

their post-transition facilities now to ensure service to the public when analog transmissions cease.

63. Accordingly, we propose to change our “use or lose” policy for stations whose pre-transition DTV channel is not their post-transition channel as follows. For such stations that received either an extension of their construction deadline in the *Construction Deadline Extension Order* or a waiver of their use-or-lose deadline in the *Use or Lose Order* (i.e., until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding), we propose that these stations will not lose protection to their post-transition channels. We note that many stations that have not built their transitional facilities have faced recognizable impediments to doing so. In addition, most of these stations that have applied for an extension of time to construct and/or a waiver of the applicable use-or-lose deadline have had those requests granted, indicating that they were found to have a valid reason not to have met the applicable deadline. Thus, we do not believe that allowing stations that faced such impediments to retain interference protection on their final, post-transition facility unfairly rewards these stations. We seek comment on this approach. We specifically invite comment on the effect of this proposal on stations moving to a different DTV channel for post-transition operations that have fully complied with their use-or-lose deadlines and construction permit build-out requirements.

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

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

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

- First, stations may discontinue further construction on their pre-transition DTV facility and to operate the facility they have constructed at this point during the remainder of the transition while they focus on construction of their permanent DTV facility. We propose to permit these stations to file an application to modify their existing CP to match their pre-transition DTV facility in accordance with the Commission’s rules.<sup>125</sup> The station would then continue operation of the facility for the remainder of the transition without devoting resources to further build-out of that facility.
- Second, stations may be permitted to cease operating their pre-transition DTV facility in certain circumstances. We propose that these stations must obtain flash cut

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

approval in accordance with the proposals discussed in section V.B., *supra*.

- Third, stations may decide they would like to continue construction of their full, authorized DTV facility on their pre-transition channel. While we do not want to deny stations in this third category the opportunity to continue to build pre-transition DTV facilities and to provide service on these facilities for the remainder of the transition, we believe it is appropriate to require that these facilities be completed expeditiously. Accordingly, for stations in this third category, we propose to permit the station to continue to build its pre-transition DTV facility, but will require that construction be completed by the deadline established for them in the *Construction Deadline Extension Order* or in the *Use or Lose Order* (i.e., 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding).

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

67. Many stations whose pre-transition DTV channel is the same as their post-transition channel have already made substantial progress toward construction of facilities that will be used to provide service after the transition. Specifically, they have already constructed their full, authorized DTV facilities in accordance with their existing CP or license and the Commission's previous build-out requirements established in the *Second DTV Periodic Report and Order*.<sup>126</sup> Some of these stations have built DTV facilities that match<sup>127</sup> those defined in the proposed new DTV Table Appendix B and are, therefore, now ready for post-transition operations. Other stations whose pre-transition DTV channel is the same as their post-transition channel have built their full, authorized DTV facilities in accordance with their existing CP or license but for some reason these facilities do not match those facilities defined in the proposed new DTV Table Appendix B.<sup>128</sup> These stations will need to file an application for a new CP or an application for modification of CP to change their facilities to match those facilities defined in the new DTV Table Appendix B, as adopted.<sup>129</sup> We discuss below, in section V.D., the process by which stations must file such applications.

68. Other stations with the same pre- and post-transition DTV channel have not yet constructed their full, authorized DTV facilities. Some of these stations currently have a CP for their full, authorized DTV facility, some are operating reduced facilities pursuant to an STA, and some may not have constructed at all. These stations must complete construction and, in some cases, may have to apply

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<sup>126</sup> See list of stations in Appendix D, *infra*.

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

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

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

for a new CP or for modification of their CP to receive authorization for facilities that match the facilities defined in the new DTV Table Appendix B, as adopted.

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

70. For stations whose post-transition channel is the same as their pre-transition DTV channel, we propose that the deadline to complete construction of their final, DTV facility is the deadline established for them in the *Construction Deadline Extension Order* or *Use or Lose Order* (i.e., six months from the release date of those orders).<sup>131</sup> For these stations, we believe it is appropriate to require that they complete construction of their final DTV facility by this deadline because they have already had a significant period of time in which to build their post-transition facilities and, indeed, should already have these facilities constructed. Unlike stations that will be moving to a different DTV channel for post-transition use, these stations have generally had the advantage of being able to plan for and commence construction of their post-transition facilities for more than 10 years. In contrast, stations moving to a different channel for post-transition operations have only recently been assigned their new channel and thus are only now able to apply for a construction permit for this channel and commence construction of their post-transition facilities.

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

### 3. Other Situations

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

73. Stations Facing Unique Technical Challenges. In the *Construction Deadline Extension Order*, the Commission granted the extension applications of four stations because these stations faced unique technical challenges (e.g., side-mounted antenna-related issues) preventing them from completing construction of their DTV facilities.<sup>132</sup> Most of these stations proposed to install their DTV antenna on the top of the tower where their existing analog antenna currently is housed. In order to top-mount the

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

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

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

DTV antenna, these stations would have to relocate the analog antenna to another position on the existing tower or to another location altogether. These stations were granted an extension until February 17, 2009 to complete construction of their DTV facilities.<sup>133</sup> Similarly, in the *Use or Lose Order*, the Commission identified 45 stations that have come close to meeting the applicable replication or maximization requirements but cannot fully satisfy those requirements because of unique technical challenges associated with operation of their analog, as well as construction of their digital, facilities.<sup>134</sup> Some of the stations in this latter group are stations with top-mounted antenna issues; others include stations whose local power company cannot provide sufficient electrical capacity to the tower site to power both analog and full power digital operations, and stations that do not have space at their antenna site for both analog and digital equipment. These stations were granted a similar waiver of the “use or lose” deadline.<sup>135</sup>

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

75. Stations Granted Waivers of the “Checklist” Deadline. In the *Use or Lose Order*, the Commission granted 10 requests for waiver of the August 4, 2005 deadline established for all television stations to construct and operate a “checklist” DTV facility.<sup>138</sup> For four of these stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these stations a “checklist” waiver and gave them an additional six months from the release date of the *Use or Lose Order* in which to complete construction and begin operation of their “checklist” facilities. For six of these stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these stations a “checklist” waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction and begin operation of their “checklist” facilities.

76. We propose for these stations an approach dependent upon whether their pre-transition DTV channel is the same as, or different than, their post-transition channel. For the six stations granted “checklist” waivers whose pre-transition DTV channel is different than their post-transition channel, we

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<sup>133</sup> *Id.*

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

<sup>135</sup> *Id.*

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

<sup>137</sup> See *supra* sections V.C.1. and V.C.2.

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

propose to apply the procedures outlined at section V.C.1., *supra*, for stations that are moving to a different channel post-transition. Thus, for these stations we propose not to require further construction of their pre-transition DTV facility and propose to establish February 17, 2009 as the deadline by which these stations must complete their final, post-transition facilities.<sup>139</sup> These stations may cease further construction of their pre-transition facility. They may decide to operate the facilities they have constructed on their pre-transition channel for the remainder of the transition and, if so, they should apply to license those facilities and, if they do so, they would not be required to request further extensions of time to construct in order to retain full interference protection to their post-transition DTV channel. Alternatively, these stations could elect to pursue the options outlined in section V.A., *supra*, concerning reduction in analog service prior to the end of the transition. For the four stations granted “checklist” waivers whose pre-transition DTV channel is the same as their post-transition channel, we propose to apply the procedures outlined above at section V.C.2., *supra*, for stations with the same pre- and post-transition channels. Thus, these stations must complete their full, final post-transition facility by the deadline established in the *Use or Lose Order* (i.e., six months from the release date of the *Use or Lose Order*). Any request for extension of time to construct beyond that date will be considered under the stricter extension criteria proposed herein.<sup>140</sup> We invite comment on these proposals.

77. Stations Denied An Extension of Time to Construct. In the *Construction Deadline Extension Order*, the Commission denied the extension applications of five stations, admonishing three of these stations for their continuing failure to timely construct and affording these stations additional time to comply with the DTV construction rule.<sup>141</sup> The one admonished station whose pre-transition DTV channel is the same as its post-transition channel was afforded six months from the release date of the Order to comply with the DTV construction rule, while the two admonished stations whose pre-transition DTV channel is different from their post-transition channel were afforded until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding. All three admonished stations were also made subject to the remedial measures for DTV construction adopted by the Commission.<sup>142</sup> For these admonished stations, we

<sup>139</sup> In the *Use or Lose Order*, these stations were granted a waiver of the “checklist” deadline until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding. *See id.*

<sup>140</sup> *See infra* section V.C.4.

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

<sup>142</sup> *See id.* at section III.E. *See also Remedial Measures For Failure to Comply with Digital Television Construction Schedule*. Report and Order, 18 FCC Rcd 7174 (2003) (“*Remedial DTV R&O*”). The two admonished stations whose pre-transition DTV channel is the same as their post-transition channel were required to submit a report within 30 days of the release date of the Construction Deadline Extension Order outlining the steps they intend to take to complete construction and the approximate date by which they will reach each of these construction milestones. Sixty days after the initial report, these stations were directed to submit a report detailing their progress on meeting their proposed construction milestones and justifying any delays they may have encountered. If, at any time during the relevant period, these stations fail to comply with the reporting requirements or fail to demonstrate that they are taking all reasonable steps to complete construction, or we otherwise find that these stations have acted in bad faith, we will consider the imposition of additional sanctions. The two admonished stations whose pre-transition DTV channel is different from their post-transition channel were not required at this time to comply with the reporting and progress requirements described above for the other two admonished stations, given the Commission’s ongoing consideration of this matter in this Third DTV Periodic Review proceeding. *Construction Deadline Extension Order*, *supra* note 88, at section III.E.

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

78. Stations Denied a Waiver of the Use or Lose Deadline. In the *Use or Lose Order*, the Commission determined that seven stations were unable to show that good cause existed to allow them additional time to meet their applicable “use or lose” deadline and, thus, were denied their “use or lose” waiver requests.<sup>144</sup> Because these stations failed to meet the applicable replication/maximization requirements, they lost interference protection to the unused portion of the associated coverage area. In addition, these stations lost the ability to “carry over” their interference protection to their unserved DTV service area on their post-transition channel.<sup>145</sup> We remind these stations that, with respect to their pre-transition channel, they must submit an application to modify their DTV construction permit to specify their reduced facilities, as directed in the *Use or Lose Waiver Order*.<sup>146</sup> Nevertheless, we recognize that the proposals in this Notice deemphasize the requirement that stations construct DTV facilities that will not be used for post-transition operations. Therefore, we seek comment on whether we should reevaluate

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<sup>143</sup> See *supra* section V.C.1.

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

<sup>145</sup> See *id.*

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

the loss of interference protection for these stations with respect to their post transition channel.

#### 4. Extension/Waiver of DTV Construction Deadlines

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

80. Under the current rules, the Media Bureau may grant a six-month extension of time to construct a DTV station if the licensee or permittee can show that the “failure to meet the construction deadline is due to circumstances that are either unforeseeable or beyond the licensee’s control where the licensee has taken all reasonable steps to resolve the problem expeditiously.”<sup>148</sup> The rules state: “[s]uch circumstances shall include, but are not limited to (A) [i]nability to construct and place in operation a facility ... because of delays in obtaining zoning or FAA approvals, or similar constraints; (B) the lack of equipment necessary to obtain a digital television signal; or (C) where the cost of meeting the minimum build-out requirements exceeds the station’s financial resources.”<sup>149</sup> These rules apply to stations granted a paired license for analog and digital operation during the transition. The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests must be referred to the Commission.<sup>150</sup>

81. We propose to revise and tighten this standard for extension of DTV construction deadlines to ensure that stations complete their DTV facilities and commence operation.<sup>151</sup> The current standard was adopted early in the DTV transition process when stations were first trying to build digital facilities and applies only to stations with a paired license.<sup>152</sup> The standard was revised to include consideration of financial resources at a time when broadcasters were still trying to meet the initial construction deadlines.<sup>153</sup> At this point in time, however, the initial construction deadlines for DTV facilities passed several years ago and the deadline for completion of the transition is less than two years away. We believe that stations at this stage in the transition must finalize their construction plans and implement them. We tentatively conclude that we should revise Section 73.624(d)(3) of the rules, which sets forth the standard for extension of DTV construction deadlines, to make that provision substantially stricter.<sup>154</sup> Specifically, we propose to eliminate Section 73.624(d)(3)(ii)(B), which permits consideration of circumstances related to the lack of equipment necessary to obtain a digital television signal in the

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

<sup>148</sup> *See* 47 C.F.R. § 73.624(d)(3).

<sup>149</sup> *See* 47 C.F.R. § 73.624(d)(3)(ii). To qualify under the financial resources standard, the applicant must provide (1) an itemized estimate of the cost of meeting the minimum build-out requirements; (2) a detailed statement explaining why its financial condition precludes such an expenditure; (3) a detailed accounting of the applicant’s good faith efforts to meet the deadline, including its good faith efforts to obtain the requisite financing and an explanation why those efforts were unsuccessful; and (4) an indication when the applicant reasonably expects to complete construction. *See First DTV Periodic MO&O*, 16 FCC Rcd at 20610-12 ¶46.

<sup>150</sup> *See* 47 C.F.R. § 73.624(d)(3)(iii).

<sup>151</sup> *See* proposed rule 47 C.F.R. § 73.624(d)(3) in Appendix A.

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

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

<sup>154</sup> *See* proposed rule changes in Appendix A.

evaluation of whether to grant a request for extension of time to construct. At this point in the transition, we believe stations have had ample time to order the equipment required to provide digital service and do not believe it is necessary or appropriate to grant stations additional time to construct because of equipment delays, absent extraordinary circumstances. We also propose to revise Section 73.624(d)(3)(ii)(C), which permits consideration of circumstances where the cost of meeting build-out requirements exceeds the station's financial resources. Specifically, in seeking a DTV extension, we propose that the licensee/permittee of a station may show that it is (1) the subject of a bankruptcy or receivership proceeding, or (2) experiencing severe financial hardship, as defined by negative cash flow for the past three years.<sup>155</sup> Thus, we propose to eliminate the existing four-part test for financial hardship and replace it with a new test. Stations seeking an extension based upon financial considerations would either (1) submit proof that they have filed for bankruptcy or that a receiver has been appointed, or (2) submit an audited financial statement for the previous three years. All such stations also would be required to submit a schedule of when they expect to complete construction. We seek comment on this proposal. In particular, we seek comment on how this proposal should be applied to noncommercial educational stations, whose financial circumstances often differ from those of commercial stations.

82. Again, at this stage in the transition we believe all stations have had considerable time to address financial issues related to completion of their digital facilities and further consideration of such issues in connection with a request for additional time to construct should be limited to a situations like bankruptcy or receivership where a court generally controls the station's finances, or where the station can demonstrate severe financial hardship as discussed above. Thus, going forward, requests for extension of time to construct related to lack of equipment or the cost of meeting the build-out requirements other than where the station is in bankruptcy or receivership or is facing severe financial hardship as discussed above will not generally be granted.

83. However, we will continue to consider going forward requests for extension of time where the station is awaiting action by the Commission or a court on a pending application or appeal or where action on an application is being delayed for other reasons beyond the station's control, such as reasons related to international coordination. We will consider delays due to international coordination where resolution of the international coordination issue is truly beyond the control of the station, such as where the failure to obtain coordination will not permit the station to construct facilities sufficient to replicate its analog coverage area. A station seeking to maximize that cannot obtain international coordination for such facilities may be required to construct facilities with a smaller coverage area. In addition, we will continue to consider circumstances related to an act of God or terrorism. A proposed revised rule of Section 73.624(d) is attached in Appendix A. We will revise FCC Form 337, accordingly, and will continue to require that any request for extension of time be filed electronically using the revised form.<sup>156</sup> We propose to apply the revised rule concerning requests for extension of time to build DTV facilities to all requests for extension of construction deadlines occurring prior to February 17, 2009. This

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<sup>155</sup> Our proposed showing of three years of negative cash flow is similar to the showing considered in determining whether a station is a "failed station" for purposes of a waiver of our local TV ownership rules. *See, e.g., 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket 02-277, *Cross-Ownership of Broadcast Stations and Newspapers*, MM Docket 01-235, *Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets*, MM Docket 01-317, *Definition of Radio Markets*, MM Docket 00-244, *Definition of Radio Markets for Areas Not Located in An Arbitron Survey Area*, MB Docket 03-130, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13706 ¶ 221 (2003). However, we do not intend to use the failed station standard in its entirety as applied in the context of local TV ownership in determining whether a station should be granted an extension of time to construct under our revised extension standard.

<sup>156</sup> *See* proposed changes to FCC Form 337 in Appendix B.

revised rule would apply, inter alia, to those stations whose pre-transition DTV channel is the same as their post-transition channel and that were granted extensions or waivers in the *Construction Deadline Extension Order* or the *Use or Lose Order*. We recognize that some stations may request further extensions of time to build and that other stations, whose deadlines have not yet expired, may request extensions of deadlines once their deadlines expire.<sup>157</sup> We tentatively conclude that we will apply the revised rule to any requests that are pending at the time the revised rule becomes effective. We seek comment on these proposals and on this tentative conclusion.<sup>158</sup>

84. We note that while we propose to establish a stricter standard for requests for extension of time to construct DTV facilities, we are also proposing, as discussed above, to eliminate the requirement for some stations that they build pre-transition DTV facilities on channels that are not their post-transition channel. Taken as a whole, we believe these proposed changes will help many stations facing financial challenges to complete construction of DTV facilities while also ensuring that broadcasters continue to focus on the timely construction of the facilities necessary to end analog transmission by February 17, 2009.

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

86. Specifically, for all requests for additional time to construct DTV facilities for construction deadlines occurring February 17, 2009 or later, we tentatively conclude that we will consider such requests under the tolling standard set forth in Section 73.3598(b) of our rules,<sup>160</sup> which currently applies to DTV singletons and analog TV stations, as well as AM, FM, International Broadcast, low power TV, TV translator, TV booster, FM translator, FM booster, and LPFM stations. Section 73.3598 provides that the period of construction for an original construction permit shall toll when construction is prevented due to an act of God (e.g., floods, tornados, hurricanes, or earthquakes), the grant of the permit is the subject of administrative or judicial review (i.e., petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal), or construction is delayed by a cause of action pending in court related to requirements for construction or

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

<sup>158</sup> We note that DTV singleton stations that were not eligible for a paired license for analog TV and DTV operation during the transition are not currently governed by 47 C.F.R. § 73.624(d)(3). These DTV singleton stations are currently subject to the tolling provisions of 47 C.F.R. § 73.3598(b) and we propose that these stations continue to be subject to the provisions of that section. See *1998 Biennial Regulatory Review – Streamlining of Mass Media Applications, Rules, and Processes*; MM Docket No. 98-43, *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, MM Docket 94-149; Report and Order, 13 FCC Rcd 23056, 23091 ¶ 85 (1998) (“*1998 Streamlining Order*”), *aff’d on reconsideration*, Memorandum Opinion and Order, 14 FCC Rcd 17525 (1999) (“*Streamlining MO&O*”).

<sup>159</sup> See 47 C.F.R. § 73.3598(b).

<sup>160</sup> *Id.*

operation of the station (*i.e.*, zoning or environmental requirements).<sup>161</sup> The rule further provides that a permittee must notify the Commission of any event covered under the provision and provide supporting documentation in order to toll the construction deadline.<sup>162</sup> Permittees are also required to notify the Commission when a relevant administrative or judicial review is resolved. Tolling resulting from an act of God automatically ceases six months from the date of the notification to the Commission unless the permittee submits additional notifications at six-month intervals detailing how the act of God continues to cause delays in construction and describing any construction progress and the steps the permittee has taken and proposes to take to resolve any remaining impediments.<sup>163</sup> Section 73.3598 further provides that any construction permit for which construction has not been completed and for which an application for license has not been filed shall be automatically forfeited upon expiration without any further affirmative cancellation by the Commission.<sup>164</sup> We seek comment on this approach.<sup>165</sup> We also invite comment on whether it is necessary to amend Section 73.3598(a) to specify “DTV” or if the existing reference to “new TV” in this section will be adequate in conjunction with the clarification provided by the Order to be adopted in this proceeding.<sup>166</sup> We also seek comment on whether we should afford small television broadcasters additional time to construct DTV facilities.<sup>167</sup>

87. We note that, under the current rules applicable to DTV stations, the Commission has permitted a station to justify an extension request if the Commission has not acted on the station’s modification application.<sup>168</sup> Under the tolling standard we propose to apply to all construction deadlines February 17, 2009 and later, the filing of an application for modification of a construction permit would not be grounds for tolling of the construction deadline. We believe that transitioning DTV stations to the rule applicable to construction of analog TV and all other broadcast stations in this regard is appropriate

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<sup>161</sup> *Id.*

<sup>162</sup> *See id.* § 73.3598(c).

<sup>163</sup> *See id.* § 73.3598(d).

<sup>164</sup> *See id.* § 73.3598(e). The Commission has noted that there may be rare and exceptional circumstances, other than those delineated in its rules or decisions adopting the rules, that would warrant the tolling of construction time, *i.e.*, other circumstances in which a permittee is prevented from completing construction within the time specified on its original construction permit for reasons beyond its control such that the permittee would be entitled to tolling of the construction time under 47 U.S.C. § 319(b). In these very limited circumstances, the Commission noted that it would entertain requests for waiver of its strict tolling provisions. *See Streamlining MO&O*, 14 FCC Rcd at 17541 ¶ 42 (1999).

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

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

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

<sup>168</sup> *See* 47 C.F.R. § 73.624(d)(3).

post-transition. However, we propose that delays due to international coordination would not generally be grounds for tolling of a DTV construction permit with two exceptions. First, the Commission would toll a construction permit for a DTV station where the station could demonstrate that a request for international coordination had been sent to Canada or Mexico on behalf of the station and no response from the country affected had been received. Second, the Commission would toll a DTV construction permit where the station could demonstrate that the DTV facility approved by Canada or Mexico would not permit the station to serve the viewers currently served by the station's analog facility that would also be served by the station's digital facility approved by the Commission. We seek comment on these proposals and other changes to Section 73.3598.

## 5. Early Transition

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

## 6. Additional Proposals to Provide Regulatory Relief

89. Alternative Buildout. We seek comment on whether to permit stations to request an STA to build less than their full, authorized post-transition facilities by the relevant construction deadline, provided these stations at least serve the same area and population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Could such a proposal facilitate the transition without undermining viewers' over-the-air reception expectations after the transition date?

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

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

<sup>171</sup> See *infra* discussion in section V.E.

<sup>172</sup> See *supra* discussion in section V.A.

We would apply the new construction deadlines and standard adopted in this proceeding for additional time to construct to the construction of such intermediate facilities that would meet the service requirement.<sup>173</sup> If we adopt such a proposal, when must these stations construct their full, authorized post-transition facilities? If we do not afford such relief generally, should we afford such relief to small television broadcasters because of unique challenges they may face in completing their transition?

90. Temporary Use of In-core Pre-Transition DTV Channels. We believe that some stations that are returning to their analog channel or moving to a new channel for post-transition operations may be able to temporarily remain on their in-core pre-transition DTV channel and provide adequate service after the transition date without causing impermissible interference to other stations or preventing other stations from making their transition. We propose to afford these stations with this opportunity if doing so would facilitate their transition. We propose to allow these stations to choose to temporarily remain on their pre-transition DTV channel if:

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

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

91. Channel Priority. We recognize that there may be some situations where a station's ability to commence its post-transition operations will be dependent on another station's construction and operating plans. For example, station A may need to begin testing its digital facility on its post-transition

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<sup>173</sup> See *supra* discussion in section V.C.4.

<sup>174</sup> Stations must ensure that consumers served pre-transition that obtain a D-to-A converter box through the NTIA program or who otherwise purchase DTV receiver equipment will be capable of receiving off-the-air DTV signals post-transition.

<sup>175</sup> See 47 C.F.R. § 73.1635.

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

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

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

channel 11 in order to be ready to operate after the transition date, but station B is currently using the channel for pre-transition (analog or digital) service. In such situations, close cooperation will be needed between these stations. We expect that broadcasters will make all possible accommodations to ensure that all stations will be able to provide digital service on their post-transition channels at the transition date. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009, unless they have applied for and been granted authority to remain on a pre-transition channel. We seek comment on whether and, if so, what steps the Commission should take to ensure a smooth transition in these circumstances.

#### D. Applications to Construct or Modify DTV Facilities

92. Stations that need to request authority to construct or modify their post-transition facilities must file CP or modification applications (*i.e.*, FCC Form 301 or 340).<sup>179</sup> Stations may file an application to modify their authority on their current DTV channel at any time, provided they do not violate the terms of the Commission's filing freeze.<sup>180</sup> Stations that have a license to operate or a CP to construct the facilities they want to retain for post-transition use should file applications if their licensed facilities or CP do not match the proposed new DTV Table Appendix B unless they have previously filed comments to amend the Table or Appendix B in the *Seventh FNPRM*, MB Docket No. 87-268.<sup>181</sup> Appendix D lists the stations that are ready for post-transition operations and do not need to apply for a

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

<sup>180</sup> On August 3, 2004, the Media Bureau imposed a freeze on requests for changing DTV channels within the DTV Table and on new DTV channels, as well as on the filing of modification applications by television and Class A television stations, in order to provide a stable database for conducting the channel election process and developing a new DTV Table. The freeze does not prevent the processing of pending applications. *See* Public Notice, "Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes," 19 FCC Rcd 14810, 14810-11 (MB 2004) ("August 2004 Filing Freeze PN"). *See also* 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

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

CP or modification based on current records. We invite comment on this list and whether there are stations that should be added or deleted.

93. Filing Requirements. Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification<sup>182</sup> and submit the appropriate fee.<sup>183</sup> NCE stations must file FCC Form 340. We propose that stations must limit their applications to those facilities specified in the new DTV Table Appendix B, as adopted. Pursuant to this proposal, applications requesting facilities that would serve a larger area than stations' new DTV Table Appendix B facilities would not be accepted at this time.<sup>184</sup> Because the new DTV Table will have resolved the interference conflicts raised during the channel election process, we believe we would be able to process these applications without having to conduct interference analyses and without having to consider whether any applications are mutually exclusive. We seek comment on this proposal. Specifically, we seek input from any stations that may be unable to build precisely the facilities specified in the new DTV Table Appendix B (for example, if an antenna producing the exact antenna pattern described in Appendix B is not available). If such stations are prohibited from expanding beyond their DTV Table Appendix B facilities (as proposed *infra* in section V.E.), will they instead be required to reduce their facilities so significantly that they will be unable to provide adequate service? If so, should we allow stations that fall into this situation to expand beyond their DTV Table Appendix B facilities to the extent necessary to address the difference between the theoretical facilities specified in the new DTV Table Appendix B and the actual facilities which they are able to build?

94. Expedited processing. It is each station's responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009.<sup>185</sup> Thus, stations have a great incentive to promptly file their applications as soon as possible in order to have the maximum time to order equipment and build their facilities. Stations also have the responsibility to file their applications in sufficient time before the deadline so that they may be granted by the Commission. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we propose to process expeditiously certain applications, provided they are filed no later than 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding. Stations whose channel assignments or facilities are not finalized at that time will receive expedited processing if they file their applications no later than the deadline specified in their individual channel resolutions. We believe this application filing deadline of 45 days after the effective date of Section 73.616 of the rules adopted in the Report and Order in this proceeding will give stations

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<sup>182</sup> Applications to construct or modify post-transition facilities specified in the new DTV Table Appendix B involve a minor change in facilities and we will process them accordingly. Section 73.3572(a)(1) of the Commission's rules defines a major change in a television station's facilities as any change in frequency or community of license. 47 C.F.R. § 73.3572(a)(1). Several stations may be changing channels as a result of the channel election process; however, these stations will be applying for the frequency and community of license assigned to them in the new DTV Table that will be established in the Report and Order in MB Docket No. 87-268, so we will treat their applications as not involving a change in frequency. We believe this treatment will speed processing. We also note that this is consistent with our implementation of the initial DTV Table in 1998. *See supra* note 10.

<sup>183</sup> *See* 47 C.F.R. § 73.3533(a); *see also* 47 C.F.R. § 1.1104. As discussed above, this application and its associated fee will be for a minor change.

<sup>184</sup> *See infra* discussed in section V.E.

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

ample time to prepare for these filings and to complete construction prior to the deadline.<sup>186</sup> Specifically, we propose to offer expedited processing to stations that timely apply for a CP to build their post-transition channel, provided that their application (i) does not seek to expand the station's facilities beyond its new DTV Table Appendix B facilities; and (ii) specifies facilities that match or closely approximate those new DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that deviate no more than five percent from those Appendix B facilities with respect to predicted population). We believe we can quickly determine which stations are applying for facilities that do not extend in any direction beyond their DTV Table Appendix B facilities and then expeditiously review those stations' applications without conducting a significant interference analysis because those applications will either match or closely approximate their DTV Table Appendix B facilities.<sup>187</sup> Further, we believe the creation of this process will allow us to grant qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not mean they will receive an expeditious grant.<sup>188</sup> Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station.<sup>189</sup> We seek comment on this proposal. We also seek comment on alternative methods to streamline the application process.

95. Revisions to FCC Form 301 and 340. To accommodate filings related to stations' post-transition facilities, we propose to modify the FCC Forms 301 and 340, as attached.<sup>190</sup> The form changes will allow stations to indicate that they are applying for post-transition facilities. They also will facilitate the expedited processing discussed above. We seek comment on our proposed forms and if additional changes to the forms are needed.

96. Program tests/License to Cover CP. Stations must not commence program tests on their post-transition channels until they are ready to begin post-transition operations under program test authority. Stations that want to conduct program tests on their post-transition facilities must comply with the Commission's rules<sup>191</sup> and coordinate with any affected stations when they do the testing. Each station is responsible for determining which other stations may be affected and coordinating accordingly. We expect that stations will work together cooperatively to facilitate testing. Upon completion of the construction of a television facility as authorized by a CP,<sup>192</sup> a station may commence program tests upon

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

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

<sup>188</sup> Stations that receive expedited processing are not guaranteed that their application will be granted; the application still must satisfy the criteria on Form 301 (or 340 for NCEs), as revised in this proceeding. Similarly, stations that do not qualify for expedited processing will not necessarily have their applications denied; rather, their applications simply will not be processed on an expedited basis.

<sup>189</sup> In addition to the proposed requirements discussed, an application cannot be granted unless certain other criteria are met. These include certifying that the proposed facility: (1) will not have a significant environmental impact; (2) will serve the principal community of license; (3) will provide necessary protection to radio astronomy installations and FCC monitoring stations; and (4) has had its tower approved by FAA, if necessary. 47 C.F.R. § 73.622(f)(2) (checklist criteria).

<sup>190</sup> *See* proposed changes to FCC Form 301 in Appendix B.

<sup>191</sup> 47 C.F.R. § 73.1620(a).

<sup>192</sup> Stations must comply with the terms of their CP as well as the technical provisions of the application, or rules and regulations, and the applicable engineering standards.

notification to the Commission, provided that an application for a license to cover the CP for the post-transition facility, on FCC Form 302, is filed within 10 days, along with the appropriate fee.<sup>193</sup> We do not believe any rule changes are necessary here.

#### **E. Expanding Facilities**

97. During the channel election process, stations defined their post-transition facilities, deciding whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility. Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that authorized by a license, CP or STA. This was precluded by the Commission's freeze on the filing of maximization applications in order to provide a stable database for developing the new DTV Table.<sup>194</sup>

98. We recognize that stations may want to apply to expand their facilities to serve a larger area than defined in the new DTV Table Appendix B, as adopted. Stations' new channel assignments may present them with new opportunities to offer expanded DTV coverage, either because the stations may be moving to a new channel that does not have the same interference restrictions or because other stations on adjacent channels may be moving away, thus eliminating prior interference conflicts. It may save some stations time and money if they are able to file only one application for expanded facilities.

99. We believe, however, that we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date before considering new maximization applications. We thus tentatively decide not to allow stations to apply for expanded facilities at this time. We propose to consider the issue of expanded facilities after all stations have had an opportunity to apply for their facilities as specified in the new DTV Table Appendix B. We seek comment on this approach and on our tentative conclusions. We also invite comment on ways in which stations could seek expanded facilities at this time without delaying the transition or overburdening the scarce resources needed by other stations to transition.

#### **F. Interference Standards**

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

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<sup>193</sup> See 47 C.F.R. §§ 73.1620, 73.3536. We remind stations that will be using Channel 14 for post-transition operations that they must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities before commencing program testing. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees. 47 C.F.R. § 73.687(e)(3).

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

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

101. In adopting the initial DTV Table in the 1997 *Sixth Report and Order*, the Commission concluded that it would apply geographic spacing standards in determining whether to permit the addition of DTV allotments in the Table.<sup>196</sup> The Commission noted that geographic spacing provides a clear and simple measure of acceptability of an allotment proposal without the need to engage in extensive analysis of interference and has been used successfully in the television service for many years.<sup>197</sup> The Commission recognized, however, that engineering criteria may allow more efficient use of the spectrum and stated it would revisit the allotment criteria at an appropriate point later in the DTV transition process. The Commission also determined in the *Sixth Report and Order* that a party applying for a modification of the DTV Table would need to show that its proposed modification would not result in any new predicted interference to other DTV allotments or existing NTSC stations, based on the engineering technical criteria used to develop the initial DTV Table.<sup>198</sup> On reconsideration, the Commission replaced this no new interference standard with a *de minimis* standard pursuant to which stations may make changes in their operation where the requested change would not result in more than a 2.0 percent increase in interference to the population served by another TV or DTV broadcast station, and provided that the protected station is not, or will not be, receiving interference in excess of 10 percent of its population from all combined interfering stations.<sup>199</sup> This *de minimis* standard for permissible new interference was adopted to provide flexibility for broadcasters in the implementation of DTV by allowing additional opportunities for stations to maximize their DTV coverage and/or service by increasing power and/or making other changes in their facilities.<sup>200</sup>

102. The Commission has also relied on other interference standards in the DTV context. For example, applicants seeking facilities modifications of full-service NTSC stations are allowed to cause a 0.5 percent margin above a prediction of no reduction in the population served by a DTV station to account for rounding and calculation tolerances.<sup>201</sup> Applicants for analog TV translator and low power TV ("LPTV") stations must propose facilities that do not exceed specified threshold D/U ratios at a DTV station's noise-limited contour or at all points within the noise-limited area in the case of adjacent channel

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

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

<sup>198</sup> See 47 C.F.R. § 73.623(c).

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

<sup>200</sup> *Id.* at 7450-51 ¶ 80.

<sup>201</sup> Public Notice, "Additional Application Processing Guidelines for Digital Television (DTV)," 1998 WL 458391 at 8 (MB rel. Aug. 10, 1998) ("*DTV Application Processing Guidelines PN*").

stations proposing to locate inside the DTV noise-limited contour.<sup>202</sup> In addition, in the channel election process that led to the proposed new DTV Table for post-transition operation, an interference conflict was determined to exist when it was predicted that more than 0.1 percent new interference would be caused to another station.<sup>203</sup>

### 1. Proposed Interference Criteria

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

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

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

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

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

<sup>204</sup> See proposed rule 47 C.F.R. § 73.616 in Appendix A.

process.

106. Our proposed requirement that interference from a DTV application for post-transition use not exceed 0.5 percent is the same requirement as we have used during the transition for analog TV stations protecting DTV stations.<sup>205</sup> It can be viewed as a “no new interference” criteria when the amount of predicted interference is rounded to the nearest whole percent (*i.e.*, any determination of less than 0.5 percent interference would be considered to be 0 percent, while an interference determination greater than 0.5 percent would round up to 1.0 percent.) This level of rounding is more reflective of the accuracy of the interference prediction model than the 0.1 percent criterion.<sup>206</sup>

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

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

109. We propose to evaluate compliance with the 0.5 percent standard using the Office of Engineering and Technology’s OET Bulletin No. 69 (“OET 69”) methodology,<sup>209</sup> but using 2000 census data as was done during the channel election process.<sup>210</sup> We seek comment on whether other changes to the OET 69 methodology are necessary here. For example, the standard OET 69 analysis evaluates “cells” within a station’s coverage area which are squares 2 kilometers on a side. We have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably

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<sup>205</sup> See *DTV Application Processing Guidelines PN*, *supra* note 201.

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

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

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

<sup>209</sup> 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](http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf). See also Public Notice, “Office of Engineering and Technology Releases Update of OET Bulletin No. 69,” 19 FCC Rcd 2208 (2004).

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

more accurate. As a result, we understand that some applications have been based on evaluating many possible smaller cell sizes until the desired result is obtained.<sup>211</sup> Such “shopping” for advantageous cell sizes does not improve the accuracy of the evaluation. Should standards for allowable smaller cell sizes be established (for example only allowing 1.0 km or 0.5 km cell sizes to be requested)?

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

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

112. Going forward, we propose to protect each station’s new DTV Table Appendix B facilities’ coverage only until it has a CP or license for its post-transition operation, at which time we will limit its interference protection to its authorized coverage area. We recognize, however, that we are proposing to require that stations initially apply for facilities that do not expand their certified coverage and some stations would need to specify facilities that create a predicted service contour that is smaller in some directions than their certified coverage contour in order to comply with that proposal. When the filing freeze is lifted, we expect many such stations will file maximization applications. To avoid

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<sup>211</sup> For example, if an application would fail based on 1.0 km cells but passes based on 1.5 km cells, the applicant would request evaluation based on the 1.5 km cell size.

<sup>212</sup> See, e.g., Comments of MSTV in MB Docket No. 05-312 at 7-8 (dated Feb. 6, 2006) and Reply Comments of Merrill Weiss Group LLC in MB Docket No. 05-312 at 6-8 (dated Mar. 8, 2006).

<sup>213</sup> Such situations may become more prevalent if rules are adopted allowing distributed transmission systems (“DTS”). See *Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Clarification Order and Notice of Proposed Rulemaking, 20 FCC Rcd 17797 (2005).

<sup>214</sup> 47 C.F.R. § 73.623(d).

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

penalizing stations in such a situation, we propose to temporarily continue to require that other stations' maximization applications protect the new DTV Table Appendix B facilities of stations, even though most stations should have a CP or license at that time. At an appropriate time, the Media Bureau would announce the change to limit the required protection to CPs and licenses for stations that have such authorizations. We seek comment on this proposal.

## 2. Pre-Transitional Operations

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

## G. Other Issues

### 1. DTV Transmission Standard (ATSC A/53)

114. In the *Second DTV Periodic Report and Order*, the Commission revised its DTV transmission standard, contained in Section 73.682(d) of the rules,<sup>220</sup> to specify the use of the August 7,

<sup>216</sup> See 47 C.F.R. § 73.623.

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

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

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

<sup>220</sup> 47 C.F.R. § 73.682(d) states: "Effective February 1, 2005, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: 'ATSC Standard Digital Audio Compression (AC-3)' (incorporated by reference, see § 73.8000), ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2: 'ATSC Digital Television Standard,' except for Section 5.1.2 ('Compression (continued....)')

2001 Advanced Television Systems Committee (“ATSC”) DTV transmission standard A/53 Revision B with Amendment 1 and Amendment 2 (“A/53-B”).<sup>221</sup> The Commission also stated that it would continue to encourage further improvements to the DTV standards and conduct additional rulemakings as appropriate to incorporate future updates of the ATSC DTV transmission standard into the Commission’s rules. We propose to update Section 73.682(d) to reflect revisions to the ATSC DTV transmission standard A/53-B since the *Second DTV Periodic Report and Order*. We seek comment on this proposal.

115. Since Section 73.682(d) was revised in the *Second DTV Periodic Report and Order*, ATSC has continued to update the ATSC DTV transmission standard; the current version is A/53 Revision E, with Amendments No. 1 and 2 (“A/53-E”).<sup>222</sup> A/53-E differs from A/53-B in several respects. First, A/53-E offers several improvements over A/53-B, including the specifications for Enhanced 8-VSB (E8-VSB”) for terrestrial broadcast.<sup>223</sup> E8-VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main Service data and Enhanced Services data.<sup>224</sup> Enhanced Services data is designed to have higher immunity to certain channel impairments than Main Service data, but Enhanced Services data is delivered at a reduced information rate selected by the broadcaster from the specified options.<sup>225</sup> A/53-E further describes the coding constraints that apply to the use of the MPEG-2 systems specification<sup>226</sup> in the DTV system, including mandatory main and optional enhanced services.<sup>227</sup> It also improves the Active Format Description (“AFD”) specifications by revising and clarifying the relevant standards.<sup>228</sup> In light of these advantages, we believe that updating the Commission’s rules to specify A/53-E will benefit both broadcasters and consumers by allowing broadcasters the flexibility to offer new technological services. We seek comment on this tentative conclusion.

116. In the *Second DTV Periodic Report and Order*, the Commission declined to mandate that broadcasters use the AFD when the active video portion picture does not completely fill the coded picture. The Commission stated that the revisions in the new standard were developed through careful consideration and deliberation within the technical committees of ATSC and thus reflected a consensus

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format constraints’) of Annex A (‘Video Systems Characteristics’) and the phrase ‘see Table 3’ in Section 5.1.1. Table 2 and Section 5.1.2 Table 4 (incorporated by reference, see § 73.8000), and ATSC A/65B: ‘ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,’ (Revision B) 2003 (incorporated by reference, see § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, (October 4, 1995), and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002).”

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

<sup>222</sup> A/53 Revision E (with Amendments No. 1 and 2) is available at [http://www.atsc.org/standards/a\\_53e-with-Amend-1-and-2.pdf](http://www.atsc.org/standards/a_53e-with-Amend-1-and-2.pdf).

<sup>223</sup> *Id.* at 55 (“The optional enhancements add additional forward error correction coding layers to the data before sending the data via a constrained version of 8-VSB called Enhanced 8-VSB (E8-VSB). Various coding rate options are defined, and the payload assignment between the Enhanced 8-VSB and the Main Mode data is selectable at discretely defined values.”).

<sup>224</sup> *Id.* at 67.

<sup>225</sup> *Id.* at 56.

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

<sup>227</sup> A/53 Revision E at 107.

<sup>228</sup> A/53 Revision E at 127.

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

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

117. In the *Second DTV Periodic Report and Order*, the Commission revised Section 73.682(d) to require the use of the ATSC Program System and Information Protocol (“PSIP”) standard A/65-B.<sup>232</sup> PSIP data is transmitted along with a station’s DTV signal and provides DTV receivers with information about the station and what is being broadcast.<sup>233</sup> PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the “major” channel number), thereby making it easy for viewers to tune to the station’s DTV channel even if they only know the station’s major channel number. In

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

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

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

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

<sup>233</sup> See ATSC website at [http://www.psip.org/psip\\_information.html](http://www.psip.org/psip_information.html) (“PSIP is a small collection of tables designed to operate within every Transport Stream (TS) for terrestrial broadcast of digital television. Its purpose is to describe the information at the system and event levels for all virtual channels carried in a particular TS. Additionally, information for analog channels as well as digital channels from other Transport Streams may be incorporated. There are two main categories of information in the ATSC PSIP Standard, system information and program data. System information allows navigation and access of the channels within the DTV transport stream, and the program data provides necessary information for efficient browsing and event selection. Some tables announce future events and some are used to locate the digital streams than make up an event. The PSIP data are carried via a collection of hierarchically arranged tables.”).

addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things. The Commission has recognized the utility that the ATSC PSIP standard offers for both broadcasters and consumers.<sup>234</sup>

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

119. We also seek comment from broadcasters and others as to the need to include more accurate, detailed, and up-to-date information about each event under this new PSIP standard. We also seek comment about whether PSIP information is being passed through to cable and satellite subscribers.<sup>235</sup> If satellite carriers are not passing through PSIP information, is the information otherwise being reflected adequately in the electronic program guide and signal they provide to subscribers?

### 3. Fees for Ancillary and Supplementary Services

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

### 4. Station Identification

121. In 2004, the Commission established rules generally requiring DTV stations to follow the same rules for station identification as analog stations.<sup>237</sup> Specifically, digital stations are required to make station identification announcements, either visually or aurally, at the beginning and end of each time of operation as well as hourly. The identification must consist of the station’s call letters followed by the community or communities specified in the station’s license as the station’s location. Stations may insert between the call letters and the station’s community of license the station’s frequency, channel number, name of the licensee, and/or the name of the network, at their discretion.

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

<sup>235</sup> Digital cable systems with activated channel capacity of 750 MHz or greater are required to include in-band PSIP when available from the provider. 47 C.F.R. § 76.640(b)(1)(iv).

<sup>236</sup> 47 C.F.R. § 73.624(g).

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

122. A station choosing to include its channel number in its station identification must use the major (analog) channel number.<sup>238</sup> The Commission adopted the ATSC A/65B standard and noted that PSIP, which is part of that standard, allows viewers to see a broadcaster's major channel number regardless of the broadcaster's allocated digital broadcast channel.<sup>239</sup> The Commission permitted stations choosing to multicast to include additional information in their station announcements identifying each program stream.<sup>240</sup> The Commission's rules require that the station that is transmitting the multicast stream is the station whose identification must appear on the program stream.<sup>241</sup>

123. Now that stations have some experience in applying these station identification rules to digital stations, we invite comment on whether these rules provide sufficient clarity to broadcasters and viewers. We specifically invite comment on whether the current rules provide for appropriate identification of multicast channels, particularly in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station. As the Commission has previously noted, as stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for the viewers and for stations themselves.<sup>242</sup> We invite comment on any and all aspects of the Commission's station identification rules, whether any changes to or clarifications of the rules are appropriate, and, if particular problems implementing the rules have arisen, specific proposals for how the rules should be changed.

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

124. We recognize that the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors ("MVPDs").<sup>243</sup> Because a majority of television viewers receive their broadcast signals via an MVPD,<sup>244</sup> if these providers have problems receiving and

<sup>238</sup> See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18354-55 ¶ 172. See also 47 C.F.R. § 73.1201(b). Thus, a broadcaster who operates an NTSC service on channel "26" and a DTV service on channel "27" would use the major channel "26" in station identification announcements. *Id.*

<sup>239</sup> See *id.* This allows broadcasters to keep their existing channel number in the digital world, thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers. *Id.*

<sup>240</sup> See *id.* Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV), and 26.2 (SDTV). Stations may provide information in the station announcement identifying the network affiliation of the program service (e.g., "WXXX-DT, channel 26.1, YYY (community of license), your CW network channel"). Stations simulcasting their analog programming on their digital channel are permitted to make station identification announcements simultaneously for both stations as long as the identification includes both call signs (e.g., "WXXX-TV and WXXX-DT") if it is intended to serve as the identification for both program streams. Stations simulcasting the analog stream on the digital channel may also do a shortened identification for both streams (e.g., "WXXX-TV/DT"). *Id.*

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

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

<sup>243</sup> See 47 U.S.C. 522(13). MVPDs include cable operators and Direct Broadcast Satellite carriers. See also 47 C.F.R. §§ 76.5, 76.501 (SMATV).

<sup>244</sup> See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, MB Docket No. 05-255, Twelfth Annual Report, 21 FCC Rcd 2503 (2006) ("2005 Competition Report"). As of June (continued....)

retransmitting digital signals when analog signals are turned off, that could have a significant adverse impact on the digital transition. We seek comment here on the issues specifically related to MVPD readiness to receive and retransmit digital signals to their subscribers when analog service ends on February 17, 2009.<sup>245</sup> We also invite comment on what steps, if any, are necessary to allow consumers to continue to receive over-the-air television signals in a variety of settings outside their homes, such as hotels, restaurants, universities and offices.

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

## VI. PROCEDURAL MATTERS

### A. Initial Regulatory Flexibility Act Analysis

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

### B. Initial Paperwork Reduction Act of 1995 Analysis

127. This Notice has been analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA"),<sup>246</sup> and contains proposed new and modified information collection requirements, including the following proposals: (1) Applications detailing stations' plans for completing their transitions;<sup>247</sup> (2) Applications to construct or modify post-transition facilities (using FCC Forms 301 and 340);<sup>248</sup> (3) Requests to reduce analog TV service;<sup>249</sup> (4) Requests to terminate analog TV service;<sup>250</sup> (5) Requests to

(Continued from previous page) \_\_\_\_\_

2005, approximately 94.2 million TV households, or almost 86 percent of TV households, subscribe to an MVPD service. *Id.* at 2506-07 ¶ 8.

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

<sup>246</sup> 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.).

<sup>247</sup> See *supra* section V., ¶ 35.

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

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

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