initial DTV Table,⁵⁷ we expect that we will receive alternative channel requests from a number of licensees, and that parties will file petitions for reconsideration of the Report and Order adopted in this proceeding. Thus, the importance of a stable database remains crucial until such time as the DTV Table is adopted and becomes final. However, we may grant waivers on a case-by-case basis in response to requests for alternative channel assignments.⁵⁸ We will determine when it is appropriate to lift the freeze in a future proceeding.

C. Requests to Change Certified Facilities

28. By November 5, 2004, all DTV licensees were required to certify whether they would construct replication or maximization facilities.⁵⁹ Forty-one stations did not timely file the appropriate form (FCC Form 381) and, therefore, were assigned replication facilities (or authorized NTSC facilities if they were a single-channel NTSC-only station).⁶⁰ We will permit these licensees to file comments proposing a change to their certification to specify maximized facilities for which they would have been allowed to certify. We are also aware that there are cases where a station already has constructed or received authorization to construct facilities on its TCD that provide service to areas that extend beyond that to which the station certified using FCC Form 381. Because the interference protection that we provide is limited to the area to which a station has certified, there is a possibility that stations serving or authorized to serve areas beyond their certified area could become subject to interference. If a licensee can demonstrate that the area served by its authorized or constructed facilities extends beyond the area to which it certified, it may file comments proposing to modify its certified facilities to match its authorized or constructed facilities.

29. Licensees requesting a modification of their certifications must either (1) submit an engineering analysis demonstrating that their proposed certified facilities would not result in interference in excess of 0.1 percent to any licensee's existing TCD or (2) submit the signed, written consent of every affected licensee. They will also be required to accept interference from any channel election already approved.

D. Resolution of TCDs Pending After Round Three

30. Our proposed DTV Table includes four proposed allotments that were unresolved when we announced TCDs for the third round.⁶¹ These channel designations represent challenging and difficult

⁵⁶ See Section II, *supra* ¶ 6.

⁵⁷ *Sixth Report and Order*, 12 FCC Rcd at 14590, ¶ 1.

⁵⁸ It is well settled that the Commission has discretion to waive a rule where "particular facts would make strict compliance with the rule inconsistent with the public interest" and "special circumstances warrant a deviation from the general rule." See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

⁵⁹ See *supra* note 18.

⁶⁰ Of these stations, nine requested that we waive the freeze and filing deadlines to accept their untimely maximization certifications. Requests were filed on behalf of stations KFNB(TV), Caspar, Wyoming; KLWY(TV), Cheyenne, Wyoming; WCJB-TV, Gainesville, Florida; KOAA(TV), Pueblo, Colorado; KSCE(TV), El Paso, Texas; KOCE-TV, Huntington Beach, California; WLMB(TV), Toledo, Ohio; WGGN-TV, Sandusky, Ohio; and WLLA(TV), Kalamazoo, Michigan.

⁶¹ See *Third Round TCD PN*, DA 06-1675 at 2.

cases in crowded markets that necessitate waiver of the freeze or the interference standard in order to find appropriate channels for post-transition operation that will ensure the best possible service to the public and promote overall spectrum efficiency.⁶² We invite comment on these proposed channel allotments.

31. New York, New York. In the first round of the channel election process, American Broadcasting Companies, Inc. (“ABC”), the licensee of WABC-TV, channel 7, and permittee of WABC-DT, channel 45, New York, New York,⁶³ elected to use its analog channel 7 for digital operation at the end of the DTV transition. The Media Bureau sent ABC a first-round conflict letter because the elected NTSC channel was predicted to cause 2.8 percent new interference to the elected DTV channel of NCE station WNJB-DT, channel *8, New Brunswick, New Jersey. ABC was unable to resolve its conflict with The New Jersey Public Broadcasting Authority (“NJPA”), the permittee of WNJB-DT, within the allotted timeframe. On August 15, 2005, ABC filed a request for a waiver of the 0.1 percent interference standard used to calculate first round interference conflicts in order to permit WABC to operate digitally on its current analog allotment at the end of the DTV transition.⁶⁴

32. In its emergency petition for waiver, ABC contends that the 2.8 percent new interference it is predicted to cause to WNJB is based on WNJB’s maximized authorized facilities, which it has yet to build.⁶⁵ ABC also argues that the viewers who would potentially be affected by this predicted new interference are either (1) outside the state of New Jersey, or (2) within the state but served by WNJB’s sister station, WNJN, Montclair, New Jersey, which currently provides the same programming as WNJB.⁶⁶ In addition, ABC asserts that enforcement of the 0.1 percent new interference standard in this instance would impose an undue hardship on WABC by preventing it from replicating its current analog service area, thus resulting in a loss of over-the-air service to current WABC viewers.⁶⁷ Further, ABC claims that post-transition operation on its digital channel 45 would result in losses of service due to interference from WOLF, Hazleton, Pennsylvania, and WEDH, Hartford, Connecticut.⁶⁸

33. WPIX, Inc., another VHF broadcaster in the New York market, joined in the waiver request in support of ABC. Educational Broadcasting Corporation, licensee of NCE station WNET, licensed to Newark, New Jersey, also filed in support of ABC’s waiver request.⁶⁹ NJPA opposed

⁶² See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18308, ¶ 65. See also Section III.B., *supra*, ¶ 24 (discussing waivers of the freeze); *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18309, ¶ 69 (considering freeze waivers when necessary or in the public interest for technical or other reasons).

⁶³ WABC is the flagship station of the ABC Television Network and is the sole ABC network station serving the New York market. ABC was an early adopter of DTV technology, commencing operation with its full, authorized DTV facility at the World Trade Center in 2001. File No. BLCDDT-20010710ABU.

⁶⁴ See WABC-TV *ex parte* in MB Docket No. 03-15 (dated Aug. 15, 2005) (“*ABC Emergency Request for Waiver*”). Simultaneous with its waiver request, ABC filed FCC Form 383 (First Round Conflict Decision Channel Election) certifying that ABC changed its election to channel 45, subject to the outcome of this waiver proceeding.

⁶⁵ *Id.* at 14-15.

⁶⁶ *Id.* at 9-11. WNJB is a satellite station of WNJT, Trenton. See BEDSTA - 20060628ABA, Ex 36 (Explaining that WNJB is not subject to the July 1, 2006 use or lose deadline because of its status as a satellite station). WNJB is also a satellite of WNJN, Little Falls, New Jersey. See Nielsen Station Index, Directory of TV Stations, 2005-2006, at 50.

⁶⁷ *Id.* at 11-14.

⁶⁸ *Id.* at 18-19.

⁶⁹ See Educational Broadcasting Corporation (“EBC”) *ex parte* in MB Docket No. 03-15 (dated May 22, 2006); and EBC *ex parte* in MB Docket No. 03-15 (dated Sept. 1, 2005) (“*Comments in Support of Emergency Request for Waiver*”).

ABC's request and contends that WABC's service on its digital channel 45 would not result in any loss of service area.⁷⁰ ABC offered to pay for WNJB to install a directional antenna to eliminate the most of the interference.⁷¹ NJPBA rejected ABC's engineering offer and proposed instead that WNJB relocate its digital transmission facility to the Empire State Building in New York City at no expense.⁷² The Media Bureau deferred action on ABC's first round channel election until the conclusion of the channel election process.⁷³

34. Subsequently, NJPBA indicated that it would be willing to co-locate its transmitting facilities at Four Times Square in New York City as a possible resolution to this issue.⁷⁴ In response, ABC agreed not to object to WNJB-DT's move to Four Times Square provided there was favorable action on its election of channel 7 and related waiver request.⁷⁵ Both parties recognized, however, that the current Commission freeze on major modification applications would prevent this resolution. Ultimately, NJPBA stated that if the freeze is waived so that WNJB-DT can apply to modify its facilities to co-locate at Four Times Square, then it would no longer object to WABC operating on channel 7.⁷⁶ NJPBA also has asserted that the proposed co-location of WNJB-DT and WABC-DT in New York would have the additional benefit of reducing the amount of interference received by WABC-DT on channel 7 from WNJB-DT's currently authorized operations in New Jersey.⁷⁷ This potential agreement remains pending between the parties.

35. According to ABC, WABC-DT will provide a DTV service area with a population of 19,324,895 operating on channel 7, approximately 300,000 more people than would receive such service on channel 45.⁷⁸ ABC also contends that channel 7 is more capable of replicating WABC's pre-September 11, 2001 service area than channel 45. In addition, ABC states that WABC's operation on digital channel 45 would be subject to co-channel interference from operations on channel 45 in Pennsylvania and Connecticut, which would affect nearly half a million people.⁷⁹

36. We conclude that the loss of service for WABC would affect current viewers of WABC, while the predicted loss of service for WNJB would affect areas outside of its current service area and primarily outside of the state of New Jersey.⁸⁰ We note, too, that WABC is a pioneer of digital service,⁸¹

⁷⁰ See NJPBA *ex parte* in MB Docket No. 03-15 (dated Sept. 12, 2005) ("Comments in Opposition to Emergency Request for Waiver").

⁷¹ ABC *Emergency Request for Waiver* at 15-16.

⁷² *Id.* at Ex 10.

⁷³ See *First Round TCD PN*, 20 FCC Rcd at 15737; *Second Round TCD PN*, DA 06-991 at 4-5; *Third Round TCD PN*, DA 06-1675 at 2.

⁷⁴ See NJPBA *ex parte* in MB Docket No. 03-15 (dated Sept. 1, 2005) at 17.

⁷⁵ See WABC-TV *ex parte* in MB Docket No. 03-15 (dated May 12, 2006).

⁷⁶ See NJPBA *ex parte* in MB Docket No. 03-15 (dated June 2, 2006).

⁷⁷ *Id.* at 2-3.

⁷⁸ See WABC-TV *ex parte* in MB Docket No. 03-15 (dated Oct. 7, 2005) at 7-8 ("Reply to Opposition").

⁷⁹ ABC predicts that its operation on channel 45 would result in a loss of service to nearly 500,000 people. *Id.* at 8-9. ABC notes that television receivers are less tolerant of the co-channel interference among stations on channel 45 than of the adjacent channel interference potentially arising between WABC on channel 7 and WNJB on channel 8.

⁸⁰ ABC also points out that WABC's move to UHF channel 45 would leave WPIX and WNET as the only New York City stations on VHF channels (channel 11 and 13, respectively), which could undermine a plan for digital (continued....)

having built full-power digital operations in 2001⁸² and re-built them first at Four Times Square and then on the Empire State Building, with a back-up facility at Alpine Tower in New Jersey, after the September 11, 2001 loss of the World Trade Center.⁸³ In contrast, WNJB has not built its digital facility and recently requested an extension of its STA beyond the July 1, 2006 “use-or-lose” deadline based on its status as a satellite station.⁸⁴ Based on all the factors in the record, we believe that the public interest and the factors enumerated in the *Second DTV Periodic*⁸⁵ favor granting WABC a TCD on channel 7 notwithstanding the predicted 2.8 percent interference to WNJB on channel 8. We find that WABC’s continued transmission on channel 7 will benefit WABC’s viewers, many of whom have relied on VHF antennas for decades. Allotting channel 7 to WABC provides the additional benefit of eliminating concerns about potential interference between WABC and WEDH-TV, a NCE station in Hartford, Connecticut,⁸⁶ and WOLF in Pennsylvania. Accordingly, we grant ABC’s request for waiver of the 0.1 percent interference standard. We also note that NJPBA may apply in the future to modify WNJB-DT’s facilities to move to Four Times Square for post-transition service. If that application is granted, WNJB’s virtual collocation with WABC-DT and other New York market stations would be likely to reduce or eliminate the predicted interference to its digital operations on channel 8.⁸⁷

37. Hartford and Norwich, Connecticut. Connecticut Public Broadcasting, Inc. (“CPBI”) is the licensee of NCE stations WEDH-TV, channel *24, Hartford, Connecticut and WEDN, channel *53, Norwich, Connecticut. In the existing DTV Table, WEDH was assigned digital channel *32 and WEDN was assigned digital channel *45.⁸⁸ In 1999, CPBI filed an application to swap the digital channels between these two stations.⁸⁹ This swap application has remained in a pending status. In 2004, CPBI filed a petition for rulemaking to substitute channel *9 as WEDN’s digital channel, and the Media Bureau issued a *Notice of Proposed Rulemaking* proposing the channel substitution.⁹⁰

38. The *Second DTV Periodic Report and Order* stated that, during the channel election process, we would protect channels proposed in outstanding rule makings where a Notice of Proposed Rulemaking had been issued, and that we would permit licensees to elect a channel if an NPRM had been

(Continued from previous page) _____

VHF service in the New York market. ABC also argues that UHF channels provide inferior service to indoor antennas in urban areas in which buildings impede reception. *ABC Emergency Request for Waiver* at 20-21.

⁸¹ In the *Second DTV Periodic Report and Order*, the Commission indicated that it would consider a number of factors, including “whether the station was an early adopter of DTV technology,” when deciding among third round election preferences. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18306, ¶ 64.

⁸² See File No. BLCDDT-20010710ABU.

⁸³ See File Nos. BDSTA-20031024AAW, BXSTA-20040728APD, and BMDSTA-20040419ACL.

⁸⁴ See BEDSTA - 20060628ABA.

⁸⁵ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18306, ¶ 64.

⁸⁶ As discussed below in ¶¶ 34-37, we propose to allot channel *45 to WEDH-TV, which elected that channel based on its pending swap application.

⁸⁷ See NJPBA *ex parte* in MB Docket No. 03-15 (dated June 2, 2006).

⁸⁸ See 47 C.F.R. § 73.622(b).

⁸⁹ See File No. BPEDT-19990113KG (swap application).

⁹⁰ See File No. BFREET-20050209AMZ. See *Notice of Proposed Rulemaking*, 19 FCC Rcd 8603 (2004) (“*Norwich NPRM*”).

issued with respect to a channel change.⁹¹ The *Second DTV Periodic Report and Order* did not specifically address how DTV channels in a pending swap application would be treated.

39. In the first round of the channel election, WEDH-TV elected channel *45 in reliance on the pending 1999 channel swap application,⁹² and WEDN elected channel *9 based on the related pending channel substitution rulemaking. Because these elections are based on matters that were pending before the commencement of the channel election process, the 2.0 percent standard set forth in Section 73.623(c)(2) applies.⁹³ Our engineering study confirms that the channels elected by CPBI for its Hartford and Norwich stations comply with the 2.0 percent technical standard.⁹⁴ WEDN received a TCD for channel *9, but WEDH did not get a TCD for channel *45 due to the unresolved status of stations' channel elections in an adjacent market.⁹⁵

40. We believe the public interest would be served by allotting DTV channel *45 to Hartford as well as channel *9 to Norwich, which was tentatively designated after round one. According to CPBI, doing so will enable station WEDH-DT to increase service to an additional 1,275,810 people while reducing its operating costs and, similarly, enable WEDN to increase DTV service to an additional 1,029,678 people while reducing its operating costs.⁹⁶ We also note that our proposal facilitates a successful resolution of the channel election process in a highly congested area of the country.⁹⁷ In particular, replacing WEDH's allotted DTV channel *32 with channel *45 eliminates potential interference from channel 33, which WCBS (New York) elected in round two. WCBS was predicted to cause 0.5 percent interference to WEDH (20,311 people) if it remained on channel 32.⁹⁸ WCBS agreed to reduce its facilities to comply with the 0.1 percent standard, thus reducing service significantly.⁹⁹ As a result of approving WEDH's TCD for channel *45, WCBS would no longer be required to reduce its

⁹¹ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307-08, ¶¶ 67 and 18279 (Channel election form 382 provides: "Pending Channel Change Requests. Licensees for which the Commission has issued a Notice of Proposed Rulemaking with respect to a channel change request may elect the new channel proposed in the NPRM.")

⁹² See File No. BFREET-20050209ACP (WEDH first round election). We note that WEDH certified on FCC Form 381 that it would construct the channel *45 facilities proposed in this swap application. File No. BCERET-20041102AED (WEDH certification).

⁹³ 47 C.F.R. § 73.623(c)(2).

⁹⁴ Neither WEDH's digital facilities on channel *45 nor WEDN's digital operations on channel *9 would cause more than 2.0 percent interference to adjacent or co-channel stations.

⁹⁵ See *First Round TCD PN*, 20 FCC Rcd at 15737 (noting that WEDH and WEDN's application to swap DTV channels remained pending). WABC-TV in New York had elected its allotted digital channel 45 but contended that WEDH's operation on channel 45 at Hartford would result in a loss of WABC-DT service to approximately 300,000 viewers. WABC-TV preferred to elect its NTSC channel 7, as described, *supra*. See also WABC-TV *ex parte* in MB Docket No. 03-15 (dated Aug. 15, 2005) ("Emergency Request for Waiver" of the 0.1 percent interference standard). In light of the pending inter-related issues concerning channel 45 in this congested area, we declined to approve TCDs for WABC or WEDH.

⁹⁶ CPBI *ex parte* in MB Docket No. 03-15 (dated May 25, 2006).

⁹⁷ For example, WABC-DT's contention that CPBI's proposed operation on channel 45 at Hartford would result in an increase in interference for approximately 300,000 viewers was factored into our conclusion, above, that the public interest would be served by allotting channel 7, rather than channel 45, as WABC-DT's post-transition digital channel.

⁹⁸ See File No. BSRECT-20051028AAE (rev'd Mar. 7, 2006).

⁹⁹ See File No. BSRCCT-20060403BQX (WCBS Conflict Resolution Form 385).

facilities in this respect. Therefore, we have adjusted the proposed parameters for WCBS in Appendix B to describe their certified facility, rather than the reduced facility they had submitted to resolve the conflict with WEDH's operation on channel 32.¹⁰⁰ Moreover, since the communities of Hartford and Norwich are located within 400 kilometers of the U.S.-Canadian border, concurrence by the Canadian government was sought and has been obtained for the allotments on channels *45 and *9, respectively.¹⁰¹ Accordingly, we propose to allot channel *45 to Hartford and channel *9 to Norwich, and these allotments are included in our proposed DTV Table. Both the application and rulemaking proceedings associated with the changes CPBI requested for its Hartford and Norwich stations are superseded by our actions herein, and parties that previously objected to the use of channels *45 and *9, as proposed in the swap application and channel substitution NPRM, may file comments in response to our proposal here.

41. Stockton, California. Telefutera Sacramento, LLC is the licensee of station KTFK(TV), NTSC channel 64 and KTFK-DT, DTV channel 62, Stockton, California. In the second round, Telefutera elected channel 26 as part of a NCA with other licensees in the region. The NCA was approved only in part, with Telefutera's election being rejected for violating the freeze.¹⁰² In the third round, Telefutera again elected channel 26 and proposed to move its transmitter site from Mount Diablo to the Walnut Grove antenna farm, which is closer to its community of license. This channel is acceptable under the 0.1 percent criterion that is applied in evaluating DTV channel elections in this proceeding. But in order to do so, Telefutera must modify its station's facilities to change its station's geographic coverage area, which would violate the freeze imposed in connection with the DTV channel election process.¹⁰³

42. Mount Diablo is located near the border between the San Francisco and Sacramento-Stockton-Modesto Designated Market Areas (DMAs), and KTFK and the other station on Mt. Diablo were required to elect channels which would not cause interference to stations in either market. Telefutera has submitted a comprehensive engineering analysis showing that, with the exception of low-VHF channels, only channel 14 is suitable for use on Mt. Diablo, and channel 14 was elected by the other Mt. Diablo licensee, pursuant to a NCA with Telefutera and other licensees in the region.¹⁰⁴

43. The proposed move to the Walnut Grove antenna farm will permit Telefutera to co-locate KTFK with the other stations in the Sacramento-Stockton-Modesto DMA. According to Telefutera, this move will provide new Telefutera network service to more than 440,000 viewers in KTFK's DMA.¹⁰⁵ While viewers in the San Francisco DMA will lose KTFK service due to terrain blockage, these viewers receive the same network programming from KTFK's "sister" station, KFSF, Vallejo, California. In addition, the entire loss area is served by numerous other NTSC and DTV stations. Based on the record before us, and in order to promote overall spectrum efficiency and ensure the best possible DTV service to the public, we believe that the public interest would be served by waiving the freeze to permit

¹⁰⁰ In submitting its engineering to resolve the interference conflict in the second round, WCBS had also indicated its intention to withdraw the reduced facility in the event that WEDH would not be operating post-transition on channel 32. *See id.*

¹⁰¹ The Commission permitted licensees subject to international coordination to certify to operate their post-transition DTV channel pursuant to a pending DTV application for maximized facilities that had not yet been authorized because of a pending international coordination issue. *See Second DTV Periodic Report and Order*, 19 FCC Rcd at 18383, app. E.

¹⁰² *See Second Round TCD PN*, DA 06-991 at 2.

¹⁰³ *August 2004 Filing Freeze PN*, 19 FCC Rcd at 14810-11.

¹⁰⁴ *See Second Round TCD PN*, DA 06-991 at 2-3.

¹⁰⁵ *See File No. BTRECT-20060526AHK* (KTFK's FCC Form 386), "Statement of Support of Third Round DTV Channel Election," MB Docket No. 03-15, at 9 (filed May 30, 2006).

modification of KTFK's certified facilities. We believe our proposal facilitates a successful resolution of the channel election process in a highly congested area. Further, our proposal improves service to KTFK's community of license and the local area. In addition, our proposal will facilitate adoption of the final DTV Table and avoid the allotment of a low-VHF channel, which the Commission has long disfavored.¹⁰⁶ Accordingly, we propose to allot channel 26 to Stockton as specified in our proposed DTV Table.¹⁰⁷

44. Sacramento, California. KVIE, Inc. is the licensee of NCE television station KVIE(TV), Sacramento, California. KVIE currently operates on NTSC channel *6 and was assigned out-of-core DTV channel *53. As a licensee with only one in-core channel, KVIE elected to release channel *6 and participate in the second round of elections.¹⁰⁸ In that round, KVIE elected channel *9 as part of a NCA with five other licensees in the Bay Area, but elected channel *6 in response to the conflict letter it received.¹⁰⁹ As a licensee with a low-VHF TCD, KVIE was permitted to seek an alternative TCD in the third round,¹¹⁰ and did so by again electing (via FCC Form 386) channel *9.¹¹¹

45. In its application, KVIE acknowledges that its proposal is predicted to cause 1.3 percent new interference to the TCD of DTV channel *9 for NCE station KIXE-TV, Redding, California. KVIE argues, however, that use of channel 6 would provide inferior service to its viewers, and that the public interest would be better served by Commission approval of KVIE's third round channel selection.¹¹² The Northern California Educational Television Association filed comments opposing KVIE's request, arguing that KVIE does not provide any evidence that channel 6 is inferior to channel 9, and that it is KVIE's responsibility to protect FM radio stations from interference.¹¹³ In the *Third Round TCD PN*, the Media Bureau said this case would be addressed in a subsequent proceeding.¹¹⁴

46. As noted above, the Commission has long disfavored the use of channel 6 as a DTV allotment.¹¹⁵ When it adopted the initial DTV Table, the Commission sought to minimize the potential

¹⁰⁶ The Commission has recognized in this proceeding that low-VHF channels are subject to technical penalties, including higher ambient noise levels and, in the case of channel 6, concerns of possible interference to and from FM radio service. See *Sixth Report and Order*, 12 FCC Rcd at 14627, ¶ 82; see also *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7436, ¶ 41.

¹⁰⁷ Because we propose here to give Telefutura its desired TCD for channel 26, we dismiss as moot Telefutura's application for review of the denial of its second round channel election.

¹⁰⁸ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18297, ¶ 44 (permitting licensees with only one in-core channel to release their in-core channel and choose to be treated like a licensee with two out-of-core channels).

¹⁰⁹ See *Second Round TCD PN*, DA 06-991 at 2.

¹¹⁰ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18306, ¶ 63 (permitting licensees with low-VHF TCDs to seek an alternative TCD in the third round); see also, *supra*, note 25.

¹¹¹ File No. BTREET-20060526AKN (KVIE's FCC Form 386).

¹¹² KVIE argues that requiring it to operate on channel 6 post-transition "would frustrate the public interest because the use of a low-VHF band channel would not only prevent KVIE from providing the best possible digital service, but would also create a preclusive effect on NCE FM station operations in the area." *Id.* at Exhibit 1, p. 2.

¹¹³ See Northern California Educational Television Association *ex parte* in MB Docket No. 03-15 at 3-4 (dated June 9, 2006).

¹¹⁴ See *Third Round TCD PN*, DA 06-1675 at 2.

¹¹⁵ See ¶ 38, *supra*.

for interference between DTV and FM radio service by avoiding the use of channel 6 for DTV whenever possible, which resulted in only one channel 6 allotment in the initial DTV Table.¹¹⁶

47. We conclude that the public interest would be served by waiving the 0.1 percent interference standard with respect to KIXE. Based on staff engineering analysis, we believe that, at most, 4,921 people within the KIXE contour (out of a total population of 375,342) would receive interference from KVIE's operation on DTV channel 9. Conversely, more than 4 million people residing within the KVIE service area will receive a superior DTV signal from KVIE on channel 9. Accordingly, we propose to allot channel *9 to Sacramento for post-transition DTV operations in our proposed DTV Table.¹¹⁷

E. International Coordination

48. Border Coordination. Creating a new DTV Table has been a continuing cooperative North American effort, involving complex matters that require careful study and planning by parties on both sides of the negotiation. Under international arrangements with Canada and Mexico,¹¹⁸ the Commission must obtain concurrence by the Canadian government for any proposed allotments located within 400 kilometers of the U.S.-Canadian border, and by the Mexican government for any proposed allotments located within 275 kilometers of the U.S.-Mexican border. Our international negotiations are continuing in a cooperative manner and we do not believe these negotiations will delay stations' ability to construct their post-transition DTV facilities.

49. We announce here that Industry Canada has objected to the allotment of the TCDs for WBSF-DT, Bay City, Michigan and KAYU-DT, Spokane, Washington. Accordingly, while we include their TCD channels in our proposed DTV Table, we seek comment from these licensees concerning whether they are willing to reduce coverage on their TCD channel in order to address Canadian concerns. As indicated above, they may also request an alternative post-transition DTV channel allotment.

F. Treatment of New Licensees and Permittees and Pending Applications for New Stations

50. In the *Second DTV Periodic Report and Order*, the Commission stated that only Commission licensees and permittees were entitled to participate in the channel election process; applicants for new stations and petitioners for new allotments would not be allowed to make channel elections.¹¹⁹ The Commission noted that there were applications for approximately 50 new NTSC stations that were pending since before 1997. Several of these applications have since been granted after the start of the channel election process, resulting in new licensees and permittees that were not eligible to

¹¹⁶ See *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7437, ¶ 45.

¹¹⁷ KIXE elected its NTSC channel *9 as its TCD in the first round. KIXE may, if it wishes, file comments proposing to substitute its allotted DTV channel *18, or another channel, for its present TCD.

¹¹⁸ See "Letter of Understanding Between the Federal Communications Commission of the United States of America and Industry Canada Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border," signed September 22, 2000 and amended October 7, 2004, and "Memorandum of Understanding Between the Federal Communications Commission of the United States of America and the Secretaria de Comunicaciones y Transportes of the United Mexican States Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border," signed April 2, 1997.

¹¹⁹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307, ¶ 66.

take part in the channel election process.¹²⁰ Accordingly, at this time, we will accommodate these new licensees and permittees with TCDs in our proposed DTV Table.

51. For some of these new licensees and permittees, we have determined that their NTSC or DTV channel is appropriate for post-transition DTV operations.¹²¹ Thus, we have tentatively designated their current channel for post-transition DTV operations in our proposed DTV Table.

52. For others of these new licensees and permittees, we have determined that their NTSC or DTV channel is not appropriate for post-transition DTV operations because it would cause impermissible interference to a protected TCD.¹²² Thus, we have tentatively designated a “best available” channel for their post-transition DTV operations in our proposed DTV Table. We will allow these stations to request alternative channel assignments through the procedure discussed above in Section III.B., *supra*. These stations may wish to propose an alternative channel that could be used both during the transition as well as post-transition.

53. We note that additional pending applications may be granted before an Order finalizing the DTV Table is adopted.¹²³ To the extent possible, we will accommodate these future new permittees in our proposed DTV Table, consistent with the approach described above for existing new permittees.¹²⁴ In order to provide interested parties with the opportunity to comment, the Media Bureau will issue public notices, to be published in the Federal Register, announcing TCDs for the new permittees that attain permittee status during the pendency of this rulemaking proceeding. If necessary, the Media Bureau is directed to establish a separate pleading cycle so that interested parties are given sufficient time to comment. Comments filed in response to such public notices will be incorporated into the record in this proceeding.

54. Applicants that receive a construction permit after the close of the comment period in this proceeding may either construct their analog facilities or apply to the Commission for permission to construct a digital facility on their analog channel. Such digital facilities are for operation during the transition. Such permittees may request authorization to continue their DTV operations on their NTSC channels after the transition. We anticipate that, in most instances, the same channel that was allotted in

¹²⁰ Two of these permittees filed channel elections in round three; seven others, similarly situated, did not. In the *Third Round TCD PN*, we did not announce TCDs for these stations because they were authorized after the completion of the first round and, therefore, were not eligible to participate in the channel election process. *Third Round TCD PN*, DA 06-1675 at 1 n.3.

¹²¹ This group consists of: (1) WMBF-TV, channel 32, Myrtle Beach, South Carolina; (2) KWKS, channel 19, Colby, Kansas; and (3) BPCT-960920KY, channel 47, Presque Isle, Maine.

¹²² This group consists of: (1) WHRE, channel 21, Virginia Beach, Virginia; (2) KNIC-TV, channel 17, Blanco, Texas; (3) BPCDT-960920WX, channel 18, Mobile, Alabama; and (4) BPCT-960920WR, channel 29, Gainesville, Florida. DTV operation of the Virginia Beach, Virginia NTSC license on channel 21 (WHRE) would cause 28.9 percent new interference to the channel 20 TCD of WUND-TV, Edenton, North Carolina. DTV operation of the Blanco, Texas NTSC CP on channel 17 (KNIC-TV) would cause 0.8 percent new interference to the channel 16 TCD of KHCE-TV, San Antonio, Texas. DTV operation of the Mobile, Alabama DTV CP on channel 18 (BPCDT-960920WX) would cause 0.4 percent new interference to the channel 18 TCD of WMAU-TV, Bude, Mississippi. DTV operation of the Gainesville, Florida, NTSC CP on channel 29, (BPCT-960920WR) would cause 0.6 percent new interference to the channel 29 TCD of WFTS-TV, Tampa, Florida.

¹²³ See, e.g., Public Notice, “FCC Announces It Is Prepared To Grant Television Construction Permits After Final Payments Are Made, Auction No. 64, DA 06-1416 (rel. July 11, 2006).

¹²⁴ See ¶¶ 51-52.

the NTSC Table will be allotted in the DTV Table.¹²⁵ In the event that the NTSC channel is not suitable for DTV operations, such as if it would cause new interference in excess of 0.1 percent to another DTV station's operations on its allotted channel, we will determine a "best available" channel. Before the end of the transition, we will issue a NPRM to amend the DTV Table in order to allot a DTV channel for each remaining authorized facility that does not have an allotted DTV channel.

¹²⁵ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18299, ¶ 48.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

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

B. Initial Paperwork Reduction Act of 1995 Analysis

56. This Notice has been analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”),¹²⁶ and does not contain proposed information collection requirements. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002.¹²⁷

C. Ex Parte Rules

57. *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.¹²⁸ *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.¹²⁹ Additional rules pertaining to oral and written presentations are set forth in section 1.1206(b).

D. Filing Requirements

58. *Comments and Replies*. Pursuant to Sections 1.415 and 1.419 of the Commission’s rules,¹³⁰ 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.¹³¹

59. *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

¹²⁶ 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.).

¹²⁷ 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).

¹²⁸ See 47 C.F.R. § 1.1206(b); see also 47 C.F.R. §§ 1.1202, 1.1203.

¹²⁹ See *id.* § 1.1206(b)(2).

¹³⁰ See *id.* §§ 1.415, 1.419.

¹³¹ See *Electronic Filing of Documents in Rulemaking Proceedings*, 13 FCC Rcd 11322 (1998).

following words in the body of the message, "get form." A sample form and directions will be sent in response.

60. *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 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.

61. *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.

62. *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>.

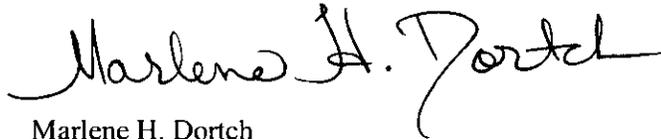
63. *Additional Information.* For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov, or Eloise Gore, Eloise.Gore@fcc.gov, of the Media Bureau, Policy Division, (202) 418-2120; Nazifa Sawez, Nazifa.Sawez@fcc.gov, of the Media Bureau, Video Division, (202) 418-1600;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

V. ORDERING CLAUSES

64. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 316, 319, 324, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 157, 301, 302, 303, 307, 308, 309, 316, 319, 324, 336, and 337 that NOTICE IS HEREBY GIVEN of the proposals and tentative conclusions described in this *Seventh Further Notice of Proposed Rulemaking*, including the proposed DTV Table of Allotment and amendments to Part 73 of the Commission's rules, as set forth in Appendix A.

65. 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

Part 73 of the Commission's Rules and Regulations (Chapter I of title 47 of the Code of Federal Regulations) is amended as follows:

PART 73 -- RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

2. Section 73.622 is amended by adding new paragraph (i) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

- (i) Post-Transition Table of DTV Allotments.

ALABAMA

Community	Channel No.
Anniston	9
Bessemer	18
Birmingham	*10, 13, 30, 36, 50
Demopolis	*19
Dothan	21, 36
Dozier	*10
Florence	14, 20, *22
Gadsden	26, 45
Gulf Shores	25
Homewood	28
Huntsville	19, *24, 32, 41, 49
Louisville	*44
Mobile	9, 15, 20, 23, 27, *41
Montgomery	12, 16, *27, 32, 46
Mount Cheaha	*7
Opelika	47
Ozark	33
Selma	29, 42
Troy	48
Tuscaloosa	23, 33
Tuskegee	22

ALASKA

Community	Channel No.
Anchorage	5, *8, 10, 12, 20, *26, 28, 32
Bethel	*3
Fairbanks	7, *9, 11, 18
Juneau	*10, 11
Ketchikan	13
North Pole	4
Sitka	2

ARIZONA

Community	Channel No.
Douglas	36
Flagstaff	2, 13, 18, 32
Green Valley	46
Holbrook	*11
Kingman	19
Mesa	12
Phoenix	*8, 10, 15, 17, 20, 24, 26, 33, 39, 49
Prescott	7
Sierra Vista	44
Tolleson	51
Tucson	9, 19, 23, 25, *28, *30, 32, 40
Yuma	11, 16

ARKANSAS

Community	Channel No.
Arkadelphia	*13
Camden	49
El Dorado	*12, 27, 43
Eureka Springs	34
Fayetteville	*9, 15
Fort Smith	18, 21, 27
Harrison	31
Hot Springs	26
Jonesboro	8, *20, 48
Little Rock	*7, 12, 22, 30, 32, *36, 44
Mountain View	*13
Pine Bluff	24, 39
Rogers	50
Springdale	39