

station has not agreed to accept this interference. We deny the requests of these stations, as described in greater detail below. None of them are requesting changes to reflect DTV facilities they are operating or are authorized to operate. Consistent with our decisions above, we decline to change the facilities specified in DTV Table Appendix B where the station requesting the change does not meet the applicable interference standard and is not yet providing service to the public.¹⁷⁰ We note, however, that each of these stations must file an application for authority to construct its post-transition facility, and at that time may be able, consistent with the procedures ultimately adopted in the Third Periodic Review proceeding, to specify facilities in that application that more closely approach the parameters requested in their comments. Following is a list of these stations and a description of their individual circumstances.

69. WEDU, Tampa, FL. Florida West Coast Public Broadcasting, Inc. ("FWCPB"), licensee of NCE station WEDU, channel *3, and WEDU-DT, channel *54, Tampa, FL, received channel *13 for its TCD in the proposed DTV Table.¹⁷¹ FWCPB requests that the proposed DTV Table Appendix B be revised to specify omnidirectional facilities for WEDU at an ERP of 40 kW.¹⁷² The Commission's interference analysis based on recalculated Appendix B facilities shows that WEDU would cause 1.16 percent new interference to WTLV, Jacksonville, Florida (analog channel 12, post-transition digital channel TCD channel 13).

70. WGTV, Athens, GA. Georgia Public Telecommunications Commission ("GPTC"), licensee of NCE station WGTV, channel *8, and permittee of WGTV-DT, channel *12, Athens, GA, received channel *8 for its TCD in the proposed DTV Table.¹⁷³ GPTC requests that the proposed parameters in DTV Table Appendix B be changed to permit WGTV to increase power and operate with an omnidirectional antenna.¹⁷⁴ The Commission's interference analysis based on recalculated Appendix B facilities shows that WGTV would cause 0.19 percent new interference to WCIQ, Mount Cheaha, Alabama (analog channel 7, post-transition digital channel 7).

71. KOED, Tulsa, OK. Oklahoma Educational Television Authority ("OETA"), licensee of NCE station KOED-TV, channel *11, and KOED-DT, channel *38, Tulsa, OK, received channel *11 for its TCD in the proposed DTV Table.¹⁷⁵ OETA requests that DTV Table Appendix B be revised to reflect an increase in antenna height for KOED.¹⁷⁶ The Commission's interference analysis based on recalculated Appendix B facilities shows that the KOED would cause 0.16 percent new interference to KTUL, Tulsa, Oklahoma (analog channel 8, post-transition digital channel 10).

E. Requests for Alternative Channel Assignments

72. We will grant certain stations' requests for an alternative channel assignment, consistent with our proposal in the *Seventh Further Notice*. In paragraph 25 of the *Seventh Further Notice*, the Commission stated that it would consider requests for alternative channel assignments only from the

¹⁷⁰ See, *supra*, ¶ 58.

¹⁷¹ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹⁷² See Comments of Florida West Coast Public Broadcasting, Inc., filed Jan. 24, 2007, at 4.

¹⁷³ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹⁷⁴ See Comments of Georgia Public Telecommunications Commission, filed Jan. 25, 2007, at 2 and Engineering Exhibit.

¹⁷⁵ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹⁷⁶ See Reply Comments of Oklahoma Educational Television Authority and Request for Acceptance of Late-Filed Pleading, filed Mar. 1, 2007, at 2-3. Although we deny this request on the grounds of impermissible interference, we also note that, because the request was filed later than the deadline for comments in this proceeding, affected stations were not afforded a full opportunity to respond.

following: (1) licensees unable to construct full, authorized DTV facilities¹⁷⁷ on the TCDs that they requested and received because, in order to avoid causing impermissible interference to other TCDs and still obtain their preferred channel, they had to agree to construct facilities on their TCD that are smaller than those to which they had certified on FCC Form 381;¹⁷⁸ (2) licensees with international coordination issues which the Commission has been unable to resolve with the Canadian and Mexican governments;¹⁷⁹ (3) licensees with TCDs for low-VHF channels (channels 2-6); and (4) new licensees and permittees that attained such status after the start of the channel election process and to which we assigned a TCD for post-transition DTV operations because their assigned NTSC or DTV channel was determined to cause impermissible interference to existing licensees. The Commission stated that licensees that want to change their DTV allotment, but which are not in any of these categories (*e.g.*, are technically able to construct their full, authorized DTV facilities on their existing TCD) may request a change in allotment only after the DTV Table is finalized and must do so through the existing allotment procedures.¹⁸⁰

73. The Commission stated that any request for an alternative channel assignment must either meet the 0.1 percent additional interference standard or be accompanied by a request for a waiver of the 0.1 percent limit or the signed written consent of the affected licensee. The Commission stated that it would grant waivers of the 0.1 percent limit where doing so would promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities.¹⁸¹

74. We received comments filed on behalf of 22 stations requesting a change in the channel assigned to the station for post-transition operation in the proposed DTV Table. For 13 of these stations, we will grant the requested channel change. A list of the stations for which we are granting an alternative channel appears in Appendix D5, *infra*,¹⁸² and we have revised the DTV Table for these stations accordingly.¹⁸³ For each of these stations, we believe that the circumstances described by the station are consistent with one or more of the criteria for consideration of alternative channel assignments outlined in the *Seventh Further Notice*.¹⁸⁴ Furthermore, none require waiver of the 0.1 percent interference standard,

¹⁷⁷ The term "full, authorized DTV facilities" refers to the original facilities certified by the licensee in its FCC Form 381. The Commission stated in the *Seventh Further Notice* that it would not preclude requests for alternative channel assignments from licensees that modified their certified facilities after receiving a conflict letter in the first and second channel election rounds. *Seventh Further Notice*, 21 FCC Rcd at 12109, ¶ 25, n.49.

¹⁷⁸ The Commission stated in the *Seventh Further Notice* that it would consider only engineering demonstrations and not requests based on financial or other reasons. *Id.* at n.50.

¹⁷⁹ See also Section III.C.5., *infra* ¶ 103.

¹⁸⁰ *Seventh Further Notice*, 21 FCC Rcd at 12109, ¶ 25 (citing 47 C.F.R. § 1.420). See also *Third DTV Periodic NPRM* at ¶ 103-112 (proposing interference criteria for evaluating petitions for rulemaking requesting a new DTV allotment post-transition).

¹⁸¹ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307, ¶ 65 and *Seventh Further Notice*, 21 FCC Rcd at 12109, ¶ 26.

¹⁸² See Appendix D5, *infra*.

¹⁸³ See Appendices A and B.

¹⁸⁴ One of the requests for a new channel that we are granting herein was opposed. CBS Broadcasting, Inc., licensee of station WBBM-TV, channel 2, and WBBM-DT, channel 3, Chicago, IL, received channel 11 for its TCD in the proposed DTV Table. See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A. CBS Corporation ("CBS"), requests the substitution of Channel 12 for Channel 11 in the DTV Table. See Comments of CBS Corporation, filed Jan. 25, 2007. Quincy Broadcasting Company and WREX Television, LLC state in reply comments that this proposed channel substitution would cause 0.6 percent new interference to WREX, Rockford, Illinois and 0.8 percent new interference to WINM, Angola, Indiana. See Joint Reply Comments of Quincy Broadcasting Company and WREX Television, LLC, filed Feb. 26, 2007, engineering statement at 4. WREX states that, should the channel change be deemed acceptable by the Commission, WREX would work to resolve any conflict with WBBM. *Id.*, (continued....)

because they either do not exceed that limit or have acquired the agreement of the affected station(s).¹⁸⁵

75. For two stations, we deny the request for an alternative channel assignment.¹⁸⁶ According to the Commission's interference analysis, the new channels requested by these stations cause interference to another station in excess of the 0.1 percent standard and there is no agreement with the affected station accepting this interference. As discussed below, we decline to waive our interference limit for these stations. Following is a brief discussion of these two stations and the relevant circumstances.

76. KCWX, Fredericksburg, TX. Corridor Television LLP, Inc., ("Corridor"), licensee of singleton station KCWX, channel 2, Fredericksburg, TX, received channel 5 for its TCD in the proposed DTV Table.¹⁸⁷ Corridor requests the substitution of channel 8 for its TCD of channel 5.¹⁸⁸ Corridor recognizes that the allotment of channel 8 to KCWX would require a waiver of the 0.1 percent interference standard, but argues that grant of a waiver would contribute to clearing the lower VHF band so that it can be used for other purposes.¹⁸⁹ In addition, Corridor states that it serves viewers in a rural area that rely more heavily on over-the-air signals and that channel 8 would result in fewer signal reception difficulties for these viewers than channel 5. Corridor also argues that operation on channel 8 would reduce its operating costs.¹⁹⁰

(Continued from previous page) _____
engineering statement at 5. CBS filed supplemental comments in this proceeding disputing the Quincy/WREX interference analysis. See Supplemental Comments of CBS Corporation, filed Mar. 14, 2007. We have analyzed the interference using extensively tested computer software techniques, and our analysis shows that the requested channel substitution for WBBM would not cause new interference in excess of the 0.1 percent interference standard. We have considered the analysis offered in the Quincy/WREX pleadings, but we note that it may be based on an incorrect method of interference calculation. We are confident that the result of our interference analysis is correct and accurately reflects the interference conditions that are expected to be present among stations. See ¶¶ 18-20, *supra*, for description of methodology used. Accordingly, as reflected in Appendix D5 and the DTV Table Appendix B adopted herein, we grant the WBBM request.

¹⁸⁵ Our engineering analysis does show that one of the requests we are granting herein causes new interference. Colorado Public Television, ("CPT"), licensee of NCE station KBDI-TV, channel *12 and permittee of KBDI-DT, channel *38, Broomfield, CO, received channel *38 for its TCD in the proposed DTV Table. See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A. CPT requests the substitution of Channel *13 for Channel *38 for KBDI. The Commission's engineering analysis shows that this substitution would cause 1.17 percent new interference to KTNE, Alliance, NE. However, KTNE has agreed to accept this interference. See Colorado Public Television *ex parte* (dated June 21, 2007) at 1. Accordingly, we grant the requested substitution. We note that the Commission recently denied KBDI's request for a waiver of the July 1, 2006 "use or lose" deadline on the ground that KBDI did not submit a showing claiming financial hardship. See *Use or Lose Order, supra* note 30, at ¶ 121. In that Order, the Commission stated that KBDI would lose interference protection to the unused portion of the applicable replication/maximization coverage area and the ability to carry over interference protection to the station's unserved DTV service area on the post-transition channel. *Id.* at ¶ 123. CPT filed a petition for reconsideration of the *Use or Lose Order* decision. See Petition for Reconsideration of Colorado Public Television, MB Dockets No. 03-15, 87-268, filed June 18, 2007.

¹⁸⁶ An additional licensee, Gilmore Broadcasting Corporation, filed reply comments requesting an alternative channel assignment for WEHT, Evansville, Indiana. See Reply Comments of Gilmore Broadcasting Corporation, filed Feb. 26, 2007. Because this request was raised in reply comments, thereby not affording affected stations a full opportunity to comment, we address this request for WEHT in the *Eighth Further Notice* herein.

¹⁸⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹⁸⁸ See Comments and Waiver Request of Corridor Television LLP, filed Jan. 9, 2007.

¹⁸⁹ *Id.* at 3.

¹⁹⁰ *Id.* at 3-4.

77. Corridor argues that, with respect to new channel allotments after the transition, the Commission proposed to utilize an interference protection requirement based on engineering criteria (*e.g.*, permissible interference), rather than geographic spacing, and to use an interference standard of 0.5 percent.¹⁹¹ Corridor argues that this proposed standard should be given significant weight in considering requests to waive the 0.1 percent standard in connection with the TCD selection process. The Commission's interference analysis shows that the requested change would cause 0.79 percent interference to KTBC, Austin, Texas (analog channel 7, post-transition digital channel 7) and 0.47 percent interference to NCE station KLRN, San Antonio, Texas (analog channel 9, post-transition digital channel 9). KTBC License, Inc., licensee of KTBC, filed an opposition to Corridor's request to waive the 0.1 percent interference limit.¹⁹² In addition, Alamo Public Telecommunications Council, licensee of KLRN, filed an opposition to Corridor's request, also arguing that Corridor should not receive a waiver of the 0.1 percent interference standard.¹⁹³

78. We note that the 0.5 percent standard is only a proposal and a different standard could be adopted.¹⁹⁴ Moreover, the new interference caused to KTBC, 0.79 percent, not only significantly exceeds the current 0.1 percent interference standard applied to channel substitution requests, it also exceeds even the proposed 0.5 percent standard. In view of the significant level of impermissible interference caused by the proposed KCWX channel substitution, we decline to waive our interference limit in this situation. We do not believe that a waiver in these circumstances would promote overall spectrum efficiency or ensure the best possible television service to the public or the local community.

79. WMYT, Rock Hill, SC. WMYT-TV, Inc., ("WMYT"), licensee of station WMYT-TV, channel 55, and permittee of WMYT-DT, channel 39, Rock Hill, SC, received channel 39 for its TCD in the proposed DTV Table.¹⁹⁵ WMYT requests the substitution of Channel 46 for its TCD of Channel 39.¹⁹⁶ WMYT argues that Channel 46 is fully spaced to other stations, while Channel 39 is short-spaced to two stations. WMYT also argues that the station would cause less interference on Channel 46 at its preferred ERP than it does at the lower assigned ERP on Channel 39. In addition, WMYT states that operation on Channel 46 would permit it to serve up to 500,000 additional viewers. The Commission's interference analysis shows that the requested change would cause 0.64 percent new interference to WYCW, Asheville, NC (analog 62, post-transition digital channel 45).¹⁹⁷

80. In view of the level of interference caused to WYCW, we do not believe it is appropriate to waive our interference standard in this situation. The level of interference caused is far in excess of the applicable 0.1 percent standard. In addition, the new interference caused to WYCW of 0.64 percent exceeds even the 0.5 percent new interference standard we proposed apply to new channel allotments

¹⁹¹ See Comments of Corridor Television LLP, filed June 12, 2007, at 5 (citing *Third DTV Periodic Review NPRM* at ¶¶ 104,105).

¹⁹² See Opposition of KTBC License, Inc. to Comments and Waiver request of Corridor Television LLP, filed July 24, 2007.

¹⁹³ See Comments of Alamo Public Telecommunications Council, filed June 27, 2007, at 4.

¹⁹⁴ See *Third DTV Periodic Review NPRM* at ¶ 104.

¹⁹⁵ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

¹⁹⁶ See Comments of WMYT-TV, Inc., filed Jan. 25, 2007.

¹⁹⁷ WVVA Television, Inc. filed reply comments opposing the WMYT channel change request on the ground that it would cause new interference to WVVA, Bluefield, West Virginia in excess of the 0.1 percent interference threshold. See Reply Comments of WVVA Television, Inc., filed Feb. 26, 2007. However, the Commission's interference analysis shows that the WMYT channel change request would not exceed this interference limit. As we deny the WMYT request on other grounds, we will not address further the WVVA reply comments.

after the transition.¹⁹⁸ As we concluded with respect to the proposed channel substitution of KCWX, *supra*,¹⁹⁹ in view of the significant level of impermissible interference that would be caused by the WMYT request we do not believe that a waiver of our interference standard would promote our overall spectrum efficiency or ensure the best service to the public.

F. Additional Requests to Change Appendix B Facilities

1. Antenna Information

81. We deny the requests of certain stations seeking to add antenna identification numbers to the proposed post-transition DTV Table Appendix B. Several stations requested that we change the proposed DTV Table Appendix B to include such antenna identification numbers.²⁰⁰ In developing the proposed post-transition DTV Table Appendix B, we did not include any antenna identification number for stations operating with an omnidirectional antenna. An omnidirectional antenna provides the same power level in every azimuthal direction and antenna identification numbers are only used for directional antennas in order to determine the different power levels in each direction. Accordingly, where stations request the addition of an antenna identification number to Appendix B, we will not make that change if our database indicates that the station is authorized for an omnidirectional antenna.

82. In addition, Scripps Howard Broadcasting requests that we change Appendix B for KNXV, Phoenix, Arizona and WCPO, Cincinnati, Ohio to reflect an antenna pattern value of "1" for 110 degrees.²⁰¹ Trinity Broadcasting of Indiana, Inc. makes a similar request for WCLJ, Bloomington, Indiana.²⁰² The channel allotments for KNXV and WCLJ are based on the use of omnidirectional antennas, so we will delete the antenna identification number in Appendix B for these stations. For WCPO, the correct 110 degree value of 1 was used when we generated Appendix B and we will correct the antenna pattern in the FCC's CDBS database. Finally, Griffin Tulsa II Licensing, LLC requests that we change Appendix B for KQCW, Muskogee, OK to reflect a relative field value of "0.958" instead of "0.096" in the reference pattern at 280 degrees.²⁰³ We have made this change and it is reflected on Appendix B, *infra*.

2. Speculative Requests to Change Appendix B Facilities

83. We reject the premature or incomplete requests of certain stations seeking changes to their facilities as proposed in the post-transition DTV Table Appendix B when these changes pertain to speculative future events or could best be accomplished through the upcoming application process. These requests are not for modifications of the coverage area as defined by the proposed DTV Table Appendix B to match authorized or licensed coverage. Instead, these stations comment that they may be unable to serve the coverage area, which is described in the proposed DTV Table Appendix B, on their post-transition channel due to differences in station parameters on the new channel or different equipment the station would like to use.²⁰⁴ These are changes that should be requested in an application to construct or

¹⁹⁸ *Third DTV Periodic Review NPRM* at ¶ 104.

¹⁹⁹ *See, supra*, ¶ 76.

²⁰⁰ *See* 17 stations listed on Appendix D6, *infra*.

²⁰¹ *See* Comments of Scripps Howard Broadcasting Company, filed Jan. 25, 2007.

²⁰² *See* Comments of Trinity Christian Center of Santa Ana, Inc., Jacksonville Educators Broadcasting, Inc., Trinity Broadcasting of Indiana, Inc., and National Minority TV, Inc., filed Jan. 25, 2007.

²⁰³ *See* Comments of Griffin Tulsa II Licensing, LLC, filed Jan. 25, 2007.

²⁰⁴ For example, stations returning to their analog channel have requested that the Commission recalculate their station parameters in Appendix B now based on parameters that will be different for use of the analog channel for digital service (such as the HAAT of the analog antenna). *See, e.g.*, Comments of Twin Cities Public Television, (continued....)

modify post-transition facilities on the new channel filed consistent with the procedures and standards for such applications adopted in the Third DTV Periodic Review proceeding,²⁰⁵ including compliance with the filing freeze and interference standard.²⁰⁶

84. Commenters notified the Commission of possible future changes to the parameters for 13 stations.²⁰⁷ In general, these commenters anticipate filing requests for changes to station parameters in the future, but do not yet have all of the information necessary to request changes at this time.²⁰⁸ In addition, in cases where a station certified to replication facilities or will not use its current DTV channel for post-transition operations, some stations comment that they may not be able to construct the precise facilities specified in the proposed DTV Table Appendix B.²⁰⁹ In general, these stations note that, while the station seeks to serve the same coverage area on the post-transition channel as defined by the facilities specified in Appendix B, the station will operate with different equipment and/or other parameters on the channel than those specified in Appendix B.²¹⁰ We find that these speculative or incomplete requests are not yet ripe for Commission action. If and when these stations need to request changes to station parameters and have full information regarding the nature of the changes, the station should file a request (Continued from previous page)

Inc. ("Twin Cities"), filed Jan. 25, 2007 at 4; Comments of Prime Time Christian Broadcasting, Inc. ("PTCB"), filed Jan. 25, 2007, at 1.

²⁰⁵ See 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538; and proposed post-transition application rules and procedures; *Third DTV Periodic Review NPRM* at ¶¶ 92-93.

²⁰⁶ See discussion of freeze and interference standard ¶ 7 note 11 *supra*.

²⁰⁷ See Comments of Pappas Entities, filed Jan. 25, 2007, at 4-5 (relating to station KSWT-DT, Yuma, AZ) and at 6 (relating to station KDBC-DT, El Paso, TX); Comments of Mission Broadcasting Inc. ("Mission"), filed Jan. 25, 2007, at 6-7 (relating to station KJTL-DT, Wichita Falls, TX) and at 10 (relating to WFXP-DT, Erie, PA); See Comments of Twin Cities, at 3 (relating to NCE station KTCI-DT, St. Paul, MN); Comments of The Arizona Board of Regents ("Arizona Board"), filed Jan. 25, 2007, at 1 (relating to NCE station KAET-DT, Phoenix, AZ); Comments of Barrington Peoria License LLC ("Barrington Peoria"), filed Jan. 25, 2007, at 1 (relating to NCE station WHOI-DT, Peoria, IL); Comments of the Board of Trustees of Northern Michigan University ("Northern Michigan"), filed Jan. 10, 2007, at 2 (relating to NCE station WNMU-DT, Marquette, MI); Comments of Puerto Rico Public Broadcasting Corporation, filed Jan. 25, 2007 (relating to station WIPR-DT, San Juan, PR); Comments of PTCB at 1 (relating to station KPCB-DT, Snyder, TX, whose proposed post-transition DTV Appendix B facilities accurately reflect the coverage of the KPCB certified construction permit); Comments of CBS Corporation ("CBS"), filed Jan. 25, 2007, at 4 (relating to station KCBS-DT, Los Angeles, CA); and Comments of Tribune Broadcasting Company ("Tribune"), filed Jan. 29, 2007, at 5 (relating to stations WGNO-DT and WNOL-DT, New Orleans, LA). See also note 219 and note 221, *infra*.

²⁰⁸ See, e.g., Comments of Pappas Entities at 4-5 (stating intent to duplicate its analog facilities for KSWT-DT) and at 6 (speculating possible need for new site for KDBC-DT); Comments of Mission at 6-7 and at 10 (stating future intent to modify KJTL-DT and WFXP-DT); and Comments of Tribune at 3 (stating intent to apply for different facilities not yet determined for WGNO-DT and WNOL-DT, both of which were destroyed by Hurricane Katrina). On July 23, 2007, Tribune filed an *ex parte* specifying the new parameters for these stations. See Tribune *ex parte* (dated July 23, 2007).

²⁰⁹ For example, Pappas Entities, which certified to replication facilities for KSWT-DT, argues in its comments that it is virtually impossible for a VHF directional antenna to duplicate exactly the directional pattern originally designed for a UHF antenna. As noted in ¶ 29, *supra*, this issue was addressed in the *Third DTV Periodic Review NPRM* at ¶¶ 92-93 (proposing post-transition application rules and procedures).

²¹⁰ See, e.g., Comments of Twin Cities at 3 (stating intent to use another station's existing antenna for KTCI-DT); Comments of Arizona Board at 1 (stating intent to use its analog channel's existing antenna for KAET-DT); Comments of Barrington Peoria at 1 (stating intent to use its analog channel's existing top-mounted antenna site for WHOI-DT); Comments of Northern Michigan at 2 (stating intent to use its analog channel's existing antenna site for WNMU-DT); Comments of PTCB at 1 (stating intent to use its analog channel's parameters for KPCB-DT); and Comments of CBS at 4 (stating intent to use another station's parameters for KCBS-DT).

following the procedures appropriate for the change requested.

85. In response to these premature or speculative requests to modify facilities, we refer commenters to our discussion in the *Third DTV Periodic Review NPRM* concerning the rules and procedures for filing applications for construction permits to build stations' post-transition (DTV) facilities and to request authorization to maximize facilities.²¹¹ We remind stations that they must file construction permit or modification applications (*i.e.*, FCC Form 301 or 340) if they need to request authority to construct or modify their post-transition facilities.²¹² Moreover, in the *Third DTV Periodic Review NPRM*, the Commission proposed that stations must limit their applications to those facilities specified in the new DTV Table Appendix B and that applications requesting facilities that would serve a larger area than stations' new DTV Table Appendix B facilities would not be accepted.²¹³ Stations that wish to apply for reduced facilities may do so, but must comply with the reduction standard ultimately adopted in the Third DTV Periodic Report and Order.²¹⁴

86. The appropriate rules, procedures and timing for filing these applications will depend on whether the station will be using its current DTV channel or another channel for post-transition operations. Stations KSWT-DT, KDBC-DT, KJTL-DT and WFXP-DT will use their current DTV channel for post-transition operations.²¹⁵ These stations, and others that seek to modify their facility on their current DTV channel, may file an application at any time, provided they comply with the relevant interference standard and do not violate the filing freeze. In response to Pappas Entities' request for clarification on this issue,²¹⁶ we note that the filing freeze does not preclude the filing of an application to modify a construction permit to specify facilities listed for the station in the post-transition DTV Table Appendix B. Accordingly, Pappas can file for modification based on current rules and procedures and does not need a waiver of the freeze. However, to the extent that Pappas seeks a change in its post-transition DTV facilities that would result in an expanded or shifted coverage area, such a change would violate the filing freeze and Pappas must wait until the freeze is lifted to make such a request.

87. Stations KTCI-DT, KAET-DT, WHOI-DT, WNMU-DT, KPCB-DT, WIPR-DT, and KCBS-DT will use a different channel from their current DTV channel for post-transition operations.²¹⁷ These stations, and others that seek to use their analog channel or a new channel for post-transition operations, may not file an application to construct their post-transition facilities until the final post-transition rules and procedures are established by the Report and Order in the Third DTV Periodic Review proceeding.²¹⁸ We recognize that these stations may need to request different parameters from those specified in the post-transition DTV Table Appendix B, even though these stations are not seeking

²¹¹ See *Third DTV Periodic Review NPRM* at ¶¶ 92-93.

²¹² See 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538.

²¹³ See *Third DTV Periodic Review NPRM* at ¶ 93.

²¹⁴ The *Third DTV Periodic Review NPRM* has proposed that if a station is unable to build precisely the facilities specified in the new post-transition DTV Table Appendix B, then it must apply for facilities that reduce by no more than five percent from those Appendix B facilities with respect to predicted population. See *Third DTV Periodic Review NPRM* at ¶ 94. For example, PTCB may apply for reduced facilities for KPCB at the appropriate time. See PTCB Comments at 1.

²¹⁵ See Appendix A.

²¹⁶ Comments of Pappas Entities at 4-5. Pappas seeks guidance on how to modify its construction permit for KSWT-DT to make it reflect the facilities listed in the post-transition DTV Table Appendix B, consistent with the filing freeze.

²¹⁷ See Appendix A.

²¹⁸ *Third DTV Periodic Review NPRM* at ¶ 94.

to change the coverage area of their post-transition channel. These stations should address this situation in their applications for their post-transition channels. If a station that is moving to a different channel for post-transition use determines that the parameters necessary to serve the coverage area specified in the post-transition DTV Table Appendix B differ from those specified in the post-transition DTV Table Appendix B, it should apply for those changes in its application. The Commission will evaluate those applications using the interference standard and other processing standards adopted in the Third DTV Periodic Report and Order.

88. We note that some commenters have asked for changes to the proposed post-transition DTV Table Appendix B facilities to conform to specific parts of their licensed or authorized facilities.²¹⁹ Although we are allowing stations to change their certifications and post-transition DTV Table Appendix B facilities to reflect an existing license or authorization,²²⁰ stations must conform to all portions of that license or authorization and may not choose various parts of that license or authorization.²²¹

89. WGNO and WNOL, New Orleans, LA. Tribune Television New Orleans, Inc. ("Tribune"), licensee of station WGNO, channel 26, and permittee of WGNO-DT, channel 15, New Orleans, LA, received channel 26 for its TCD in the proposed DTV Table.²²² Tribune is also the licensee of station WNOL, channel 38, and permittee of WNOL-DT, channel 40, New Orleans, LA, which received channel 15 for its TCD in the proposed DTV Table.²²³ Tribune states that the analog and digital transmission facilities of both of these stations were destroyed by Hurricane Katrina.²²⁴ Tribune states that it has worked to resume and then improve reduced-power analog operations for both stations but that it has not yet been able to restore DTV operations. Tribune is evaluating alternative sites for the DTV operations of these stations and recently reported that it has finalized negotiations to relocate the digital operations of the stations to another tower.²²⁵ Tribune recently filed an *ex parte* to request that the

²¹⁹ For example, NJPBA is asking to change the transmitter site coordinates of NCE station WNJT-DT, Trenton, NJ to reflect those granted in the station's DTV license, FCC File No. BNPEDT-20030224AAF; however, it does not ask to change all of its facilities to match its DTV license. See Comments of New Jersey Public Broadcasting Authority ("NJPBA"), filed Jan. 25, 2007, at 2 and n.1. Similarly, Ebenezer Broadcasting Group, Inc. asks to change the coordinates of WIDP-DT, Guayama, PR to match those of the site currently authorized in its DTV construction permit, FCC File No. BPCDT-19991029AHA, but does not ask to change all of the parameters in Appendix B to match that DTV CP. See Comments of Ebenezer Broadcasting Group, Inc., filed February 23, 2007. In addition, Pappas Telecasting of Central Nebraska, L.P. asks to change the coordinates for KWNB, Hayes Center, NE to conform to the coordinates specified in the construction permit for KWNB-DT, FCC File No. BPCDT-19991101AIJ, but does not ask to change all of the Appendix B parameters to match that construction permit. See Comments of Pappas Entities, filed January 25, 2007, at 2, 5-6.

²²⁰ See Section III.C., *supra*.

²²¹ In its comments, the South Dakota Board of Directors for Educational Telecommunications ("SDBD") requests changes to DTV Appendix B for several stations. For four of these stations, SDBD requests only a change in the coordinates specified in Appendix B: KBHE, Rapid City, SD; KDSD, Aberdeen, SD; KPSD, Eagle Butte, SD; and KZSD, Martin, SD. See Comments of South Dakota Board of Directors for Educational Telecommunications, filed January 10, 2007. It appears from these comments that for these four stations SDBD wants to adjust the station coordinates but still retain the larger coverage area for the station provided on Appendix B rather than change Appendix B to reflect the smaller coverage area provided in the station authorization. If so, these are changes that may be accomplished through the application process. Accordingly, we decline to make the requested coordinate changes for these four stations at this time in order to preserve for these stations the larger coverage area provided in Appendix B. These stations may file applications for the new coordinates they request.

²²² See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

²²³ See *id.*

²²⁴ See Reply Comments of Tribune Broadcasting Company ("Tribune"), filed Jan. 29, 2007 at 5.

²²⁵ See Tribune *ex parte* (dated June 15, 2007).

proposed DTV allotments for WGNO and WNOL be changed to reflect the technical parameters for the facilities it will construct at the new site.²²⁶ The Commission is committed to continuing to work with stations affected by Hurricane Katrina to help those stations commence or re-commence operations. Because this request applies to post-transition operations, we will offer the proposal for further comment in the *Eighth Further Notice* herein.²²⁷

3. Proposals Subject to the Filing Freeze

90. We deny the requests of stations seeking a waiver of the filing freeze, except for one station which has demonstrated unique circumstances. Seven stations filed comments requesting a change in and/or expansion of the facilities specified in the proposed post-transition DTV Table Appendix B that is inconsistent with the August 2004 filing freeze.²²⁸ This freeze on the filing of certain applications was imposed to provide for a stable database while the Commission developed the post-transition DTV Table.²²⁹ The freeze precludes any expansion of a station's post-transition noise limited service contour beyond that of the station's certified Grade B contour. The freeze remains in effect while the DTV Table is being finalized to assist the Commission in providing stations with authorizations for post-transition facilities. Unlike the stations discussed in Section III.C, *supra*, the stations whose comments are discussed below are not requesting changes to DTV Table Appendix B to reflect authorized facilities to which they could have certified on FCC Form 381, consistent with the 0.1 percent interference standard, or to match constructed and operating facilities. In contrast, the stations discussed below are requesting changes that violate the filing freeze and do not meet the criteria for a change to certified facilities discussed in the *Seventh Further Notice*.

91. For one station, WLAE, New Orleans, LA, we hereby waive the filing freeze and make the changes requested to the DTV Table Appendix B adopted herein. For the reasons discussed below, we believe that a waiver of the freeze for this station is warranted. For the other stations discussed below, we decline to waive the filing freeze and decline to make the requested changes to Appendix B. In order to preserve the integrity of the licensing process and avoid giving certain stations an unfair advantage over others in seeking expanded facilities, we have granted waivers of the filing freeze only in very limited circumstances. In general, before we can consider stations' requests to modify and, in particular, expand their DTV facilities, we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date.²³⁰ Except for the unique circumstances present in the case of WLAE, we find that these stations have failed to demonstrate that a waiver of the freeze would advance their transition to DTV or that the station's circumstances warrant a waiver of the freeze for any other reason. A description of these stations' individual circumstances is provided below.

92. WLAE, New Orleans, LA. Educational Broadcasting Foundation, Inc. ("EBFI"), licensee of NCE station WLAE, channel 32 and permittee of WLAE-DT, channel 31, New Orleans, LA, received channel 31 for its TCD in the proposed DTV Table.²³¹ EBFI did not file a Form 381 for WLAE

²²⁶ Ex parte Comments of Tribune (dated July 23, 2007).

²²⁷ See *Eighth Further Notice, infra*, describing Tribune's proposed parameters, and requesting comment thereon.

²²⁸ See *August 2004 Filing Freeze PN, supra* note 11.

²²⁹ *Id.*

²³⁰ See *Third DTV Periodic Review NPRM* at ¶ 99. In the *Third DTV Periodic Review NPRM*, the Commission tentatively decided not to allow stations to apply for expanded facilities at this time. The Commission, however, proposed 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. The Commission invited comment on this proposal and also invited 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.

²³¹ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A.

and, accordingly, the station received replication facilities in the proposed post-transition DTV Table Appendix B.²³² At the time that certifications were due, WLAE-DT had a construction permit for maximized facilities.²³³ In August 2005, WLAE's facilities were destroyed by Hurricane Katrina. EBFI now asks to change the station's certification to its previously authorized maximized facilities.²³⁴

93. We will waive the freeze to allow WLAE-DT to apply for the maximized facilities specified in its initial construction permit.²³⁵ WLAE was one of the 41 stations expressly invited to request maximized facilities for which they would have been allowed to certify.²³⁶ As noted above, the WLAE-DT maximized facilities were authorized at the time that certifications were filed. Our actions herein will aid in the restoration of public television service to the city of New Orleans.

94. WBPG, Gulf Shores, AL. LIN of Alabama, L.L.C. ("LIN"), singleton licensee of analog station WBPG, channel 55, Gulf Shores, AL, received channel 25 for its TCD in the proposed DTV Table.²³⁷ The previous licensee of WBPG certified on FCC Form 381 that the station did not have a digital allotment and would operate post-transition based on its currently authorized analog facilities.²³⁸ In comments filed to this proceeding, LIN seeks to maximize its Appendix B facilities for WBPG by increasing its ERP, changing its antenna pattern, and changing transmitter location.²³⁹ The changes requested would violate the filing freeze. LIN does not have an existing authorization for these facilities and does not meet the criteria for a change to certified facilities discussed in the *Seventh Further Notice*.

95. WUOA, Tuscaloosa, AL. The Board of Trustees of the University of Alabama ("University of Alabama"), singleton licensee of analog station WUOA, channel 23, Tuscaloosa, AL, received channel 23 for its TCD in the proposed DTV Table.²⁴⁰ The previous licensee of WUOA, Channel 23, LLC, certified in its FCC Form 381 that it did not have a DTV channel allotment and intended to operate its post-transition station based on its currently authorized analog license.²⁴¹ In comments filed to this proceeding, the University of Alabama seeks to maximize the Appendix B facilities for WUOA by increasing the permitted ERP, changing the antenna pattern, and changing transmitter location.²⁴² The facilities requested would violate the filing freeze. The University of Alabama does not have an existing authorization for such facilities and the request does not meet the

²³² See *Seventh Further Notice*, 21 FCC Rcd at 12100, App. B.

²³³ See FCC File No. BPEDT-20000210AAF (Form 340 granted Aug. 14, 2000). This CP authorized 200 kW ERP and 274m antenna HAAT.

²³⁴ See Comments of Educational Broadcasting Foundation, Inc., filed Jan. 8, 2007.

²³⁵ A freeze waiver is needed because of the station's subsequent modification to reduce facilities.

²³⁶ See *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 28.

²³⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A.

²³⁸ See FCC File No. BCERCT-20041104BAW (WBPG's Form 381 filed Nov. 5, 2004, certifying to the station's license: FCC File No. BMLCT-20021009AAA). See also Comments of LIN of Alabama, L.L.C., filed Jan. 23, 2007, at 2.

²³⁹ See Comments of LIN of Alabama, L.L.C., filed Jan. 23, 2007.

²⁴⁰ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A.

²⁴¹ See FCC File No. BCERCT-20041105ADM (WUOA's Form 381 filed Nov. 8, 2004, certifying to the station's license: FCC File No. BLCT-20011109ACV). Channel 23, LLC subsequently assigned the license for WUOA to the University of Alabama.

²⁴² See Comments of University of Alabama, L.L.C., filed Jan. 23, 2007, at 1.

criteria for a change to certified facilities discussed in the *Seventh Further Notice*.²⁴³

96. KQSD, Lowry, SD. South Dakota Board of Directors for Educational Telecommunications (“SDBD”), licensee of NCE station KQSD-TV, channel *11 and KQSD-DT, channel *15, Lowry, SD, received its analog channel *11 for its TCD in the proposed DTV Table.²⁴⁴ In its FCC Form 381, SDBD certified to replication facilities and was given the allotted replication facilities in the proposed Appendix B.²⁴⁵ In its comments, SDBD requests a change in Appendix B for KQSD-DT to increase the HAAT and change the geographic coordinates.²⁴⁶ These changes violate the filing freeze. KQSD does not have a current authorization for these facilities and the request does not meet the criteria for a change to certified facilities discussed in the *Seventh Further Notice*.

97. KNVA, Austin, TX. 54 Broadcasting, Inc. (“54 Broadcasting”), licensee of station KNVA, channel 54, and KNVA-DT, channel 49, Austin, TX, received channel 49 for its TCD in the proposed DTV Table.²⁴⁷ In its FCC Form 381, 54 Broadcasting certified that KNVA would operate post-transition at maximized facilities as authorized by an existing construction permit.²⁴⁸ 54 Broadcasting’s comments request that its allotment be changed to allow operation post-transition at a lower ERP but using an omnidirectional instead of a directional antenna to provide more viewers with DTV service.²⁴⁹ These requested changes would violate the freeze. KNVA does not have a current authorization for these facilities and the request does not meet the criteria for a change to certified facilities discussed in the *Seventh Further Notice*.

98. KPXC, Denver, CO. Paxson Denver License, Inc. (“Paxson”), licensee of station KPXC-TV, channel 59, and permittee of KPXC-DT, channel 43, Denver, CO, received channel 43 for its TCD in the proposed DTV Table.²⁵⁰ In its FCC Form 381, Paxson certified to replication facilities, which are reflected in the proposed Appendix B parameters for KPXC-DT.²⁵¹ In its comments, Paxson seeks a change in KPXC’s certified facilities to conform to those it recently requested in a January 2007 construction permit application, including a site change.²⁵² Paxson states that the would-be tower owner

²⁴³ We note that University of Alabama filed an *ex parte* in June 2007 seeking a channel change to a low VHF channel. See University of Alabama *ex parte* (dated June 1, 2007) (“Supplement to Comments”). We decline to consider this late request in this Report and Order, but note that it, too, would violate the freeze. However, to the extent that WUOA would accept replication facilities on an alternative channel, we will consider the station’s late request in the *Eighth Further Notice*. See ¶ 148, *infra*.

²⁴⁴ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A.

²⁴⁵ See FCC File No. BCERET-20041101ADM (KQSD’s Form 381 filed Nov. 2, 2004, certifying to allotted replication facilities).

²⁴⁶ See Comments of South Dakota Board of Directors for Educational Telecommunications (“SDBD”), filed Jan. 10, 2007, at 3 (requesting change in antenna HAAT to 564m and change in coordinates to 451638 N and 995910 W).

²⁴⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

²⁴⁸ See FCC File No. BCERCT - 20041029AIJ (KNVA’s Form 381 filed Nov. 1, 2004, certifying post-transition operations pursuant to FCC File No. BPCDT-19991025ADB).

²⁴⁹ See Comments of 54 Broadcasting, Inc., filed Jan. 16, 2007.

²⁵⁰ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A; FCC File No. BCERCT - 20041103AIF (Form 381).

²⁵¹ See FCC File No. BCERCT-20041103AIF (KPXC’s FCC Form 381 filed Nov. 4, 2004, certifying to the station’s allotted replication facilities). See also *Seventh Further Notice*, 21 FCC Rcd at 12100, App. B.

²⁵² See Comments of Paxson Denver License, Inc. (“Paxson”), filed Jan. 5, 2007, at 1-2; FCC File No. BMPCDT-200701104ACH (Form 301 filed Jan. 4, 2007).

at the original KPXC-DT site received initial local zoning board approval from the Board of Commissioners of Jefferson County in 2003, which was affirmed by the Jefferson County District Court. In 2006, however, the decision was overturned by the Colorado Appeals Court which remanded the case to the Board of Commissioners.²⁵³ The Board of Commissioners subsequently sought certiorari from the Colorado Supreme Court, which has yet to make a decision.²⁵⁴ Paxson states it “has no expectation that it could construct the station on Mt. Morrison before the statutory termination of analog service” and it would thus be “more reasonable for the allotment to correspond to the parameters proposed in the new CP application.”²⁵⁵

99. Paxson’s request would result in a significant shift in the area served by KPXC, such that the station’s digital signal would not reach a large area that is currently served by this station, and would violate the filing freeze. We are concerned, however, about the zoning issue faced by this station and by Paxson’s stated expectation that it will not be able to construct its full DTV facility before the transition deadline on February 17, 2009. While we do not believe that shifting Paxson’s coverage as proposed is the proper resolution, and therefore deny Paxson’s request for a waiver of the freeze, we hereby invite Paxson to propose another site that would result in a less dramatic change to its current service area and population. We will consider such a request in the application process following adoption of the Report and Order in the Third DTV Periodic Review proceeding. We also urge Paxson to keep us informed concerning progress and events in the zoning case in Colorado.

100. WMHT, Schenectady, NY. WMHT Educational Telecommunications (“WMHT”), licensee of NCE station WMHT-TV, channel *17, and permittee of WMHT-DT, channel *34, Schenectady, NY, received channel *34 for its TCD in the proposed DTV Table.²⁵⁶ In its comments, WMHT supports the proposed allotment of channel *34 but requests a change of its community of license from Schenectady to Albany.²⁵⁷ WMHT argues that it should be allowed to change its community of license because its market is defined as a hyphenated market, Schenectady-Albany, in the NTSC Table of Allotments.²⁵⁸ In addition, WMHT argues that the station’s “Troy studio and Altamont tower locations permit it to serve the entire New York Capital District and beyond.”²⁵⁹ No other comments were filed related to this TCD.

101. We decline to make the allotment change requested by WMHT at this time. The Commission did not use hyphenated markets in the initial DTV Table²⁶⁰ and did not use hyphenated markets in the new DTV Table proposed in the *Seventh Further Notice*.²⁶¹ While the market may have been hyphenated in the NTSC Table, WMHT’s license lists the station’s market as Schenectady and not as a hyphenated market.²⁶² WMHT’s request to change its community of license is precluded by the

²⁵³ See Comments of Paxson at 2.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

²⁵⁶ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

²⁵⁷ See Comments of WMHT Educational Telecommunications (“WMHT”) (filed Jan. 24, 2007).

²⁵⁸ 47 C.F.R. § 73.606(b).

²⁵⁹ See Comments of WMHT at 3.

²⁶⁰ See 47 C.F.R. § 73.622(b).

²⁶¹ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

²⁶² See FCC File No. BLEDT-20040108ALV (filed Aug. 9, 2004).

Commission's filing freeze.²⁶³ We further conclude that WMHT has not demonstrated that a waiver of the freeze is warranted. WMHT does not suggest that the change in community of license is necessary to advance its digital transition process. Instead, WMHT states only that the proposed change "entails no change in the current operation," "will result in no diminution of service to Schenectady," and is intended for "future state funding, grant funding, and membership recruitment" because an Albany community license provides "greater recognition to the licensee's operations."²⁶⁴ We note that WMHT may seek a change in its community of license after the freeze is lifted, consistent with the Commission's rules for post-transition operations.²⁶⁵

4. Stations Not Eligible To Participate in the Channel Election Process

102. We deny the requests of pending applicants for a new television station to add new allotments to the post-transition DTV Table. Comments were filed by such pending applicants arguing that the Commission failed to include such allotments in the proposed DTV Table.²⁶⁶ In each case, the commenter has an application for a construction permit for a new television station on the requested new allotment pending at the Commission. In the *Second DTV Periodic Report and Order*, the Commission made it clear that only Commission licensees and permittees would be eligible to participate in the channel election process.²⁶⁷ Applicants for new stations and petitioners for new allotments were expressly excluded from making elections.²⁶⁸ In the *Seventh Further Notice*, we noted that a number of

²⁶³ See *August 2004 Filing Freeze PN*, 19 FCC Rcd at 14810 (stating that the Commission will not accept for filing petitions for rulemaking to change communities of license).

²⁶⁴ See Comments of WMHT at 4.

²⁶⁵ Requests to change a community of license require the filing of a petition for rulemaking. 47 C.F.R. §73.3572(a).

²⁶⁶ See Appendix D7. See also Comments of Northern California Public Television ("NCPTV"), filed Jan. 25, 2007, at 1 (relating to Weaverville, CA); Comments of Flathead Adventist Radio, Inc. ("FAR"), filed Jan. 25, 2007, at 1 (relating to Kalispell, MT); Comments of Oral Roberts University ("ORU"), filed Jan. 12, 2007, at 1 (relating to Tulsa, OK); Comments of Pappas Telecasting of America ("Pappas") and South Central Communications Corporation ("SCCC"), filed Jan. 19, 2007, at 1 (relating to Owensboro, KY); Joint Comments of Grant Educational Foundation, KVIE, Inc., LeSea Educational Broadcasting of Sacramento, Inc., Calvary Christian Inc., ESP Technology Community Broadcasters, Amazing Facts, Inc., Rising Tide of Sacramento, Family Stations, Inc., and La Dov Educational Outreach, Inc. filed Jan. 25, 2007, at 1 (relating to Sacramento, CA).

²⁶⁷ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307, ¶ 66. Contrary to the assertion of Flathead Adventist Radio, Inc. ("FAR") and Oral Roberts University, the prohibition in paragraph 66 applies to pending applicants for both NTSC and DTV stations. See Comments of FAR, filed Jan. 25, 2007; Comments of Oral Roberts University, filed Jan. 12, 2007.

²⁶⁸ *Id.* With respect to pending NTSC and DTV rulemaking proposals, the Commission stated: "...pending NTSC and DTV rulemaking proposals will be dismissed if found to be inconsistent with the current protection requirements. Each rulemaking request, including those associated with applications and those seeking new DTV allotments, falls into one of three groups: (1) pending petitions for rulemaking; (2) outstanding rulemakings (Notice of Proposed Rule Making issued); or (3) completed rulemakings that now have pending applications for a construction permit. We will attempt to protect allotments and proposed allotments in the second and third groups where we have already adopted a Notice of Proposed Rule Making or a Report and Order to establish a channel allotment. Protection of these rulemaking proceedings is consistent with the requirements placed on DTV applications by Section 73.623(h)(2) of the rules. However, we advise these petitioners that there may be a few cases where we must modify, restrict or eliminate their requested allotment in order to accommodate all eligible broadcasters with a post-transition DTV allotment. Remaining rulemaking petitions will be evaluated at the conclusion of the channel election and repacking process and may be accommodated with a post-transition DTV allotment or dismissed when we issue the NPRM proposing the new DTV Table of Allotments." *Id.* at 18307-8, ¶ 67.

pending applications for new television stations had been granted since the start of the channel election process, and we accommodated those permittees with TCDs in the proposed DTV Table.²⁶⁹ In addition, we announced a method by which we would assign TCDs to other new permittees whose pending applications for new television stations were granted before an Order finalizing the DTV Table is adopted.²⁷⁰ We also stated that, before the end of the transition, we would issue an NPRM to amend the DTV Table in order to allot a DTV channel for each remaining authorized facility that does not have an allotted DTV channel.²⁷¹ Thus, if any other pending applications are granted before the end of the transition, we will attempt to accommodate these stations with a DTV channel for post transition operation.²⁷²

5. Stations Awaiting International Coordination

103. In the *Seventh Further Notice*, the Commission noted that proposed allotments near the U.S.-Canadian and U.S.-Mexican borders require coordination with those countries.²⁷³ The Commission stated that our international negotiations are continuing in a cooperative manner and we indicated that we do not believe that these negotiations will delay stations' ability to construct their post-transition facilities.²⁷⁴ We continue to believe that international coordination of digital allotments will proceed in a manner that will allow affected stations to construct digital facilities by the transition deadline. In some cases, however, stations may need to proceed with constructing authorized facilities to the extent approved by Canada or Mexico, even if those facilities differ from the preferred facilities sought by the station, if international coordination issues arise that delay action on a pending application and those issues cannot be resolved in time to allow construction to be completed before the end of the transition.²⁷⁵

²⁶⁹ See *Seventh Further Notice*, 21 FCC Rcd at 12117-8, ¶ 50.

²⁷⁰ *Id.* at 12118, ¶ 53. See also ¶ 24, *supra*, and Sections III.F.7 and IV.A, *infra*. But see Reply Comments of Cohen, Dippell, and Everist, Feb. 26, 2007 (proposing that certain pre-transition allotments be included on the post-transition table even where no permit or license has been granted for those channels).

²⁷¹ *Seventh Further Notice*, 21 FCC Rcd at 12118-9, ¶ 54. With respect to applicants that receive a construction permit after the close of the comment period in this proceeding, we stated that those parties may either construct their analog facilities or apply to the Commission for permission to construct a digital facility on their analog channel. *Id.* We noted that new permittees could request authorization to continue DTV operations on their NTSC channels after the transition. *Id.*

²⁷² See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307-18308, ¶ 67.

²⁷³ See *Seventh Further Notice*, 21 FCC Rcd at 12117, ¶ 48. The Commission noted that, under international arrangements with Canada and Mexico, the Commission must obtain concurrence by the Canadian government for any proposed allotments located within 400 kilometers of the U.S.-Canadian border, and by the Mexican government for any proposed allotments located within 275 kilometers of the U.S.-Mexican border. See "Letter of Understanding Between the Federal Communications Commission of the United States of America and Industry Canada Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border," signed Sept. 22, 2000 and amended Oct. 7, 2004 ("Canadian LOU"), and "Memorandum of Understanding Between the Federal Communications Commission of the United States of America and the Secretaria de Comunicaciones y Transportes of the United Mexican States Related to the Use of the 54-72 MHz, 76-88 MHz, 174-216 MHz and 470-806 MHz Bands for the Digital Television Broadcasting Service Along the Common Border," signed Apr. 2, 1997.

²⁷⁴ See *Seventh Further Notice*, 21 FCC Rcd at 12117, ¶ 48.

²⁷⁵ In the *Third DTV Periodic Review NPRM*, we proposed to require all full-power television stations to file a form with the Commission detailing their current transition status, additional steps necessary in order to be prepared for digital-only operation on Feb. 17, 2009, and a timeline for making those steps. See *Third DTV Periodic Review NPRM* at ¶ 35. The proposed form, if adopted, would permit stations to indicate that they require international government clearance of a proposed facility. *Id.* at Appendix B.

104. We note that all stations in the U.S.-Canadian or U.S.-Mexican border area with a TCD on a channel that is not their current digital channel will have to file an application for the TCD channel following adoption of the Report and Order in the Third DTV Periodic Review proceeding. A list of these stations is attached hereto in Appendix D4. The Commission is working to coordinate all Appendix B facilities as a group so that individual applications do not need to be coordinated. If there are circumstances where this is not possible, the Commission will work with these stations to expedite international coordination of their applications.²⁷⁶

105. In the *Seventh Further Notice*, the Commission identified two allotments for which it had received recent objections from Industry Canada: WBSF-DT, (TCD on channel 46), Bay City, MI²⁷⁷ and KAYU-DT, (TCD on channel 28), Spokane, WA.²⁷⁸ The Commission included the TCDs for these channels in the proposed DTV Table, but sought comment from these licensees concerning whether they are willing to reduce coverage on the TCD in order to address Canadian concerns.²⁷⁹ The Commission also noted that these licensees could request an alternative post-transition DTV allotment.²⁸⁰ Both of these stations have filed comments indicating their belief that the current proposed TCD does not in fact cause impermissible interference, and have submitted engineering statements in support of their positions.²⁸¹ These stations request that the Commission continue to negotiate with Industry Canada to permit them to operate on the TCD proposed in the *Seventh Further Notice*.²⁸² We are adopting our proposed allotments for these stations, subject to our continuing negotiations with Canada which relate to these allotments as well as all other new DTV allotments in the border area.²⁸³

6. Resolution of TCDs Pending After Round Three

106. We adopt our tentative conclusions in the *Seventh Further Notice* with respect to the resolution of four allotments that remained outstanding after TCDs were announced for the third round of channel elections.²⁸⁴ The Commission noted that these TCDs represented challenging and difficult cases in crowded markets necessitating waiver of the freeze²⁸⁵ or the 0.1 percent interference standard²⁸⁶ in order to find appropriate channels for post-transition operation that would ensure the best possible service

²⁷⁶ ION Media Networks filed *ex parte* comments concerning ten of their stations that need international coordination. ION Media Networks *ex parte* (dated June 28, 2007). These stations are included with the other stations in the border areas that the Commission and the State Department are working to coordinate with Canadian and Mexican authorities.

²⁷⁷ Barrington Bay City License LLC ("Barrington"), licensee of WBSF(TV), channel 46, Bay City, MI, received channel 46 for its TCD in the proposed DTV Table. See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

²⁷⁸ Mountain Licenses, LP ("MLLP"), licensee of KAYU-TV, channel 28 and KAYU-DT, channel 30, Spokane, WA, received channel 28 for its TCD in the proposed DTV Table. See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

²⁷⁹ *Id.* at 12117, ¶ 49.

²⁸⁰ *Id.*

²⁸¹ See Comments of Mountain Licenses, LP, filed Jan. 25, 2007, at 3; Comments of Barrington Bay City License LLC, filed Jan. 25, 2007, at 3-4.

²⁸² *Id.*

²⁸³ It is not necessary for MLLP to make a contingent election for DTV channel 30, as it requested, at this time. See Comments of Mountain Licenses at 3.

²⁸⁴ See *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 30; see also *Third Round TCD PN*, 21 FCC Rcd at 9573.

²⁸⁵ See *supra* note 11.

²⁸⁶ See *supra* note 39.

to the public and promote overall spectrum efficiency.²⁸⁷ We received comments from some of the parties involved in these cases and address each of these proposed allotments below.

107. WABC, New York, NY. American Broadcasting Companies, Inc. (“ABC”), the licensee of station WABC-TV, channel 7 and WABC-DT, channel 45, New York, NY,²⁸⁸ was granted a waiver of the 0.1 percent interference standard in the *Seventh Further Notice* and received channel 7 for its TCD in the proposed DTV Table.²⁸⁹ ABC and The New Jersey Public Broadcasting Authority (“NJPBA”), the permittee of WNJB-DT, channel *8, New Brunswick, NJ, filed comments related to this TCD.²⁹⁰ During the channel election process, NJPBA initially objected to the grant of a waiver for WABC and later sought a waiver of the freeze to move its digital operations on channel 8 to New York City.²⁹¹ These arguments were fully considered by the Commission in deciding to grant ABC’s request for waiver of the 0.1 percent interference standard, required in light of the predicted 2.8 percent new interference to WNJB.²⁹² The Commission concluded that the loss of service for WABC would affect current viewers of WABC, while the predicted loss of service for WNJB would affect areas outside of its current service area and primarily outside of the state of New Jersey.²⁹³ The Commission noted that WABC has been a pioneer of digital service, having built full-power digital operations in 2001 and re-built them first at Four Times Square and then on the Empire State Building, with a back-up facility at Alpine Tower in New Jersey, after the September 11, 2001 loss of the World Trade Center.²⁹⁴ In addition, the Commission noted that allotting channel 7 to WABC would eliminate any interference concerns between WABC and both WEDH-TV, an NCE station in Hartford, CT (analog channel *24, post-transition digital channel *45),²⁹⁵ and WOLF-TV in Hazleton, PA (analog channel 56, post-transition digital channel 45).²⁹⁶

108. Because ABC sought the waiver during the channel election process, both parties had an opportunity to present their arguments prior to the adoption of the *Seventh Further Notice*. We find that NJPBA has not raised any new arguments that would cause us to reverse our grant of the interference standard waiver to ABC. We note that NJPBA contests the Commission’s statement in the *Seventh Further Notice* that WNJB had not built its digital facility.²⁹⁷ In fact, WNJB has built only smaller DTV

²⁸⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12110, ¶ 30.

²⁸⁸ WABC is the flagship station of the ABC Television Network and is the sole ABC network station serving the New York market. ABC was an early adopter of DTV technology, commencing operation with its full, authorized DTV facility at the World Trade Center in 2001. File No. BLCDDT-20010710ABU. The Walt Disney Company (“Disney”) is the ultimate parent company of ABC.

²⁸⁹ See *Seventh Further Notice*, 21 FCC Rcd at 12114, ¶ 36.

²⁹⁰ See generally Comments of Disney, filed Jan. 25, 2007; Comments of The New Jersey Public Broadcasting Association, filed Jan. 25, 2007 (“Comments of NJPBA”); Reply Comments of Disney, filed Feb. 26, 2007.

²⁹¹ See Comments of The New Jersey Public Broadcasting Association, MB 03-15, filed Sept. 12, 2005; See also Comments of NJPBA.

²⁹² See *Seventh Further Notice*, 21 FCC Rcd at 12111-12113, ¶¶ 31-36.

²⁹³ *Id.* The Commission also found that WABC’s continued use of channel 7 would benefit WABC’s viewers, many of whom have relied on VHF antennas for decades.

²⁹⁴ *Id.* (noting that the Commission, in the *Second DTV Periodic Report and Order*, indicated that it would consider a number of factors, including “whether the station was an early adopter of DTV technology,” when deciding among third round election preferences). *Id.* at n.81.

²⁹⁵ As discussed in ¶ 110, *infra*, we adopt the allotment of channel *45 to WEDH-TV made in the proposed DTV Table.

²⁹⁶ See *Seventh Further Notice*, 21 FCC Rcd at 12111-12113, ¶¶ 31-36.

²⁹⁷ Comments of NJPBA at 10.

facilities pursuant to STA and has still not constructed its full, authorized DTV facility,²⁹⁸ in contrast to WABC's early construction and rebuilding of full DTV facilities after the September 11, 2001 destruction of their facilities.

109. NJPBA also claims that, based on an agreement between the parties, it is entitled to a waiver of the Commission's current freeze on modification applications and thereby allowed to co-locate its transmitting facilities at Four Times Square in New York City.²⁹⁹ As noted by ABC, NJPBA did not file its application and waiver request to modify WNJB-DT's facilities until after release of the *Seventh Further Notice*.³⁰⁰ Moreover, NJPBA offers no showing that it could not achieve its transition absent a waiver of the freeze. Thus, we disagree with NJPBA that allotment of channel 7 to ABC necessitates, or entitles NJPBA to, a waiver of the freeze. The Media Bureau will consider WNJB's application and waiver request in the normal course of processing. As noted in the *Seventh Further Notice*, consideration of NJPBA's application is best left until after the filing freeze is lifted.³⁰¹ Accordingly, we allot channel 7 to WABC.³⁰²

110. WEDH, Hartford, CT and WEDN, Norwich, CT. Connecticut Public Broadcasting, Inc. ("CPBI"), the licensee of NCE stations WEDH, channel *24, permittee of WEDH-DT, channel *32, Hartford, CT and WEDN, channel *53, permittee of WEDN-DT, channel *9, Norwich, CT, received a TCD of channel *45 for WEDH in Hartford and a TCD of channel *9 for WEDN in Norwich in the proposed DTV Table.³⁰³ In proposing these allotments, the Commission found it necessary to supersede a pending swap application and rulemaking pertaining to CPBI's pre-transition facilities.³⁰⁴ CPBI filed comments in favor of these proposed allotments.³⁰⁵ No comments were filed opposing these proposed allotments.³⁰⁶ Accordingly, we allot channel *45 to WEDH, Hartford, CT and channel *9 to WEDN,

²⁹⁸ See FCC File No. BEDSTA-20060628ABA (filed June 28, 2006; requesting extension of the STA for operation of station facilities at less than specified in the permittee's CP, in particular asserting that WNJB is a satellite station of flagship NCE WNJT-DT, Trenton; and WNJB's construction permit, FCC File No. BMPEDT-20000425AAM (granted May 14, 2001); see also Reply Comments of Disney at 9.

²⁹⁹ In *ex parte* exchanges before release of the *Seventh Further Notice*, NJPBA stated that it would not object to WABC operating on channel 7 if the freeze is waived so that WNJB-DT could apply to modify its facilities to co-locate at Four Times Square and ABC stated that it would not object to WNJB-DT's move to Four Times Square if there was favorable action on its election of channel 7 and interference standard waiver request. See *Seventh Further Notice*, 21 FCC Rcd at 12112, ¶ 34 (citing to WABC-TV *ex parte* in MB Docket No. 03-15 (dated May 12, 2006) and NJPBA *ex parte* in MB Docket No. 03-15 (dated June 2, 2006)).

³⁰⁰ Reply Comments of Disney at 6. See FCC File No. BMPEDT 20070125ACC (WNJB's Waiver Request at 8 dated Jan. 26, 2007).

³⁰¹ If that application is granted, WNJB's virtual collocation with WABC-DT and other New York market stations would be likely to reduce or eliminate the predicted interference to its digital operations on channel 8.

³⁰² See Appendices A and Appendix B, *infra*.

³⁰³ See *Seventh Further Notice*, 21 FCC Rcd at 12112, ¶ 36.

³⁰⁴ For purposes of the channel election process, the Commission stated that it would protect channels proposed in outstanding rulemakings where a Notice of Proposed Rulemaking had been issued, and that we would permit licensees to elect a channel if an NPRM had been issued with respect to a channel change. The Commission did not specifically address how DTV channels in a pending swap application would be treated. *Seventh Further Notice*, 21 FCC Rcd at 12113, ¶ 38 (citing the *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18307-08, ¶ 67 and 18279).

³⁰⁵ See Comments of CPBI (filed Jan. 25, 2007); Reply Comments of CPBI (filed Feb. 26, 2007).

³⁰⁶ Entravision Holdings, LLC and the Scripps-Howard Broadcasting Company previously filed objections to the pre-transition use of Channel *45 at Hartford and Channel *9 at Norwich, respectively; however, neither party (continued....)

Norwich, CT.³⁰⁷

111. Although CPBI supported the post-transition allotments, it objected to the Commission's decision to supersede the swap application and channel substitution rulemaking proceedings associated with the changes CPBI requested for its Hartford and Norwich stations.³⁰⁸ We cannot reinstate these applications without vitiating the basis for the post-transition channel allotments for WEDH and WEDN.³⁰⁹ We recognize, however, that CPBI wants to use their new allotments for pre-transition DTV operations. In that regard, we note that the *Third DTV Periodic Review NPRM* seeks comment on a proposal to allow stations that are moving to new post-transition channels (such as WEDH and WEDN) to begin operating on their new channels before the transition date, under certain conditions.³¹⁰ If such a proposal is adopted, CPBI would be able to apply for pre-transition DTV operations on their new allotments.

112. KTFK, Stockton, CA. Telefutera Sacramento, LLC ("Telefutera"), the licensee of station KTFK-TV, channel 64, and KTFK-DT, channel 62, Stockton, CA, was granted a waiver of the filing freeze in the *Seventh Further Notice* to permit it to modify KTFK's certified facilities and receive channel 26 for its TCD in the proposed DTV Table.³¹¹ No comments were filed opposing this proposed allotment. Accordingly, we adopt this TCD and allot channel 26 to KTFK, Stockton, CA.³¹²

113. KVIE, Sacramento, CA. KVIE, Inc., the licensee of NCE station KVIE, channel *6 and KVIE-DT, channel *53, Sacramento, CA, was granted a waiver of the 0.1 percent interference standard³¹³ and received channel *9 for its TCD in the proposed DTV Table.³¹⁴ KVIE, Inc. filed comments in favor of the proposed allotment.³¹⁵ No comments were filed opposing this proposed allotment. Accordingly, we adopt this TCD and allot channel *9 to KVIE(TV), Sacramento, CA.³¹⁶

7. TCDs for New Permittees Granted During Proceeding

114. We adopt the TCDs announced for the six new permittees in the *New Permittees Public Notice*.³¹⁷ As discussed in Paragraph 24, *supra*, six pending applications were granted during this (Continued from previous page) _____ addressed the Hartford and Norwich allotments in their comments to this proceeding. See Reply Comments of CPBI at 2.

³⁰⁷ See Appendices A and B, *infra*.

³⁰⁸ Comments of CPBI at 3. See also FCC File Nos. BMPEDT-20031008AAT and BPEDT-19990113KG.

³⁰⁹ See *Seventh Further Notice*, 21 FCC Rcd at 12115, ¶ 40.

³¹⁰ See *Third DTV Periodic Review NPRM* at ¶ 88. For example, the Commission proposes to allow early transition, provided such operations would not cause impermissible interference to another station.

³¹¹ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

³¹² See Appendices A and B, *infra*.

³¹³ The proposed allotment was predicted to cause 1.3 percent new interference to NCE station KIXE-TV, channel *9, Redding, CA; however, the Commission concluded that this was outweighed by the fact that more than 4 million people residing within the KVIE service area were predicted to receive a superior DTV signal from KVIE on channel *9 than on its current low-VHF channel *6.

³¹⁴ See *Seventh Further Notice*, 21 FCC Rcd at 12112, ¶ 36.

³¹⁵ See Comments of KVIE, Inc., filed Jan. 25, 2007.

³¹⁶ See Appendices A and B, *infra*.

³¹⁷ See *New Permittees Public Notice*, *supra* note 50. The Media Bureau announced TCDs for six permittees that attained permittee status during the pendency of the rulemaking proceeding and invited public comment on these changes to the proposed post-transition DTV Table.

rulemaking, and proposed TCDs for the new permittees were published for comment in the *New Permittees Public Notice*. There were no comments, or only favorable comments, regarding the TCDs of five of the permittees, and they are therefore included in this *Report and Order's* modified DTV Table and Appendix B.³¹⁸ An objection was raised to the TCD of one of the new permittees, and is discussed below.

115. KCWV, Duluth, MN. George S. Flinn, III, new permittee of station KCWV-TV, channel 27, Duluth, MN, received channel 27 for KCWV's TCD in the Public Notice. The State of Wisconsin – Educational Communications Board (“ECB”) filed comments in opposition.³¹⁹ ECB is the licensee of NCE station WHWC-DT, Channel *27, Menomonie, WI, which received channel 27 for its TCD in the proposed DTV Table.³²⁰ ECB states its belief that the proposed allotment of channel 27 to Duluth “would cause interference to WHWC-DT for 10,995 persons, or 1.290 percent of its noise limited service area,” including “new interference from Duluth channel 27 of 0.345 percent of the population served.”³²¹ ECB asks the Commission to instead assign channel 47 to KCWV, arguing that such an allotment “would cause considerably less interference.”³²² Mr. Flinn did not file a reply.

116. Prior to the issuance of the *New Permittees Public Notice*, the TCDs of all new permittees were analyzed using computer software techniques that have been validated through extensive testing and comparison of results with similar software used by other parties participating in this proceeding. At that time, the Commission's interference analysis indicated that no station would receive impermissible interference from KCWV's TCD. We have considered the analysis offered in ECB's pleadings, and we find that they do not match our findings. We are confident that the results of our interference analysis are correct and accurately reflect the service areas to be provided with the facilities specified and the interference conditions that are expected to be present among stations.³²³ We therefore include KCWV in the modified DTV Table and Appendix B.³²⁴

8. Stations to be Deleted from the DTV Table

117. Two stations, Delta College, licensee of NCE station WDCP-TV, University Center, MI, analog channel *19 and permittee of DTV channel *18, and Rockfleet Broadcasting II, LLC, (“Rockfleet”) licensee of station WFUP, channel 45, and permittee of WFUP-DT, channel 59, Vanderbilt, MI (satellite station of WFUX-TV, Cadillac, MI), have notified us that they do not intend to construct DTV facilities and will cease operation after February 17, 2009. Delta College filed a comment and

³¹⁸ Prior to the issuance of the *New Permittees Public Notice*, Entravision Holdings, LLC (“Entravision”) filed a comment noting that its newly-issued permit in Derby, KS made it eligible for participation in the channel election process, and requesting that the station at Derby be included in the new DTV Table. *See* Comments of Entravision, filed Dec. 28, 2006. Derby was included in the *New Permittees Public Notice*, and no comments were filed in opposition to its inclusion. We grant Entravision's request for the inclusion of Derby in the DTV Table. *See also Eighth Further Notice* at ¶ 140, *infra* (proposing the inclusion in the Table of a more recently granted Entravision permittee). No comments were filed regarding the other four new permittees.

³¹⁹ *See* Comments of State of Wisconsin – Educational Communications Board (“ECB”), filed Feb. 9, 2007. ECB's comments were timely filed within the comment cycle established by the *New Permittees Public Notice*: February 9, 2007 for comments and February 26, 2007 for reply comments. *Id.* Comments filed in response to this public notice were incorporated into the record in this proceeding.

³²⁰ *See Seventh Further Notice*, 21 FCC Rcd at 12123 App. A.

³²¹ *See* Comments of ECB at 2 and n.1.

³²² *Id.*

³²³ *See* ¶¶ 18-20, *supra*, for description of methodology used.

³²⁴ *See* Appendices A and B, *infra*.

requested that we delete the TCD for WDCP on channel 18 from the Table of Allotments.³²⁵

118. Rockfleet notified us during the first round of the channel elections that it does not intend to construct a post-transition DTV facility for WFUP.³²⁶ Rockfleet explained that Vanderbilt will be served by the digital signal of WFUX-DT. Consequently, we did not assign a TCD for this station. Rockfleet will surrender its license for cancellation after February 17, 2009.³²⁷

9. Other Requests

119. WSWP, Grandview, WV. We grant the request of West Virginia Educational Broadcasting Authority ("WVEBA"), licensee of NCE station WSWP-TV, channel *9 and permittee of WSWP-DT, channel *53, Grandview, WV, which received channel *10 for its TCD in the proposed DTV Table, for a waiver of the 0.1 percent interference standard up to 2.0 percent and to the extent that it is consistent with the filing freeze.³²⁸ WVEBA requests a waiver of the 0.1 percent interference standard, claiming that WSWP-DT cannot replicate the station's existing analog service area on the proposed allotment for channel *10.³²⁹ Davis Television Clarksburg, LLC ("DTC"), permittee of WVFY-DT, channel 10, Clarksburg, WV, and TCD on channel 10 in the proposed DTV Table,³³⁰ filed reply comments opposing WVEBA's waiver request.³³¹

120. In the first channel election round, WVEBA elected its analog channel *9; however, this election was determined to cause more than 2.0 percent new interference,³³² and, thus, disapproved.³³³ In the second round, WVEBA elected channel 11, but this election was also rejected because it was determined to cause more than 0.1 percent new interference.³³⁴ In the third round, WVEBA elected

³²⁵ WDCP Comment at 2-3.

³²⁶ See letter filed in lieu of Form 381 by Rockfleet, dated Nov. 5, 2004.

³²⁷ *Id.*

³²⁸ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A.

³²⁹ See Comments of The West Virginia Educational Broadcasting Authority ("WVEBA"), filed Jan. 25, 2007. WVEBA also submitted an *ex parte* filing on April 26, 2007 in the docket. WVEBA previously filed a "Request for Partial Reconsideration" of its TCD after issuance of the *Third Round TCD PN*. See WVEBA *ex parte* (filed Apr. 26, 2007 and May 10, 2007); WVEBA "Request for Partial Reconsideration of Third Round DTV Tentative Channel Designation" filed Sept. 28, 2006 ("WVEBA's Partial Recon"). See also Public Notice, "Third Round of the DTV Channel Election Process: Tentative Channel Designations," 21 FCC Rcd 9572 (MB 2006) ("*Third Round TCD PN*").

³³⁰ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A. WVFY(TV)'s current NTSC channel is channel 46, Clarksburg, WV. 47 C.F.R. § 73.606(b).

³³¹ See Reply Comments of Davis Television Clarksburg ("DTC"), filed Feb. 26, 2007. DTC also filed supplemental comments in response to WVEBA's *ex parte* Engineering statement on May 10, 2007.

³³² The analysis indicated 2.8 percent new interference to another station (*i.e.*, WVNS, Lewisburg, WV, analog ch 59, TCD on ch 8) (service loss to 13,763 people). As previously noted in *supra* ¶ 20, the Commission allowed a station with an out-of-core DTV channel to exceed the 0.1 percent interference standard to up to 2.0 percent, if doing so would allow such a station to elect its in-core analog channel. If such an election was predicted to cause more than 2.0 percent new interference to a protected DTV station, then the station was made subject to the normal conflict-resolution procedures.

³³³ See FCC File No. BFREET-20050209AKA (disapproving WSWP's election in Form 382).

³³⁴ See FCC File No. BSREET-20051031AEV (disapproving WSWP's election in Form 384). The analysis indicated 0.5 percent new interference to another station (*i.e.*, WJHL) (service loss to 6,876 people).

channel 10.³³⁵ This election was also determined to cause more than 0.1 percent new interference.³³⁶ Consequently, WVEBA received channel *10 as its TCD, but at reduced facilities in order to bring the station into compliance with the 0.1 percent interference standard.³³⁷ Specifically, WSWP's ERP was reduced to 2.5 kW.³³⁸ In response to the *Third Round TCD PN*, WVEBA filed a "Request for Partial Reconsideration," supporting its proposed channel allotment, but requesting to operate at 10 kW in order to "adequately serve the station's current audience."³³⁹

121. The *Seventh Further Notice* proposed channel *10 as WSWP's TCD at 2.5 kW ERP in the post-transition DTV Table.³⁴⁰ WVEBA filed comments in response to the *Seventh Further Notice* and now asks for 20 kW ERP.³⁴¹ WVEBA contends that this power level is necessary for the station to replicate its analog coverage.³⁴²

122. WVEBA certified to its replication facilities on Form 381.³⁴³ WVEBA claims that its current analog station serves 906,075 people and that its proposed operation of its digital facility on channel 10 at 20 kW ERP would serve 900,098 people.³⁴⁴ WVEBA further asserts that its proposal to operate WSWP at 20 kW ERP will result in new interference of 0.7 percent to WVFX-DT, which it acknowledges exceeds the 0.1 percent interference standard,³⁴⁵ but claims is necessary "to meet its certification to replicate its NTSC coverage."³⁴⁶ DTC replies that WVEBA overstates WSWP's present analog population coverage and understates the interference to WVFX-DT, claiming that WVEBA's proposal would cause more than 1.4 percent new interference.³⁴⁷

123. We agree with DTC that WVEBA overstates WSWP's present analog population coverage, but we also concur with WVEBA that WSWP-DT's operation at the proposed 2.5 kW ERP would not fully replicate its existing analog coverage.³⁴⁸ We also find, however, that operation of channel *10 at 20 kW ERP would exceed the station's certified replication facilities and violate the current freeze

³³⁵ See FCC File No. BTREET-20060526AAZ (WSWP's Form 386).

³³⁶ WVEBA states that it requested to operate channel *10 using 10 kW. See *WVEBA's Partial Recon* at 1.

³³⁷ See *Third Round TCD PN*, 21 FCC Rcd at 9573, n.5.

³³⁸ *Id.*

³³⁹ See *WVEBA's Partial Recon* at 2.

³⁴⁰ WVEBA's petition for reconsideration was premature because the issuance of a TCD was not a final Commission action subject to reconsideration. 47 C.F.R. § 1.106(a)(1). As noted in the *Seventh Further Notice*, final channel allotments can be established only through a rulemaking proceeding. *Seventh Further Notice*, 21 FCC Rcd at 12103, ¶ 5. We, therefore, dismiss WVEBA's petition as premature and will consider the pleading as an informal comment to the instant proceeding.

³⁴¹ See Comments of WVEBA at 1.

³⁴² *Id.*

³⁴³ See FCC File No. BCERET-20041105AFL (WSWP's Form 381).

³⁴⁴ See Comments of WVEBA at 3-4.

³⁴⁵ See *id.* at 5; WVEBA *ex parte* (dated Apr. 26, 2007) at 1, and "Supplemental Engineering Technical Statement."

³⁴⁶ See Comments of WVEBA at 1.

³⁴⁷ See Reply Comments of Davis Television Clarksburg, filed Feb. 26, 2007, at 2-4.

³⁴⁸ WSWP's operation at 2.5 kW ERP on its TCD of channel *10 is predicted to serve a population of approximately 435,000 people, which is less than those that would be served by the station's replication facilities.

on expansion of a noise limited service contour beyond its certified replication contour.³⁴⁹ To resolve the conflict, we have analyzed WSWP's channel facilities using a modified replication approach to derive the proposed facilities from the analog Grade B contour on which the initial DTV Table facilities were based and determined that WSWP could replicate its analog coverage at 18.6 kW.³⁵⁰ Operation of WSWP-DT at 18.6 kW, however, would cause 1.73 percent new interference to WVFY-DT, which exceeds the 0.1 percent interference standard. Therefore, we must consider WVEBA's waiver request.

124. In evaluating WVEBA's request for a waiver of the 0.1 percent interference standard, we find that although WVEBA's circumstances are dissimilar to two stations that were granted waivers in the *Seventh Further Notice*,³⁵¹ WVEBA does offer important public interest bases that merit a waiver in this case. First, WVEBA had an out-of-core DTV channel, which would have warranted a 2.0 percent interference allowance to elect its analog channel *9 in the first round. However, use of channel 9 would have exceeded the 2.0 percent standard. Second, although there are UHF channels available in its market, WVEBA has argued persuasively that a UHF channel would not replicate the station's analog coverage due to the mountainous terrain in WSWP's service area and would require this educational station to incur "significant increased capital and operational costs."³⁵² Third, NCE station WSWP offers unique educational programming to an economically disadvantaged community that relies on over-the-air broadcasting for their TV service.³⁵³

125. Our analysis indicates that WSWP's operation on channel 10 with full replication facilities would cause less total interference than would its operation on channel 9, 11 or any other high VHF channel. We conclude that WSWP would have been eligible for up to 2.0 percent new interference using its own analog channel 9 for post-transition DTV operation.³⁵⁴ Operation on channel 9 would have exceeded 2.0 percent new interference, while operation on channel 10 at 18.6 kW does not. Therefore, we grant WVEBA's request for waiver of the 0.1 percent interference standard and establish its Appendix B facilities at 18.6 kW ERP on channel *10.³⁵⁵

126. KTAZ, Phoenix, AZ. We grant the request of NBC Telemundo License, Co. ("NBC Telemundo"), licensee of singleton station KTAZ, channel 39, Phoenix, AZ, which received channel 39 for its TCD in the proposed DTV Table,³⁵⁶ to change station KTAZ's post-transition DTV Table Appendix B facilities. In 2005, the Commission approved a modification to the analog Table of Allotments sought by NBC Telemundo and Community Television Educators, Inc. ("CTE") which substituted Channel 39 for noncommercial reserved Channel 39 (*39) in Phoenix, substituted noncommercial reserved Channel 11 (*11) for Channel 11 in Holbrook, Arizona, and authorized NBC Telemundo to operate on Channel 39 in Phoenix and CTE to operate on Channel *11 in Holbrook.³⁵⁷ The

³⁴⁹ See discussion of freeze, *supra* note 11.

³⁵⁰ See discussion of requests for modified coverage area, *supra* Section III.D.

³⁵¹ See Comments of WVEBA at 6.

³⁵² Comments of WVEBA at 2 ("the UHF signal characteristics over the relevant terrain (even at maximum UHF power of 1000 kW) cannot replicate the current channel 9 NTSC coverage").

³⁵³ See Comments of WVEBA at 4.

³⁵⁴ See *supra* ¶ 20 and note 41.

³⁵⁵ See *infra* Appendix B.

³⁵⁶ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

³⁵⁷ See Comments of NBC Telemundo License Co., filed Jan. 25, 2007, at 3. See also *Memorandum Opinion and Order*, Amendment of the Television Table of Allotments to Delete Noncommercial Reservation of Channel *39, 620-626 MHz, Phoenix, Arizona, and to Add Noncommercial Reservation on Channel 11, 198-204 MHz, Holbrook, Arizona, 20 FCC Rcd 16854 (2005).

Commission subsequently granted minor modification applications filed by the parties to implement the channel substitutions.³⁵⁸ The proposed post-transition DTV Table Appendix B lists the Facility ID for the former Channel *39 facility for KTAZ, rather than the Facility ID for the new Channel 39 facility. NBC Telemundo requests that Appendix B be revised to reflect the correct Facility ID for the new Channel 39 facility.³⁵⁹

127. In addition, NBC Telemundo states that the technical facilities specified in Appendix B for Channel 39 are no longer accurate. KTAZ does not have a paired digital channel. The technical facilities specified in Appendix B for Channel 39 reflect the digital parameters applied for by CTE prior to the channel substitutions. NBC Telemundo states that it recently relocated the Channel 39 analog facility to a new tower.

128. We have revised DTV Table Appendix B as adopted herein to reflect operation of a digital station on Channel 39 in Phoenix with parameters reflected in the analog authorization approved by the Commission for KTAZ.³⁶⁰ In addition, we have revised Appendix B to reflect the correct Facility ID for both KTAZ and Channel *11 in Holbrook.

129. WNYA, Pittsfield, MA. In response to comments filed opposing the proposed post-transition facilities of WNYA, Pittsfield, MA, we will change station WNYA's post-transition DTV Table Appendix B facilities. Venture Technologies Group, LLC, licensee of singleton station WNYA, channel 51, Pittsfield, MA, received channel 13 for its TCD in the proposed post-transition DTV Table.³⁶¹ WNYT-TV, LLC ("WNYT"), licensee of station WNYT, channel 13, and WNYT-DT, channel 12, Albany, NY, which received channel 12 for its TCD in the proposed post-transition DTV Table,³⁶² objects to the facilities proposed for WNYA in the post-transition DTV Table Appendix B.³⁶³ WNYA did not respond to the WNYT comments.

130. The proposed post-transition DTV Table Appendix B specifies a site change for WNYA which would move that station's DTV facility from the WNYA analog site in Pittsfield to WNYT's licensed site near Albany. WNYA specified this site change in its second round conflict decision form (FCC Form 385) to resolve an interference conflict of 3.7 percent with WNYT, which resulted from WNYA's election of channel 13.³⁶⁴ In its comments, WNYT claims that the ERP of 28kW that is proposed for WNYA in Appendix B, is substantially in excess of that permitted for a DTV station on channel 13 in Zone 1.³⁶⁵ WNYT requests that the Commission revise Appendix B for WNYA to specify the Pittsfield site for that station with parameters that would permit WNYA to comply with its FCC Form 381 certification.

131. WNYT is correct that the power specified in the proposed Appendix B for WNYA exceeds the maximum allowed pursuant to 73.622(f)(7)(ii). At an HAAT of 396 meters, the maximum ERP for a channel 13, Zone 1 DTV station is 12.6 kW. However, WNYT's request that we change WNYA's Appendix B facilities to specify the Pittsfield transmitter site would not address the interference conflict found in round 2 of the channel election process.

³⁵⁸ See FCC File No. BLCT-20060809ABN; BMPCT-20060417AGD.

³⁵⁹ See Comments of NBC Telemundo, at 3.

³⁶⁰ *Id.*

³⁶¹ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

³⁶² See *id.*

³⁶³ See Comments of WNYT-TV, LLC, filed Jan. 25, 2007.

³⁶⁴ See FCC File No. BSRCT-20060317ADH (WNYA's Form 385).

³⁶⁵ *Id.* at 4.

132. We conclude that WNYA can serve most of its certified coverage area from the site near Albany, at reduced power. We have determined that WNYA can provide an acceptable predicted field strength over Pittsfield, Massachusetts, its city of license, based on its FCC Form 385 facilities with its maximum ERP reduced from the proposed 28 kW to 12.6 kW. In addition, at this reduced power, WNYA's operation on channel 13 will cause any additional interference. Therefore, we are changing Appendix B to specify an ERP for WNYA of 12.6 kW.

133. WLFL, Raleigh, NC. We deny the request of Sinclair Broadcast Group, Inc. ("Sinclair"), the parent entity of the licensee³⁶⁶ of station WLFL, channel 22 and permittee of WLFL-DT, channel 57, Raleigh, NC, which received channel 27 for its TCD in the proposed DTV Table.³⁶⁷ We conclude that it is not necessary to increase the ERP for this station.³⁶⁸

134. In its Form 381, Sinclair certified to maximized facilities for WLFL-DT as authorized by its construction permit.³⁶⁹ In the first round, Sinclair obtained a TCD for channel 27 through an approved NCA with station WRDC, Durham, NC.³⁷⁰ Sinclair's comments claim that the power listed for channel 27 on Appendix B is incorrect.³⁷¹ In fact, the proposed channel 27 power is less than the certified channel 57 power so that the post-transition facilities will match the certified facilities' coverage.³⁷² Consequently, no change in Appendix B is needed to provide WLFL-DT with its certified coverage.

135. KCET, Los Angeles, CA. Community Television of Southern California ("CTSC"), licensee of NCE station KCET, channel *28, and KCET-DT, channel *59, Los Angeles, CA, received channel *28 for its TCD in the proposed DTV Table.³⁷³ CTSC states in its comments that it certified that it would operate noncommercial educational station KCET with maximized facilities on channel *28 for post-transition operations but the Commission disapproved the election because it was projected to cause interference of 2.3 percent to the elected DTV channel 27 of KEYT, Santa Barbara, California (analog channel 3, post-transition digital channel 27).³⁷⁴ CTSC states that it changed its election to specify replication facilities on channel *28 but reserved its right to seek maximized facilities should circumstances permit.³⁷⁵

³⁶⁶ Sinclair is the parent of WLFL Licensee, LLC, which is the named licensee of station WLFL.

³⁶⁷ See *Seventh Further Notice*, 21 FCC Rcd at 12149, App. A.

³⁶⁸ See Comments of Sinclair Broadcast Group, Inc., filed Jan. 25, 2007, at 2, 4.

³⁶⁹ See FCC File No. BCERCT-20041105AIM (Form 381 filed Nov. 8, 2004, certifying to its maximized facilities authorized in FCC File No. BMPCDT-19991021AAO – Form 301 granted Feb. 1, 2001). The CP authorized 1000 kW ERP for DTV channel 57.

³⁷⁰ See FCC File No. BFRECT-20050209AUR (Form 382, approved June 23, 2005).

³⁷¹ See Sinclair Comments at 2, 4.

³⁷² The adjustment in power is necessitated by the "dipole factor" that is applied to UHF TV service as determined pursuant to OET Bulletin 69. 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. A lower UHF channel requires less power to reach the same coverage area as a higher number UHF channel.

³⁷³ See *Seventh Further Notice*, 21 FCC Rcd at 12123, App. A.

³⁷⁴ See Comments of Community Television of Southern California, filed Jan. 25, 2007, at 1-2; See also FCC File No. BFREET-20050121ALB (disapproving KCET's Form 382 election of channel 28 and requiring conflict analysis); and FCC File No. BFRCT-20050815ABG (approving KCET's Form 383 to reduce facilities to eliminate the interference conflict that had prevented the election of channel 28).

³⁷⁵ *Id.* at 3.

136. On July 7, 2006, Smith Media License Holdings, LLC ("Smith") filed a letter requesting a waiver of the July 1, 2006 replication/maximization deadline with respect to KEYT-DT.³⁷⁶ In that letter, Smith indicated that for KEYT-DT to operate with its allotted replication facilities, as the prior owner certified, Smith would have to increase the ERP for KEYT to approximately 698 kW.³⁷⁷ Smith indicated that, because of electrical capacity limits at the station's antenna site, it did not anticipate being able to increase power at the antenna site until near the end of the DTV transition.³⁷⁸

137. According to CTSC, the maximized facilities it originally proposed for KCET-DT on Channel *28 would not cause impermissible interference to the facilities of KEYT-DT on Channel *27 if KEYT-DT operates with an ERP of 699 kW.³⁷⁹ Accordingly, CTSC requests that the Commission change DTV Table Appendix B to specify maximized parameters for KCET-DT. Smith objects to CTSC's request and urges the Commission to continue to protect the KEYT-DT post-transition allotment.³⁸⁰

138. We deny the request of CTSC to change DTV Table Appendix B for KCET. We note the disagreement of CTSC, but have already determined that the KCET maximized facilities would cause interference to the certified facilities of KEYT-DT on its TCD in excess of the permissible limit. Our analysis was performed using computer software techniques that have been validated through extensive testing and comparison of results with similar software used by other parties participating in this proceeding. We are confident that the result of our interference analysis is correct, and there is no agreement with the affected station to accept this interference.³⁸¹ The Commission will determine in the Third DTV Periodic Review Report and Order what interference standards and other procedures to apply to stations seeking to file applications for changes to station parameters post-transition. KCET may choose to file an application at that time.³⁸²

³⁷⁶ See Smith Media License Holdings, Inc. *ex parte* MB Docket No. 03-15 (dated July 7, 2006). A copy of this letter is also attached as an exhibit to the CTSC Comments.

³⁷⁷ The proposed DTV Table Appendix B specifies an ERP for KEYT of 699 kW.

³⁷⁸ *Id.* at 2. Smith was subsequently granted a waiver of the use-or-lose deadline for KEYT until February 17, 2009. See *Use or Lose Order*, *supra* note 30, at ¶105. We note that the Commission recently denied KCET's request for an extension of the digital television construction deadline on the ground that when KCET chose to amend its Conflict Resolution Form and to specify its licensed replication facilities, it gave up its rights to pursue the construction permit for its maximized facilities. See *Construction Deadline Extension Order*, *supra* note 30, at ¶ 89. In that Order, the Commission stated that KCET would not be permitted to pursue a construction permit that conflicts with the allotted facilities of another station (KEYT-DT). *Id.* CTSC filed a petition for reconsideration of the *Construction Deadline Extension Order* decision. See *Petition for Reconsideration of Community Television of Southern California, Construction Deadline Extension Order* FCC 07-91, adopted May 17, 2007.

³⁷⁹ See *Response of Community Television of Southern California to Reply Comments of Smith Media License Holdings, LLC*, filed Mar. 14, 2007, at 4. See also CTSC Comments at 4 and engineering statement.

³⁸⁰ See *Reply Comments of Smith Media License Holdings, LLC.*, filed Feb. 26, 2007, at 4.

³⁸¹ See ¶¶ 18-20, *supra*, for description of methodology used. Smith states that, until analog service is terminated, the extent to which KEYT-DT can increase power and replicate service post-transition will not be known with reasonable certainty. According to Smith, it cannot consent to KCET-DT's proposed allotment expansion until it has determined the permissible post-transition ERP of KEYT-DT. *Id.* at 2, 4.

³⁸² We also received comments requesting a change to the proposed DTV Table Appendix B filed on behalf of WPCW, Jeannette, PA, as well as an opposition to that request. Those comments and reply comments are discussed in the *Eighth Further Notice, infra*.

IV. EIGHTH FURTHER NOTICE OF PROPOSED RULEMAKING

139. As discussed above, the *Seventh Further Notice* finalized the DTV channel election process and began the final stage of the transition of the nation's broadcast television system from analog to digital technology. Although virtually all potentially eligible stations were assigned TCDs at that time, the *Seventh Further Notice* noted that some applications for station licenses remained pending, and might be granted before the adoption of this Order.³⁸³ Some of these new permittee TCDs were granted too late to allow sufficient opportunity for public comment in the *Seventh Further Notice* rulemaking. In addition, several commenters submitted requests for substantive modifications to the Table or Appendix B after the close of the comment period. The Commission therefore issues this *Eighth Further Notice of Proposed Rule Making*, and solicits comment on the TCDs and modification requests discussed below. We emphasize that this Further Notice deals exclusively with the stations described below. All comments and reply comments should relate solely to the specific situations and issues raised herein. No further proposals for modification of the DTV Table or Appendix B will be entertained during this pleading cycle, and no such proposals should be raised during the comment or reply period.

A. New Permittees

140. As described in the *Seventh Further Notice*, we are establishing a separate pleading cycle to give interested parties an opportunity for comment on new permittees that have attained permittee status too late to be considered in the *Seventh Report and Order*.³⁸⁴ Three new permittees have attained this status since we issued the *New Permittees PN*.³⁸⁵ Entravision Holdings, LLC, in Pueblo, Colorado (Analog channel 48), Richland Reserve, LLC in Greeley, Colorado (Digital channel 45), and Northwest Television, Inc. ("Northwest Television") in Galesburg, Illinois (Digital channel 53). Post-transition, channel 48 in Pueblo would create no additional interference, and we therefore propose channel 48 as this station's TCD. Interference analysis indicates, however, that post-transition, channel 45 in Greeley would cause 0.3 percent new interference. Therefore, we propose channel 49 as the TCD Richland Reserve, LLC. With respect to the new permittee in Galesburg, IL, because channel 53 is an out-of-core channel, an engineering analysis was conducted and it was determined that channel 8 is the best available post-transition channel in Galesburg. Channel 8 creates no new interference to the TCD of another full-power station but would interfere with licensed Class A Station WQFL-CA, Rockford, IL.³⁸⁶ However, WQFL has an application for a minor modification of license pending,³⁸⁷ which would require a waiver of the filing freeze but which, if granted, would eliminate the interference from channel 8. In order to locate an interference-free post-transition channel for Galesburg, we propose to grant WQFL-CA a waiver of the filing freeze and grant the WQFL-CA modification application, thereby resolving any potential interference, and propose channel 8 as the TCD for Northwest Television. These proposals will further amend the new DTV Table of Allotments.³⁸⁸ In addition, we propose the specific technical facilities--effective radiated power (ERP), antenna height above average terrain (HAAT), antenna radiation pattern, and geographic coordinates--at which these stations would operate after the DTV transition.³⁸⁹ The attachment also includes information on predicted service area and population coverage. Consistent with

³⁸³ *Seventh Further Notice*, 21 FCC Rcd at 12118, ¶ 53.

³⁸⁴ *See id.*

³⁸⁵ *See New Permittees Public Notice*, DA 07-20, 72 FR 2485 (Jan. 19, 2007).

³⁸⁶ *See* FCC File No. BLTVL-19930625JV.

³⁸⁷ *See* FCC File No. BPTVA-20070312ACG.

³⁸⁸ *See* Appendix F.

³⁸⁹ *See* Appendix G.