

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of
Third Periodic Review of the
Commission's Rules and Policies
Affecting the Conversion
To Digital Television

MB Docket No. 07-91

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FEDERAL COMMUNICATIONS COMMISSION

REPORT AND ORDER

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By the Commission: Chairman Martin, Commissioners Copps, Adelstein, Tate and McDowell issuing
separate statements.

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I. INTRODUCTION

1. Congress has mandated that after February 17, 2009, full-power television broadcast stations must transmit only digital signals and may no longer transmit analog signals.¹ With this Report and Order in our third periodic review, we resolve issues necessary to complete the conversion of the

¹ See Digital Television and Public Safety Act of 2005 (“DTV Act”), which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”) (*codified at* 47 U.S.C. §§ 309(j)(14) and 337(e)). DTV Act § 3002(a) amends Section 309(j)(14) of the Communications Act to establish February 17, 2009 as a new hard deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A). DTV Act § 3002(b) directs the Commission to “take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to require the cessation of broadcasting by full-power stations in the analog television service, by February 18, 2009; and (2) to require by February 18, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive).” 47 U.S.C.A. § 309 Note. DTV Act § 3005(a) also created a coupon program to subsidize the purchase of digital-to-analog (“D-to-A”) converter boxes. *Id.*

nation's broadcast television system from analog to digital television ("DTV"). We conduct these periodic reviews in order to assess the progress of the transition and make any necessary adjustments to the Commission's rules and policies to facilitate the introduction of DTV service and the recovery of spectrum at the end of the transition.² In the Notice of Proposed Rulemaking in this third periodic review ("*Third DTV Periodic Review NPRM*"), we sought comment on several issues necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition (digital) facilities.³ We received 125 comments, 22 reply comments, and numerous *ex parte* filings in response to the *Third DTV Periodic Review NPRM*.⁴

2. With the DTV transition deadline less than 14 months away, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. We want to ensure that no consumers are left behind in the DTV transition. We recognize that the transition is a complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off. Therefore, we adopt rules to offer broadcasters regulatory flexibility, while at the same time requiring broadcasters to maintain the best possible television service to the public and meet viewers' over-the-air reception expectations after the transition date.

II. EXECUTIVE SUMMARY

3. In this Report and Order in our third periodic review, we (1) provide a progress report on the transition; (2) describe the status and readiness of stations to complete their transition; (3) adopt procedures and rule changes necessary to ensure that broadcasters meet the statutory transition deadline and complete construction of their final, post-transition facilities while maintaining the best possible television service to their viewers; and (4) address other issues related to the transition. Stations face many challenges in order to be ready to make their transition by the February 17, 2009 statutory transition deadline. Stations must focus their full attention on constructing their final digital facilities before they must cease analog operations. In this Report and Order, we take the following actions to facilitate the completion of the transition for full-power television stations:⁵

- We establish February 17, 2009 as the construction deadline for stations building digital facilities based on a new channel allotment in the post-transition DTV Table of Allotments

² The Commission has conducted two prior periodic reviews: the first in MM Docket No. 00-39 and the second in MB Docket No. 03-15. See notes 9 and 10, *infra*.

³ *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Notice of Proposed Rulemaking, 22 FCC Rcd 9478 (2007) ("*Third DTV Periodic Review NPRM*").

⁴ See Appendix A – List of Commenters. Comments in response to the *Third DTV Periodic Review NPRM* were due Aug. 15, 2007, and replies were due Aug. 30, 2007. See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Order Granting Extension of Time for Filing Comments and Reply Comments, 22 FCC Rcd 15046 (2007) (order granting seven-day extension of time to file comments in the proceeding).

⁵ We note that the statutory transition deadline applies only to full-power stations. See 47 U.S.C. §§ 309(j)(14) and 337(e). The transition timing for low power, translator and Class A stations will be addressed in a separate proceeding. See *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19336 ¶ 12 (2004) ("*LPTV DTV Report and Order*").

("DTV Table") and accompanying Appendix B ("DTV Table Appendix B")⁶, i.e., stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations. These stations will not be required to construct a digital facility on their pre-transition DTV channel and will be permitted to forego further construction to the extent such a facility has been partially built. [Section V.B.1., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(vii) in Appendix B.]

- We establish May 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. [Section V.B.2., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(v) in Appendix B.]
- We establish August 18, 2008 as the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but which do not have a construction permit that matches their post-transition (DTV Table Appendix B) facilities. [Section V.B.2., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(vi) in Appendix B.]
- We establish February 17, 2009 as the construction deadline for stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities. [Section V.B.3., *infra*, and revised Rule 47 C.F.R. § 73.624(d)(1)(vii) in Appendix B.]
- We establish stricter standards for granting extensions of time to construct digital facilities for all construction deadlines on or before February 17, 2009. In addition, for construction deadlines occurring February 18, 2009 or later, we will consider such requests under the tolling standard set forth in Section 73.3598(b) of the rules. We adopt our revised FCC Form 337, as proposed. [Section V.B.5., *infra*, revised Rule 47 C.F.R. § 73.624(d)(3) in Appendix B and changes to FCC Form 337 in Appendix C.]
- We adopt FCC Form 387 and require all full-power television stations to file it by February 18, 2008, detailing their current transition status, additional steps necessary for digital-only operation upon expiration of the February 17, 2009 transition deadline, and a timeline for making those steps. Stations must update the form as events warrant and by October 20, 2008 if they have not completed construction. [Section V.A.1., *infra*, and changes to FCC Form 387 in Appendix C.]
- We will permit stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. [Section V.B.7., *infra*.]

⁶ The details of each station's channel assignment, including technical facilities and predicted service and interference information, are set forth in the DTV Table Appendix B. See 47 C.F.R. § 73.622(i), which codifies the post-transition DTV Table. See also *Advanced Television Systems and their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Report and Order and Eighth Further Notice of Proposed Rule Making, 22 FCC Rcd 15581 (2007) ("*Seventh Report and Order*" and "*Eighth Further Notice*"). The Commission proposed channel assignments and reference facilities for stations' post-transition operations in a 2006 Notice of Proposed Rule Making in MB Docket No. 87-268. See also *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MB Docket No. 87-268, Seventh Further Notice of Proposed Rule Making, 21 FCC Rcd 12100 (2006) ("*Seventh FNPRM*") (setting forth a channel for each eligible broadcast TV station in the proposed new DTV Table).

- We will permit stations to operate their post-transition facilities, pursuant to special temporary authority (“STA”), at less than their full, authorized facilities, provided: (1) They demonstrate a unique technical challenge (as defined in Section V.B.5., *infra*) and they can serve at least 85 percent of the same population that receives their current analog TV and DTV service; or (2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted herein and they serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. In addition, stations must demonstrate that they do not cause impermissible interference to other stations or prevent other stations from making their transition. Finally, stations that cannot serve at least 100 percent of the same population that receives their current analog TV and DTV service must comply with a viewer notification requirement. [Section V.B.7., *infra*.]
- We clarify that, under existing rules, a station may temporarily reduce or cease service on their pre-transition analog or digital channel for a period of 30 days or less, upon notification to the Commission and without prior approval, when necessary to complete construction of the post-transition digital facility. [Section V.C.1., *infra* and revised Rule 47 C.F.R. § 73.1615.]
- We will provide stations with the flexibility to permanently reduce or terminate their analog or pre-transition digital service before the transition date, provided the station satisfies the following two requirements: (1) The station demonstrates that its service reduction or termination is directly related to the construction and operation of its, or another station’s, post-transition facilities; and (2) The station notifies viewers on its pre-transition channel(s) about the planned service reduction or termination and informs them about how they can continue to receive the station. [Section V.C.2-3., *infra*.]
- To provide additional flexibility within 90 days of the February 17, 2009 transition date (*i.e.*, beginning on or after November 19, 2008), we will allow stations to permanently reduce or terminate their analog or pre-transition digital service without prior approval upon notification to the Commission 30 days prior to the planned permanent service reduction or termination. The station must still comply with a viewer notification requirement. [Section V.C.4., *infra*.]
- We will permit stations that are moving to a different DTV channel for post-transition operations to cease operations on their pre-transition digital channels and begin operating on their new channels before the transition date, provided: (1) The early transitioning stations will not cause impermissible interference to another station; and (2) The early transitioning stations continue to serve their existing viewers for the remainder of the transition and commence their full, authorized post-transition operations upon expiration of the February 17, 2009 transition deadline. [Section V.C.3.a., *infra*.]
- We will offer expedited processing of stations’ applications to build their post-transition facilities, provided that their application: (1) does not seek to expand the station’s facilities beyond its final DTV Table Appendix B facilities; (2) specifies facilities that are no more than five percent smaller than those specified in the post-transition DTV Table Appendix B (with respect to predicted population); and (3) is filed within 45 days of the effective date of this Report and Order. We adopt our revised FCC Forms 301 and 340, as proposed. [Section V.D., *infra* and changes to FCC Forms 301 and 340 in Appendix C.]
- We announce our intent to lift the freeze on the filing of maximization applications on August 17, 2008, the date by which we expect to have completed processing stations’ applications to build their post-transition facilities. Until this date, we will maintain our freeze and will not accept maximization applications to expand facilities. [Section V.E., *infra*.]

- We adopt a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that will not use their pre-transition DTV channel for post-transition operation. This policy will allow added flexibility for stations that wish to use their existing analog channel antenna, which provides benefits for the successful completion of the transition by reducing the demands on equipment suppliers and installation crews during a critical time as the transition date nears. [Section V.E., *infra*.]
- We adopt a 0.5 percent new interference standard (*i.e.*, only considering interference in addition to that contained in the post-transition DTV Table Appendix B) to apply to applications for post-transition facilities and also to future maximization applications and applications to implement new allotments. [Section V.F., *infra* and Rule 47 C.F.R. § 73.616 in Appendix B.]
- We update the Commission's rules to reflect the latest revisions to the ATSC standards concerning DTV transmission and PSIP. [Sections V.H.1-3., *infra* and Rule 47 C.F.R. § 73.682(d) in Appendix B.]
- We revise Section 73.624(g) to require DTV stations that are permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions to file FCC Form 317 and pay fees on any revenue derived from feeable ancillary or supplementary services in the same way required of DTV licensees. [Sections V.H.4., *infra* and Rule 47 C.F.R. § 73.882(d) in Appendix B.]
- We clarify our station identification requirements for digital stations in situations where one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station, or another programming source. [Section V.H.5., *infra*.]
- We discuss MVPDs' obligations with respect to carriage of digital stations after the transition. [Section V.G., *infra*.]

III. BACKGROUND

4. Congress specifically requires the Commission to periodically evaluate the progress of the nation's transition to DTV.⁷ The Commission initiated this third DTV periodic review in April 2007.⁸ The previous two DTV periodic reviews began in March 2000⁹ and January 2003,¹⁰ respectively. In

⁷ See 47 U.S.C. §336(g).

⁸ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9478.

⁹ See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Notice of Proposed Rule Making, 15 FCC Rcd 5257 (2000) ("*First DTV Periodic NPRM*"). As a result of this proceeding, the Commission made a number of determinations in furtherance of the digital transition. See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Report and Order, 16 FCC Rcd 5946 (2001) ("*First DTV Periodic Report and Order*") (addressing channel election and interference protection deadlines), *on recon.*, 16 FCC Rcd 20594 (2001) ("*First DTV Periodic MO&O*"), Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978 (2002) ("*DTV Tuner Order*") (addressing DTV receiver standards and labeling requirements). See also *Third Memorandum Opinion and Order on Reconsideration*, 17 FCC Rcd 18571 (2002) (denying a Petition for Reconsideration of the determination that DTV area expansion applications must protect certain earlier-filed NTSC applications).

¹⁰ See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Notice of Proposed Rule Making, 18 FCC Rcd 1279 (2003) ("*Second DTV Periodic NPRM*"). The Commission, among other things, determined how the channel-election process would operate and established replication and maximization deadlines. *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Report and Order, 19 FCC Rcd 18279, 18281 (2004) ("*Second DTV Periodic Report and Order*").

addition to these periodic reviews, the Commission conducts the ongoing DTV proceeding, in which we recently established the DTV Table of Allotments for stations' post-transition operations ("post-transition DTV Table").¹¹

A. DTV Transition

5. In early 2006, Congress enacted significant statutory changes to the DTV transition in the DTV Act. Most importantly, it set February 17, 2009, as the date certain for the end of the DTV transition, at which time all full-power television broadcast stations must cease their analog transmissions.¹² The DTV Act does not provide for waivers or extensions of this deadline for cessation of analog broadcasts.¹³ The DTV Act also requires broadcast licensees to cease operations outside the core spectrum after February 17, 2009 in order to make that spectrum available for public safety and commercial wireless uses.¹⁴ All full-power TV broadcast stations must be operating inside the core TV spectrum and only in digital at the end of the transition on February 17, 2009.¹⁵

6. In April 2007, the Commission initiated this third periodic review of the nation's conversion from analog to DTV broadcasting.¹⁶ The Commission sought comment on a range of proposals intended to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels upon expiration of the February 17, 2009 transition deadline. The Commission made a number of proposals regarding the procedures and standards applicants must follow in filing applications for facilities specified in the final, post-transition DTV Table of Allotments ("DTV Table").¹⁷

¹¹ See 47 C.F.R. § 73.622(i), which codifies the post-transition DTV Table. See also *Seventh Report and Order*, App. B. The Commission proposed the post-transition DTV Table in the October 2006 *Seventh Further Notice*. See *Seventh FNPRM* at App. B. The Commission established the initial DTV Table of Allotments in 1997. See *Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588 (1997) ("*Sixth Report and Order*"). The details of each station's channel assignment under the initial DTV Table, including technical facilities and predicted service and interference information, were set forth in the initial Appendix B of the Sixth Report and Order ("initial Appendix B"). See *Sixth Report and Order*, 12 FCC Rcd at 14693, app. B. The initial Appendix B was amended in 1998. See Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418 (1998) ("*DTV Sixth Memorandum Opinion and Order*") and Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders, 14 FCC Rcd 1348 (1998) ("*DTV Second Memorandum Opinion and Order*"). Simultaneous with the adoption of the *Sixth Report and Order*, the Commission announced DTV channel assignments for eligible licensees in the *Fifth Report and Order* in the same docket. See *Fifth Report and Order*, 12 FCC Rcd 12809, 12892, app. E (1997) ("*Fifth Report and Order*").

¹² 47 U.S.C. § 309(j)(14) ("A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009."). See also 47 U.S.C. § 337(e).

¹³ Previously, 47 U.S.C. § 309(j)(14) provided an exception to the earlier December 31, 2006 transition deadline under several market-by-market criteria. 47 U.S.C. § 309(j)(14)(B)(2005). Congress eliminated the statutory provisions authorizing market-specific extensions of the DTV transition, including the 85 percent benchmark for DTV reception. This new hard deadline obviates the need for any further discussion of how to interpret and implement the former Section 309(j)(14)(B) of the Act, an issue previously deferred by the *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18282, ¶ 6.

¹⁴ See 47 U.S.C. § 337(e)(1).

¹⁵ *Id.*

¹⁶ See generally *Third DTV Periodic Review NPRM*, 22 FCC Rcd 9478.

¹⁷ *Id.* at 9516-9519, ¶¶ 92-96.

7. Development of DTV Table. In the 2004 *Second DTV Periodic Report and Order*, the Commission established a three-round channel-election process through which eligible broadcast licensees and permittees (collectively, “licensees”) selected their post-transition channels inside the core TV spectrum (*i.e.*, channels 2-51).¹⁸ At the start of this process, licensees proposed their post-transition facilities.¹⁹ After each channel election round, the Commission announced proposed post-transition channels – called tentative channel designations (“TCDs”). In order to facilitate the development of a final, post-transition DTV Table, the Media Bureau announced a freeze on the filing of certain requests for allotment or service area changes.²⁰ The Commission has maintained the filing freeze to ensure that each station has an opportunity to apply for and construct its authorized facility.²¹

8. The channel election process culminated in the adoption of the post-transition DTV Table in the August 2007, *Seventh Report and Order*.²² The post-transition DTV Table provides eligible stations channels for post-transition operations inside the core TV spectrum and is the result of informed decisions made by eligible licensees during the Commission’s channel election process, as well as the Commission’s efforts to promote overall spectrum efficiency and ensure that broadcasters provide the best possible service to the public, including service to local communities.²³ The post-transition DTV Table will ultimately replace the current (pre-transition) DTV Table at the end of the transition; however,

¹⁸ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18292, ¶ 33. The Commission received 11 petitions for reconsideration of the *Second DTV Periodic Report and Order*, raising a number of issues, most of which have been rendered moot by the completion of the channel election process.

¹⁹ In November 2004, licensees filed certifications via FCC Form 381 in order to define their proposed post-transition facilities. In these certifications, licensees chose whether to (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility. See Public Notice, “DTV Channel Election Information and Deadlines,” 19 FCC Rcd 19569 (MB 2004) (“*Certification Deadline PN*”). Stations that did not submit certification forms by the deadline were evaluated based on replication facilities. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18296, ¶ 41.

²⁰ See Public Notice, “Freeze on the Filing of Certain TV and DTV Requests for Allotment or Service Area Changes,” 19 FCC Rcd 14810, 14810-11 (MB 2004) (“*August 2004 Filing Freeze PN*”). The freeze, which was imposed on August 3, 2004 – prior to the commencement of the channel election process, precludes parties from filing the following items: (i) petitions for rulemaking to change DTV channels within the current DTV Table, (ii) petitions for rulemaking to establish a new DTV channel allotment, (iii) petitions for rulemaking to swap in-core DTV and NTSC channels; (iv) applications to change DTV channel allotments among two or more licensees; (v) petitions for rulemaking by licensees/permittees to change NTSC channels or communities of license; (vi) applications to maximize DTV or analog TV facilities; and (vii) certain Class A television station applications. The freeze does not prevent the processing of pending applications. See *id.* See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

²¹ In the *Seventh Report and Order*, we denied seven requests of stations seeking a waiver of the filing freeze, except for one station which demonstrated unique circumstances. *Seventh Report and Order*, 22 FCC Rcd at 15618-9, ¶ 90.

²² *Seventh Report and Order* at apps. A and B. See also 47 C.F.R. § 73.622(i). Approximately 123 stations have filed petitions for reconsideration of the *Seventh Report and Order*, which remain pending. Most of the Petitions request changes to facilities previously certified. These requests will be addressed in a separate Order of Reconsideration after the conclusion of the period for oppositions and responses. In the *Eighth Further Notice*, which accompanied the *Seventh Report and Order*, the Commission announced TCDs for three new permittees that recently attained permittee status and also considered requests for substantive modifications to the post-transition DTV Table which were made after the close of the comment period for the *Seventh Further Notice*. Comments on these proposed changes to DTV Table in the *Eighth Further Notice* were due Oct. 10, 2007 and replies were due Oct. 25, 2007. See Public Notice, “Media Bureau Announces Comment and Reply Comment Dates for the DTV Eighth Further Notice of Proposed Rule making, MB Docket No. 87-268,” 22 FCC Rcd 16846 (2007).

²³ See *Seventh Report and Order*, 22 FCC Rcd at 15583, ¶ 2.

we note that, in certain defined circumstances, stations may be permitted to temporarily remain on their pre-transition DTV channel after the transition date.²⁴

9. Approximately 123 Petitions for Reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle, representing approximately 200 stations, most of them requesting changes to their Appendix B facilities to accommodate their preference to use their existing analog antenna when they return to their analog channel for post-transition digital operation.²⁵ In addition, we have received several Petitions for Reconsideration filed after the 30-day statutory deadline.²⁶ Moreover, we recognize that not all stations that may want to revise their Appendix B facilities to assure that they will be permitted to continue serving their analog viewers with their post-transition digital facility have filed Petitions for Reconsideration, and that not all of those stations that have failed to file petitions can be, alternatively, fully addressed through the application process adopted in this Report and Order.²⁷ Therefore, in light of the urgent need to finalize post-transition facilities so that all full power stations can complete the transition by February 17, 2009, we delegate to the Media Bureau the authority to amend the DTV Table of Allotments and Appendix B to the DTV Table of Allotments as needed up to the full power transition deadline. Such proceedings at the Bureau level may be expedited as necessary, including being conducted without notice and comment where good cause is found because the requested change does not adversely affect any other station's post-transition operations.²⁸

10. Reclamation of the 700 MHz Bands. As a result of the DTV transition, 108 megahertz of spectrum in the 700 MHz Band (TV Channels 52-69) will be made available for critically important public safety needs and new wireless services. In passing the DTV Act,²⁹ Congress directed the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008, and deposit the proceeds of the auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008.³⁰ Accordingly, in April 2007, we made changes to the 700 MHz band plan to enable public safety entities to use wireless broadband technology and prepare for the auction of the remaining spectrum in that band.³¹ Furthermore, in July 2007, we specifically redesignated 10 megahertz

²⁴ As explained below in Section V.B.7.a., some stations will be permitted to use their pre-transition DTV channel, temporarily, after the February 17, 2009 transition date. The current NTSC Table, which is contained in 47 C.F.R. § 73.606(b), will become obsolete at the end of the transition, when all full-power analog operations must cease. We anticipate initiating another proceeding to address these and other "clean-up" changes to our rules to eliminate outdated references to analog and out-of-core operations. See *Seventh Report and Order*, 22 FCC Rcd at 15583, ¶1 n.1.

²⁵ We addressed and resolved 30 similar requests that were raised during the comment period for the *Seventh Report and Order*, and we will address these additional requests on reconsideration.

²⁶ 47 U.S.C. § 405 ("A petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.")

²⁷ See discussion in Section V.E., *infra* (allowing expansion of facilities up to five miles if necessary to serve current analog viewers).

²⁸ See 5 U.S.C. § 553(b)(3)(B) (allowing for implementation without notice and comment if good cause exists where "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest"). Where any requested change to the Table or Appendix may affect another station's operations, we expect the Bureau to issue an NPRM and provide an opportunity for public comment. Stations should file in Docket No. 87-268 when seeking a correction to Appendix B.

²⁹ See 47 U.S.C. § 337(e)(1).

³⁰ DTV Act § 3003-4.

³¹ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-* (continued....)

of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network.³² The Wireless Telecommunications Bureau has scheduled the auction of the remaining commercial spectrum of the 700 MHz Band on January 24, 2008.³³

11. Prior to the DTV Act, the Commission reallocated the 700 MHz Band in separate proceedings, first for the 60 megahertz covering TV Channels 60-69 (“Upper 700 MHz Band”)³⁴ and then for the 48 megahertz covering TV Channels 52-59 (“Lower 700 MHz Band”).³⁵ In the Balanced Budget Act of 1997 (“Balanced Budget Act”),³⁶ Congress specifically directed that the allocation of the Upper 700 MHz Band include 24 megahertz of spectrum for public safety and 36 megahertz for commercial services. Accordingly, the Commission divided the Upper 700 MHz Band to include a 24-megahertz allocation for public safety use,³⁷ and a 36-megahertz allocation for commercial use, of which 6

(Continued from previous page)

102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (2007) (“700 MHz First Report and Order”).

³² See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Second Report and Order, 22 FCC Rcd 15289 (2007) (“700 MHz Second Report and Order”).

³³ See Public Notice, “Auction of 700 MHz Band Licenses Scheduled for January 24, 2008: Notice and Filing Requirements, Minimum Opening Bids, Reserve Prices, Upfront Payments, and Other Procedures for Auctions 73 and 76,” AU Docket No. 07-157 (rel. Oct. 5, 2007); Public Notice, “Auction of 700 MHz Band Licenses; Revised Procedure for Auctions 73 and 76: Additional Default Payment for D Block Set at Ten Percent of Winning Bid Amount; Disputed Issues in the Negotiation of Network Sharing Agreement,” WT Docket No. 06-150, (rel. Nov. 2, 2007).

³⁴ See *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, Report and Order, 12 FCC Rcd 22953 (1998), recon. 13 FCC Rcd 21578 (1998) (“Upper 700 MHz Reallocation Order”); *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476 (2000) (“Upper 700 MHz First Report and Order”).

³⁵ See *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Report and Order, 17 FCC Rcd 1022 (2002) (“Lower 700 MHz Report and Order”); *Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)*, GN Docket No. 01-74, Memorandum Opinion and Order, 17 FCC Rcd 11613 (2002) (“Lower 700 MHz MO&O”).

³⁶ See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3004 (1997) (adding new § 337 of the Communications Act); Upper 700 MHz Reallocation Order, 12 FCC Rcd at 22955 ¶ 5.

³⁷ See 47 U.S.C. § 337(a) (enacted by the Balanced Budget Act of 1997 § 3004, which added new Section 337(a) and established an initial timetable for conducting auctions).

megahertz comprised the Guard Bands spectrum.³⁸ With regard to the Lower 700 MHz Band, Congress also directed that the Commission “reclaim and organize” spectrum beyond that in the Upper 700 MHz Band, “in a manner consistent with the objectives” of Section 309(j)(3) of the Act.³⁹ While Congress did not direct the amount of spectrum to be reclaimed, the Commission determined that all broadcasters using digital transmission systems could be accommodated in the core TV spectrum (*i.e.*, TV Channels 2-51). As a result, the 48 megahertz of spectrum in the Lower 700 MHz Band (698-746 MHz) would become available for new services through competitive bidding.⁴⁰

B. DTV Construction Deadlines

12. In 1997, the Commission adopted a DTV construction schedule that provided for varying construction deadlines based on the size of the market and type of station, with all stations required to construct by May 1, 2003.⁴¹ In the 2004 *Second DTV Periodic Report and Order*, the Commission established two deadlines by which stations were expected to either replicate or maximize DTV service on their current (pre-transition) DTV channel or lose interference protection to the unserved areas on that channel.⁴² By July 1, 2005, top-four network affiliates in the top 100 markets were required to fully replicate or maximize if they will remain on their DTV channel after the transition. If these stations were to move to another channel post-transition, they were required to serve at least 100 percent of their replication service population by July 1, 2005. By July 1, 2006, all other stations were required to fully replicate and maximize if they were to remain on their current DTV channel after the transition. If they were to move to another channel post-transition, they were required to serve at least 80 percent of their replication service population by July 1, 2006.⁴³ The Commission stated that stations that met the applicable “use-or-lose” deadline and that are going to move to a different channel after the transition would be permitted to carry over their authorized maximized areas to their new channels.⁴⁴ In addition, these “use-or-lose” replication/maximization deadlines became the new deadlines for stations operating

³⁸ See *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 06-169 and 96-86, Notice of Proposed Rule Making, 21 FCC Rcd at 10414, ¶ 1 n.1 (2006).

³⁹ 47 U.S.C. § 309(j)(14)(C)(i)(II) (2005).

⁴⁰ See *DTV Memorandum Opinion and Order of the Sixth Report and Order*, 13 FCC Rcd at 7435-36, ¶ 42 (1998). The Commission stated that expanding the DTV core spectrum would permit recovery of 108 megahertz of spectrum at the end of the DTV transition period. *Id.* at 7436, ¶ 45. Interference protections for current channel 51 licensees and new channel 51 allotments, vis a vis Wireless Communications Service auction winners, is discussed in Section V.F. (¶ 169), *infra*.

⁴¹ Under this schedule, television stations in the 10 largest TV markets and affiliated with the top four television networks (ABC, CBS, Fox, and NBC) were required to build DTV facilities by May 1, 1999. Stations affiliated with those networks in television markets 11 through 30 were required to construct their DTV facilities by November 1, 1999. All other commercial stations were required to construct their DTV facilities by May 1, 2002, and all noncommercial stations were to have constructed their DTV facilities by May 1, 2003. 47 C.F.R. § 73.624(d)(1).

⁴² See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18311-18319, ¶¶ 72-87.

⁴³ *Id.* at 18314-18315, ¶ 78.

⁴⁴ *Id.* at 18317-18318, ¶¶ 85-86.

temporary DTV facilities pursuant to STA to complete construction of their licensed DTV facilities.⁴⁵ Approximately 80 percent of the stations in each of these categories met their respective deadlines.⁴⁶

13. In the *Second DTV Periodic Report and Order*, the Commission also noted that certain stations had not yet been granted an initial DTV construction permit. The Commission required that, by August 4, 2005, all such stations construct and operate “checklist” facilities that conform to the parameters of the DTV Table and other key processing requirements. The Commission stated that it would consider requests for waiver of the August 4, 2005 deadline on a case-by-case basis, using the criteria for extension of DTV construction deadlines.⁴⁷

14. In 2007, the Commission in the *Construction Deadline Extension Order* and the *Use or Lose Order* addressed applications filed by stations for extensions of time to construct DTV facilities and/or waivers of the deadline by which stations must build DTV facilities in order to retain the ability to carry over interference protection to their post-transition channel (so-called “use or lose” waivers).⁴⁸ In the *Construction Deadline Extension Order*, the Commission considered 145 requests for an extension of time to construct a DTV facility.⁴⁹ For 107 stations whose pre-transition DTV channel is the same as their post-transition channel, the Commission granted these applications and gave these stations until November 18, 2007,⁵⁰ in which to complete construction.⁵¹ For 29 stations whose pre-transition DTV channel is different from their post-transition channel, the Commission granted these applications and gave these stations until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction.⁵² In the *Use or Lose Order*, the Commission considered 192 requests for waiver

⁴⁵ In 2001, the Commission temporarily deferred (until the Second DTV Periodic Review) the establishment of construction deadlines for these stations, provided they constructed initial DTV facilities designed to serve at least their communities of license. See *First DTV Periodic MO&O*, 16 FCC Rcd at 20597-98, ¶ 10, 20603-04, ¶ 24.

⁴⁶ See ¶ 14, *infra*.

⁴⁷ *Second DTV Periodic Review Report and Order*, 19 FCC Rcd at 18327-18328, ¶ 111. See 47 C.F.R. § 73.622(f)(2); Public Notice, “Commission Details Application Filing Procedures for Digital Television,” 1997 WL 637847 (MB rel. Oct. 16, 1997). “Checklist” facilities have power and antenna height equal to or less than those specified in the DTV Table and are located within a specified minimum distance from the reference coordinates specified in the DTV Table. Because these facilities comply with the interference requirements specified in the rules, no further consideration of interference is required. In addition, because the DTV Table was coordinated with Canada and Mexico, “checklist” facilities generally did not require further international coordination.

⁴⁸ See generally *DTV Build-Out; Applications Requesting Extension of the Digital Television Construction Deadline*, Order, 22 FCC Rcd 9789 (2007) (“*Construction Deadline Extension Order*”); and *DTV Build-Out; Requests for Waiver of July 1, 2005 and July 1, 2006 “Use or Lose” Deadlines Requests for Waiver of the August 4, 2005 “Checklist” Deadline*, Order, 22 FCC Rcd 9750 (2007) (“*Use or Lose Order*”). Three petitions for reconsideration were filed to the *Construction Deadline Extension Order* and 11 petitions for reconsideration were filed to the *Use or Lose Order*. See Public Notice, “DTV Channel Election Information and Deadlines,” 19 FCC Rcd 19569 (MB 2004) (“*Certification Deadline PN*”).

⁴⁹ See *Construction Deadline Extension Order*, 22 FCC Rcd at 9789-90, ¶ 1. The Commission granted 140 of these extension requests, 110 of which were to stations remaining on their current DTV channel for post-transition use. *Id.*

⁵⁰ November 18, 2007 is based on six months from the release date of the *Construction Deadline Extension Order* (May 18, 2007).

⁵¹ See *id.* at 9792, ¶¶ 10-61.

⁵² See *id.* at 9802-9805, Section III.B. (¶¶ 62-81). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 73, the Commission also granted CP extensions until February 17, 2009 to four stations, facing unique technical challenges (e.g., side-mounted/top-mounted antenna-related issues) preventing them from completing construction of their DTV facilities. See *Construction Deadline Extension Order*, 22 FCC Rcd at 9789- (continued....)

of the “use or lose” deadlines.⁵³ For 102 stations whose pre-transition DTV channel is the same as the station’s post-transition DTV channel, the Commission granted these stations a waiver and gave them until November 18, 2007, to meet the “use or lose” deadline.⁵⁴ For 38 stations whose pre-transition DTV channel is different from the station’s post-transition channel, the Commission granted these stations a waiver and gave them until 30 days after the effective date of the amendments to Section 73.624(d) of the rules adopted in the Report and Order in this Third DTV Periodic Review proceeding in which to complete construction.⁵⁵ In both of these orders, the Commission reminded stations that the hard deadline for termination of analog TV service prevents consideration of any request for extension of full-power analog TV service beyond that date. The Commission advised stations given an extension or waiver to utilize this time to take all steps possible to complete construction as further extension or waiver requests may be evaluated under a more stringent standard.⁵⁶ Those stations that have a construction permit for which the original time to complete construction has not yet expired or that had their original construction permit extended to a date that has not yet expired were not addressed in the *Construction Deadline Extension Order* or *Use-or-Lose Order*. These stations were directed to continue to follow existing rules and procedures (*i.e.*, continue to build their current DTV construction permit and, if that construction permit will expire before they can complete construction, file a request to obtain Commission approval for extension of the construction permit).⁵⁷

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90, ¶ 1 and 9805-9806 Section III.C. (¶¶ 82-87). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9508, ¶ 77, the Commission denied the extension requests of five stations: two of which met their DTV construction obligations and were permitted to continue to operate their licensed facilities, while the other three stations were admonished for failing to meet their DTV construction obligations. See *Construction Deadline Extension Order*, 22 FCC Rcd at 9806-9809, Section III.D. and E. (¶¶ 88-99).

⁵³ See *Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1. The Commission granted 185 of these “use-or-lose” waiver requests, 130 of which were to stations remaining on their current DTV channel for post-transition use. *Id.* The *Use or Lose Order* was adopted simultaneously with the *Construction Deadline Extension Order*.

⁵⁴ The Commission granted these applications an additional six months from the release date of the *Use or Lose Order* in which to complete construction. See *id.* at 9751, Section V.A. (¶¶ 10-63).

⁵⁵ See *id.* at 9760-9761, ¶ 64. As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 73, the Commission also granted 45 stations, facing unique technical challenges (*e.g.*, side-mounted antenna-related issues) preventing them from meeting the applicable replication/maximization requirements, “use or lose” waivers and CP extensions until February 17, 2009. See *Use or Lose Order*, 22 FCC Rcd 9751, ¶ 1 and 9764-9769, Section III.C. (¶¶ 79-115). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9507, ¶ 78, the Commission denied the “use or lose” waiver requests of seven stations. See *Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1 and 9769-9771, Section III.D. (¶¶ 116-126). As discussed in the *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9507, ¶ 75, the Commission granted 10 stations their requests for waiver of the “checklist” deadline (the August 4, 2005 deadline established for all television stations to construct and operate “checklist” DTV facilities). See *Use or Lose Order*, 22 FCC Rcd at 9751, ¶ 1 and 9771-9772, Section III.E. (¶¶ 127-136).

⁵⁶ See *Construction Deadline Extension Order*, 22 FCC Rcd at 9790, ¶¶ 2-3; and *Use or Lose Order*, 22 FCC Rcd at 9752, ¶¶ 3-4.

⁵⁷ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9501, ¶ 57. Since the release of the *Construction Deadline Extension* and *Use-or-Lose orders*, 83 stations have filed extension requests and 69 stations have filed for use-or-lose waivers. These numbers include requests for additional time as well as new requests filed with respect to deadlines that occurred after the Orders were drafted. The *Third DTV Periodic Review NPRM* did not require the usual reporting and progress requirements for some stations according to the rules of the *Construction Deadline Extension Order*, in light of the ongoing consideration of this Report and Order. *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9510, ¶ 77 n.142. Similarly, the *Third DTV Periodic Review NPRM* withheld admonishment of some stations under the *Use or Lose Order* pending adoption of rules in this proceeding. *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9510-11, ¶ 78.

IV. PROGRESS REPORT

15. The transition to DTV is a complex undertaking, affecting virtually every segment of the television industry and every American who watches television. The Commission has been facilitating the transition to DTV by adopting a standard for digital broadcasting, creating an initial and post-transition DTV Table, awarding DTV licenses, establishing operating rules for the new service, monitoring the physical build-out of DTV broadcast stations, and helping to educate consumers about the transition. At the end of the transition, television broadcast operations will be limited to the core TV spectrum.⁵⁸ This will enable the recovery of a total of 108 MHz of spectrum (*i.e.*, TV channels 52-69)⁵⁹ for critically important public safety needs and new wireless services.⁶⁰

A. DTV Operations

16. As of December 17, 2007, 1,706 television stations in all markets (representing approximately 99 percent of all stations) have been granted a DTV construction permit (“CP”) or license. A total of 1,635 stations are now broadcasting a digital signal. Of these, 1,396 stations have authorized licensed facilities or program test authority and 239 stations are operating pursuant to STA or experimental DTV authority.⁶¹

17. In the top 30 television markets, all 119 top-four network-affiliated television stations are on the air in digital; 113 are licensed DTV facilities or program test authority and six have STAs. In markets 1-10, all 40 top-four network affiliated stations are providing digital service, 38 with licensed DTV facilities and two with STAs. In markets 11-30, all 79 top-four network affiliated stations are providing DTV service, 75 with licensed DTV facilities and four with STAs.⁶²

18. Approximately 1,230 commercial television stations were due to commence digital broadcasts by May 1, 2002. As of December 17, 2007, 1,157 of these stations (94 percent) are broadcasting a digital signal. In addition, approximately 373 NCE television stations were required to commence digital operations by May 1, 2003. As of December 17, 2007, 359 (96 percent) of these stations are broadcasting a digital signal.⁶³

B. Consumer Capability to Receive DTV Signals

19. Over-the-Air Viewer Reception. As of January 1, 2007, Nielsen estimates that 36.6 million people or 13 percent of people in the United States relied only on over-the-air television.⁶⁴ In addition Nielsen estimates that 15.2 million households, or 14 percent of television households, watched

⁵⁸ The “core spectrum” is comprised of low-VHF channels 2 to 4 (54-72 MHz) and 5 to 6 (76-88 MHz), high-VHF channels 7 to 13 (174-216 MHz) and UHF channels 14-51 (470-698 MHz), but does not include TV channel 37 (608-614 MHz), which is used for radio astronomy research. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18292, ¶ 33; *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7419, ¶ 5. See also 47 C.F.R. § 73.603(c).

⁵⁹ See 47 U.S.C. § 337(e)(1) (“Any full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after February 17, 2009.”).

⁶⁰ See ¶ 10, *supra*.

⁶¹ See *Status Reports on DTV Applications and Buildout Topics*, available at <http://www.fcc.gov/mb/video/dtvstatus.html>. This data is publicly available and frequently updated.

⁶² *Id.*

⁶³ *Id.* The commercial and NCE TV stations that have not commenced digital broadcasts were required to file a request for extension of additional time to complete construction of their DTV facilities by the deadline established for them in 47 C.F.R. § 73.624(d)(1).

⁶⁴ The Nielsen Company.

television via an over-the-air signal only.⁶⁵ Nielsen predicts that by January 1, 2008, fewer people, specifically 33.6 million, or 12 percent of people in the United States, will watch television via an over-the-air signal only.⁶⁶ In terms of households, Nielsen estimates much fewer, 13 percent of all television households, or 14.3 million households, will be over-the-air only.⁶⁷

20. The demand for DTV sets has grown with increased availability of DTV programming and receiving equipment and a steady drop in the price of such equipment. The Consumer Electronics Association (“CEA”) reports that the consumer electronics industry has invested \$66.7 billion in DTV products since 1998.⁶⁸ Moreover, CEA reports more than \$75 billion in consumer investment in DTV products. According to CEA, 23.9 million DTV sets and monitors were sold in 2006. CEA predicts that 29.2 million DTV products will be sold in 2007, 33.4 million in 2008, 35.2 million in 2009 and 36.4 million in 2010.⁶⁹ CEA estimates that total digital display unit sales will increase by 30 percent in 2007, as compared to 2006. Sales of high-definition television sets are expected to increase to 20.7 million in 2007, a significant increase from 17.3 million sold the previous year.⁷⁰

21. To promote the availability of reception equipment and protect consumers by ensuring that their television sets continue to work in the digital world just as they do today, the Commission established a DTV tuner mandate, which required that all television receiver equipment (e.g., TV sets (all sizes), VCRs, digital video recorders, and any other TV receiving devices) shipped in interstate commerce or imported into the United States, for sale or resale to the public, must be capable of receiving the signals of DTV broadcast stations over-the-air by March 1, 2007.⁷¹

22. In another consumer protection effort, the Commission adopted an order in April 2007, to require that, as of May 25, 2007, retailers that continue to sell analog-only television equipment provide consumers with information regarding the February 17, 2009 transition date at the point of sale of DTV television receiving equipment.⁷² Specifically, the Commission now requires sellers of television receiving equipment that does not include a digital tuner to disclose at the point-of-sale that such devices include only an analog tuner and, therefore, will require a converter box to receive over-the-air broadcast television after the February 17, 2009 transition date.⁷³ As we noted in this order, consumers expect that

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ See *Ex Parte* Comments of CEA in MB Docket No. 03-15 (dated April 2, 2007) (“CEA *Ex Parte*”).

⁶⁹ *Id.*

⁷⁰ Consumer Electronics Association's Semi-Annual U.S. Sales and Forecasts Report, July 2007.

⁷¹ 47 C.F.R. § 15.117(a). In 2002, the Commission initiated the DTV tuner mandate, with a phase-in period based on screen size to minimize the cost impact on consumers. *DTV Tuner Order*, 17 FCC Rcd at 15996 ¶ 40 (requiring that all TV receivers manufactured or shipped in the U.S. with screen sizes 13 inches and above be capable of receiving DTV signals over-the-air no later than July 1, 2007); See also *Consumer Electronics Ass'n v. F.C.C.*, 347 F.3d 291 (D.C. Cir. 2003) (upholding the *DTV Tuner Order*). In 2005, the Commission accelerated the implementation of the DTV tuner mandate to become effective on March 1, 2007 and expanded the mandate to include television sets less than 13 inches. *Requirements for Digital Television Receiving Capability*, ET Docket No. 05-24, Second Report and Order, 20 FCC Rcd 18607 (2005) (“*2005 DTV Tuner Order*”).

⁷² See *Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 03-15, Second Report and Order, 22 FCC Rcd 8776 (2007) (“*Labeling Order*”).

⁷³ Specifically, the *Labeling Order* requires that anyone that sells or offers for sale or rent television receiving equipment that does not contain a DTV tuner must display the following consumer alert, in a size of type large enough to be clear, conspicuous and readily legible, consistent with the dimensions of the equipment and the label, at the point of sale: “CONSUMER ALERT: This television receiver has only an analog broadcast tuner and will require a converter box after February 17, 2009, to receive over-the-air broadcasts with an antenna because of the (continued....)”

DTV television receiving equipment for sale today that is capable of receiving television is and will continue to be able to receive over-the-air broadcast signals, and, if not, then such material information should be disclosed prior to purchase. The successful completion of the DTV transition depends upon satisfaction of this basic consumer expectation.⁷⁴

23. We also note that subsidized digital-to-analog (“D-to-A”) converter boxes will be available to eligible consumers starting January 2008, further promoting access to digital reception equipment.⁷⁵ This subsidy program, which was created by the DTV Act, will allow consumers with analog-only TV sets to receive over-the-air broadcast programming after the February 17, 2009 transition date, when analog broadcasting ends. Congress directed the National Telecommunications and Information Administration (“NTIA”) of the U.S. Department of Commerce to administer this subsidy program.⁷⁶ In March 2007, NTIA issued final rules to implement the program, which subsidizes the purchase of D-to-A converter boxes.⁷⁷ The Commission is working with NTIA to test the D-to-A converters for eligibility to be certified for the coupon program.

24. The Commission has also taken action to ensure that all cable subscribers, including those with analog TV sets, can view broadcast television after the DTV transition.⁷⁸ Approximately 35 percent of all television homes, or approximately 40 million households, are analog-only cable subscribers.⁷⁹

25. In September 2007, the Commission adopted rules ensuring that the 98 million TV viewers retain the same access to their local stations after the transition as they do today.⁸⁰ The rules will

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Nation’s transition to digital broadcasting. Analog-only TVs should continue to work as before with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products. For more information, call the Federal Communications Commission at 1-888-225-5322 (TTY: 1-888-835-5322) or visit the Commission’s digital television website at: www.dtv.gov.” *Id.* at ¶ 14. This requirement applies to the sale or rent of such equipment via direct mail, catalog, or electronic means (*e.g.*, the Internet). *Id.*

⁷⁴ *Id.* at ¶ 1.

⁷⁵ DTV Act § 3005(c)(1)(A); 47 U.S.C.A. § 309 Note. *See Rules to Implement and Administer a Coupon Program for Digital-to-Analog Converter Boxes*, NTIA Docket No. 0612242667-7051-01, Final Rule, 72 FR 12097 at ¶ 8 (rel. March 12, 2007) (“*NTIA Coupon Program Final Rule*”); 47 C.F.R. § 301. Starting January 1, 2008, all U.S. households will be eligible to request up to two \$40 coupons to be used toward the purchase of up to two, D-to-A converter boxes, while the initial \$990 million allocated for the program is available. 47 C.F.R. § 301.3-4. If the initial funds are used up and the additional funds (up to \$510 million) are authorized, eligibility for the coupons will be limited to over-the-air-only television households. *NTIA Coupon Program Final Rule*, 72 FR 12097 at ¶ 8. Eligible consumers will have until March 31, 2009 to make a request for these coupons. DTV Act § 3005(c)(1)(A).

⁷⁶ DTV Act § 3005(a)(1) directs the Assistant Secretary for Communications and Information to “implement and administer a program through which households in the United States may obtain coupons that can be applied toward the purchase of digital-to-analog converter boxes.” *Id.* The purpose of the program is to enable consumers to continue receiving broadcast programming over the air using analog-only televisions not connected to cable or satellite service. *NTIA Coupon Program Final Rule*, 72 FR 12097 at ¶ 2; *See* 47 C.F.R. § 301.1.

⁷⁷ *See generally NTIA Coupon Program Final Rule*, 72 FR 12097. NTIA established rules for the coupon program in 47 C.F.R. § 301. The rules became effective April 16, 2007.

⁷⁸ *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission’s Rules*, CS Docket No. 98-120, Third Report and Order and Third Further Notice of Proposed Rule Making, FCC 07-170 (rel. Nov. 30, 2007) (“*Cable Viewability Order*”).

⁷⁹ *Id.* at n.3.

⁸⁰ *See FCC, FCC Adopts Rules to Ensure all Cable Customers Receive Local TV Stations After the Digital Television Transition* (press release), Sept. 11, 2007).

require cable operators to comply with the statutory viewability requirement⁸¹ by choosing to either: (1) carry digital signals in analog format, or (2) for all-digital systems, carry the signals only in digital format, provided that all subscribers have the necessary equipment to view the broadcast content. The viewability requirements will be in force from the date of the transition through February 2012 subject to review by the Commission during the last year of this period.⁸²

26. The Commission also reaffirmed the existing material degradation standard for cable carriage of digital signals, including the requirement that cable systems carry high definition (“HD”) broadcast signals in HD format.⁸³ In addition, the Commission has taken several actions to increase consumer awareness about the impending DTV transition. Successful completion of the DTV transition depends upon government and industry working together to promote consumer awareness and minimize the burdens borne by consumers. In July 2007, the Commission adopted a Notice of Proposed Rulemaking for the Commission’s Digital Television Consumer Education Initiative (“*DTV Consumer Education NPRM*”), which requested comment on several proposals relating to consumer education about the DTV transition, including considering the best means of creating a coordinated, national DTV consumer education campaign.⁸⁴ We proposed to require television broadcast licensees to conduct on-air consumer education efforts and to require “broadcast licensees and permittees to report, every 90 days, their consumer education efforts, including the time, frequency, and content of public service announcements aired by each station in a market, with civil penalties for noncompliance.”⁸⁵ It also sought comment on proposals about notices in MVPD customer billing statements, notices from consumer electronics manufacturers, and consumer electronics retailer training and education, among others.

27. In addition, on September 26, 2007, the Commission held the first in a series of Commission Digital Television Consumer Education Workshops.⁸⁶ These workshops provide an opportunity for all interested parties to jointly discuss the challenges associated with the upcoming transition and explore ways to develop coordinated consumer education activities. The Commission invites organizations representing a broad range of consumers and other stakeholders to participate, including those who represent senior citizens, low-income consumers, non-English speakers, people with

⁸¹ See 47 U.S.C. §§ 534 and 535(g), (h).

⁸² See *Cable Viewability Order*, *supra*, note 78.

⁸³ *Id.* See also, 47 U.S.C. § 534(b)(4)(A) and 535(g).

⁸⁴ *DTV Consumer Education Initiative*, MB Docket No. 07-148, Notice of Proposed Rulemaking, 22 FCC Rcd 14091 (rel. July 30, 2007) (“*DTV Consumer Education NPRM*”). Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

⁸⁵ Public Notice, “Media Bureau Announces Comment and Reply Comment Dates for the DTV Consumer Education Initiative, MB Docket No. 07-148,” 22 FCC Rcd 15197 (2007). Comments were due September 17, 2007 and reply comments were due October 1, 2007. An order addressing the proposals in this docket was circulated on October 16, 2007. See Written Statement Of The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, Before the Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet, U.S. House of Representatives (dated Oct. 17, 2007); http://fjallfoss.fcc.gov/edocs_public/attachmatch/DOC-277414A1.doc.v

⁸⁶ See News Release, “FCC to Hold Series of Digital Television Consumer Education Workshops; FCC Announces Dates for the First Two Focusing on Seniors and Minority/Non-English Speaking Consumers,” (rel. Oct. 9, 2007). The workshops will focus on communities that have been identified as being likely to be disproportionately impacted by the transition and least aware of it. These communities include, for example, seniors, minorities and non-English speakers, people with disabilities, low-income earners, and those living in rural areas. On November 8, 2007, the Commission hosted a workshop that addressed issues related to ensuring that seniors are prepared for the DTV transition. On December 4, 2007, the Commission hosted a workshop that addressed issues related to ensuring that minority and non-English-speaking consumers are prepared for the DTV transition.

disabilities, tribes, and public interest organizations working on behalf of underserved customers or those living in rural areas.⁸⁷

V. FINAL DTV TRANSITION RULES

28. By statute, full-power television broadcast stations must cease analog operations by 11:59 p.m. on February 17, 2009.⁸⁸ Accordingly, our focus is now on overseeing broadcasters' construction of facilities that will reach viewers in their authorized service areas by the time they must cease broadcasting in analog. Specifically, this Report and Order adopts rules to ensure that broadcasters meet their statutory responsibilities and can begin operations on their final, post-transition (digital) channels by the expiration of the transition deadline on February 17, 2009. We take seriously our goal to ensure that consumers who have diligently prepared for the transition by obtaining the necessary DTV receiver equipment are able to, at a minimum, continue to watch their existing television programming after the transition date. In order to make this transition as smooth as possible for consumers, stations must have their digital facilities in place and ready to commence operations no later than 12:00 a.m. on February 18, 2009. We recognize that the transition is a complex undertaking presenting many challenges to the broadcast industry and that some disruption of television service may be unavoidable leading up to the analog turn-off. Accordingly, we adopt rules, where possible, to offer broadcasters some regulatory flexibility. At the same time, however, we must still ensure that DTV broadcasters will at least reach the audiences that they have been serving with their analog service and that, after the transition date, viewers will continue to have access to the stations that they are accustomed to receiving over the air.

29. Stations are reminded that their authority to operate on a pre-transition channel, whether analog or digital, ends on February 17, 2009. Continued operation of analog or pre-transition digital facilities after that date is operation without a license and will result in the imposition of sanctions for unauthorized operations.⁸⁹ Only stations that have applied for and been granted specific authority to remain on a pre-transition digital channel may continue operating on that channel.⁹⁰ As noted in the *Third DTV Periodic Review NPRM*,⁹¹ we recognize that there may be some situations where a station's ability to commence its post-transition operations will be dependent on another station's construction and operating plans. For example, station A may need to begin testing its digital facility on its post-transition channel in order to be ready to operate after the transition date, but station B is currently using the channel for pre-transition (analog or digital) service. In such situations, close cooperation will be needed between these stations. We expect that broadcasters will make all possible accommodations to ensure that all stations will be able to provide digital service on their post-transition channels at the transition date.

30. We begin by, first, adopting our proposal to gather information about each station's transition status and plan to meet the deadline. Second, we adopt our proposed deadlines for the construction and operation of stations' final digital facilities. Third, we adopt our proposed stricter standards for granting stations extensions of time to construct digital facilities. Fourth, we adopt our proposals to permit qualifying stations to make a "phased transition" in an effort to afford regulatory relief without undermining the expectations of over-the-air viewers. Fifth, we adopt flexible rules allowing stations to reduce and/or terminate their analog and pre-transition digital television service before the transition deadline if doing so is necessary to achieve their transition. Sixth, we adopt our proposal to permit qualifying stations to transition early. Seventh, we address the rules, procedures and

⁸⁷ See FCC, *FCC Announces Preliminary Agenda for Digital Television Consumer Education Workshop on September 26* (press release), August 28, 2007.

⁸⁸ 47 U.S.C. § 309(j)(14).

⁸⁹ See 47 C.F.R. § 73.1745.

⁹⁰ See Section V.B.7., *infra*.

⁹¹ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9515-16, ¶ 91.

interference standards for stations to file applications for construction permits to build their final, post-transition facilities and to request authorization to maximize their facilities. Finally, we address a variety of other issues related to the DTV transition.⁹²

A. Broadcasters' Transition Status

31. Stations are responsible for meeting the statutory deadline for the DTV transition. The Commission has no discretion to waive or change this transition date.⁹³ Full-power broadcast stations not ready to commence digital operations upon expiration of the deadline for the transition on February 17, 2009 must go dark on their analog channel and risk losing their authorizations to operate after the transition date.⁹⁴

32. We have finalized post-transition channel assignments for every eligible station.⁹⁵ In the post-transition DTV Table, 1,812 stations received post-transition DTV channels.⁹⁶ Of these, 1,178 stations received the DTV channel on which they are currently authorized, 517 stations received the NTSC channel on which they are currently authorized, and 117 stations received a different channel from which they are currently authorized. In addition, we have proposed post-transition channel assignments for 13 stations that became eligible after the channel election process.⁹⁷

33. The process of transitioning the entire TV broadcast industry to digital-only operation on each station's final channels will be complex. Accordingly, most stations should have their plans in place for their transition to digital-only service on their post-transition channel. Some stations may now be ready, or very close to ready, to make their transition. Other stations, however, will need to take significant steps to accomplish their transition. Stations' situations will vary based on their final channel assignments in the new DTV Table and whether they must change their transmission facilities to operate on their post-transition channels.

1. Transition Status Reports (Form 387) Adopted

34. We adopt our proposal in the *Third DTV Periodic Review NPRM*⁹⁸ to require all full-power television stations to file a form⁹⁹ detailing (1) their current transition status, (2) any additional steps needed to commence their full, digital operations, and (3) their timeline to meet the February 17,

⁹² We note the Commission's rules for full-power television will need to be updated to eliminate outdated references to analog and out-of-core television service and clarify engineering issues that differ for digital transmission and analog transmission. Such housekeeping matters will be addressed in a separate rulemaking in the DTV proceeding, MB Docket No. 87-268.

⁹³ See 47 U.S.C. §§ 309(j)(14) and 337(e)(1).

⁹⁴ See *supra* ¶ 5.

⁹⁵ These post-transition channel assignments largely were based on the choices made by licensees during the channel-election process. Eligibility for a proposed post-transition channel assignment was limited to existing Commission licensees and permittees. See *Seventh FNPRM*, 21 FCC Rcd at 12117-12118, ¶ 50.

⁹⁶ This total includes 1,806 stations announced in Appendix A to the *Seventh FNPRM* and six additional stations announced in a subsequent Public Notice. See *id.* at 12123, App. A; and Public Notice, "Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the Seventh Further Notice of Proposed Rulemaking," 22 FCC Rcd 102 (2007) ("*New Permittees PN*"). Additional new permittees may also be announced before the transition deadline. See *Seventh FNPRM*, 21 FCC Rcd at 12118, ¶ 53.

⁹⁷ *Eighth Further Notice*, 22 FCC Rcd at 15637, ¶ 140.

⁹⁸ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9492, ¶ 35.

⁹⁹ FCC Form 387 attached hereto as Appendix C.

2009 transition deadline. The record supports adoption of this form.¹⁰⁰ We agree with commenters and find that these forms will assist the Commission, industry, and the public in assessing progress and making plans for the transition date.¹⁰¹ We note, however, that these forms are not a substitute for active coordination efforts that may be necessary between and among broadcasters. Stations' forms will be made publicly available on the Commission's website.¹⁰²

35. We will require stations to file these forms no later than February 18, 2008.¹⁰³ In addition, stations must update their forms, as necessary, until they report the completion of their transition – specifically, that they have begun operating their full facility as authorized by the post-transition DTV Table Appendix B.¹⁰⁴ As proposed,¹⁰⁵ each station is responsible for the continuing accuracy and completeness of the information furnished in their form.¹⁰⁶ Whenever the information furnished in their form is no longer substantially accurate and complete in all significant respects, the station must file an updated form as promptly as possible and in any event within 30 days to furnish such additional or corrected information as is appropriate.¹⁰⁷ Examples of a significant change would include a change in a station's (1) transition plans, (2) construction or operational status or (3) existing service (e.g., reduction or termination of analog or pre-transition digital service). Stations must continue to file updates until construction of fully authorized post-transition facilities is complete and the station has begun operating its full post-transition DTV Table Appendix B facility. Commenters express concern that some stations may not be able to set a detailed timeline by the due date because some of their transition logistics (e.g., details about equipment and tower crews) are beyond their control.¹⁰⁸ We recognize that some stations may need to update their forms several times as they progress through their transitions. At a minimum, stations that have not completed construction of their post-transition facility and applied for a license to cover by October 20, 2008, must update their form to report their current status as of that date. Stations unable to answer questions on the form on the initial filing date must explain their reasons for not providing an answer and indicate when they expect to update the form to provide an appropriate response. We delegate authority to the Media Bureau to follow up with stations that do not file or update their forms. We intend to use these forms to identify stations that are not communicating their progress and

¹⁰⁰ See, e.g., APTS/PBS Comments at 22; Capitol Comments at 9; NCTA Comments at 4-5. For example, APTS/PBS states that these reports will permit it and other broadcast organizations “to assist stations in the choreography of the hundreds of channel changes that will need to occur in the coming months.”

¹⁰¹ We commend Capitol Broadcasting on its stations' detailed transition information which it set forth in its comments. See Capitol Comments at 2-8.

¹⁰² See Digital Television (DTV) Regulatory Information, available at <http://www.fcc.gov/dtv/>.

¹⁰³ Although the Commission originally proposed December 1, 2007 as the date broadcasters must file their forms, in response to the comments, we instead adopt February 18, 2008 as that date. See APTS/PBS Comments at 22 (arguing that that the Commission adopt a policy requiring that stations submit the new Form 387 at least 60 days after the Report and Order in this proceeding is published in the Federal Register). We expect that, by February 18, 2008, this Report and Order will have been published in the Federal Register and have become effective and also that the Commission will have obtained the necessary OMB approval for this information collection. See OMB Control No. 3060-1105. The Media Bureau will announce when OMB approval has been obtained and will confirm the February 18, 2008 filing deadline for when broadcasters must file the form.

¹⁰⁴ 47 C.F.R. 73.622(i).

¹⁰⁵ See *Third Periodic DTV NPRM*, 22 FCC Rcd at 9492, Section V. (¶ 35).

¹⁰⁶ This requirement is consistent with 47 C.F.R. § 1.65(a).

¹⁰⁷ See 47 U.S.C. 308(b) (The Commission may request that licensees provide “such other information as [the Commission] may require...during the term of any such licenses...to enable it to determine whether such original application should be granted or denied or revoked...”)

¹⁰⁸ APTS/PBS Comments at 22-23.

may need to contact stations directly to assess and discuss the station's transition status. In addition, the Media Bureau will prepare a comprehensive summary report of the information provided in the Form 387 no later than August 18, 2008 (six months prior to the February 17, 2009 transition deadline). This report will enable us to assess progress toward completing the transition and to make any mid-transition adjustments in time for the February 17, 2009 deadline.

2. Stations Identified as Ready to Commence Post-Transition Operations

36. There are more than 800 stations that have built their post-transition facility.¹⁰⁹ These stations have built and licensed or applied to license their full authorized DTV facilities as defined in the post-transition DTV Table Appendix B (*i.e.*, their post-transition channel is the same as their pre-transition DTV channel).¹¹⁰ We note that in the *Third DTV Periodic Review NPRM*, we listed 752 stations on Appendix D.¹¹¹ In response to comments, we have now added approximately 50 stations and removed approximately three stations from this list. We have also added other stations to this list that we have identified as having become ready to make their transition because they have filed for a license to cover their post transition (DTV Table Appendix B) facilities since the close of the comment cycle in this proceeding. The stations listed in Appendix D, however, must still file a transition status report, FCC Form 387, to confirm their operational status and indicate their timing for terminating their analog service.

B. Construction Deadlines for Full, Authorized DTV Facilities

37. We establish the following deadlines for full-power television broadcast stations to construct their full, authorized post-transition (digital) facilities (as defined in the post-transition DTV Table Appendix B):¹¹²

- February 17, 2009 will be the construction deadline for stations building digital facilities based on a new channel allotment in the post-transition DTV Table, *i.e.*, stations that will be returning to their analog channel or moving to a new digital channel for post-transition operations. These stations will not be required to construct a digital facility on their pre-transition DTV channel and will be permitted to forego further construction to the extent such a facility has been partially built.
- February 17, 2009 will also be the construction deadline for stations demonstrating that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.
- May 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations and already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.
- August 18, 2008 will be the construction deadline for stations that will use their pre-transition DTV channel for post-transition operations, but do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities.

As discussed in more detail below, we establish particular deadlines and procedures for stations falling into specific defined circumstances. Stations using their pre-transition DTV channel for post-transition

¹⁰⁹ This number is increasing as stations complete construction of their post-transition facilities and file for licenses to cover. See Appendix D – List of Stations Identified as Ready to Commence Post-Transition Operations.

¹¹⁰ See *Seventh Report and Order*, 22 FCC Rcd 15581, at app. B. Some stations are not at full, authorized facilities, as designated in DTV Table Appendix B, but have indicated they are licensed and do not intend to build more.

¹¹¹ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9487, ¶ 18 and 9563, app. D (“List of Stations Believed Ready to Commence Post-Transition Operations”).

¹¹² See revised rule sections 47 C.F.R. 73.624(d)(1)(v)-(vii) in Appendix B, *infra*.

operations that do not have a construction permit that matches their post-transition facilities, should apply now for a new or modified construction permit. Stations that have a construction permit that has not yet expired remain subject to that expiration date. For stations granted “checklist” waivers and denied extensions or “use or lose” waivers, their deadline will depend upon whether a station’s pre-transition DTV channel is the same or different from its post-transition channel. Finally, we adopt a stricter standard for stations to obtain an extension of time to construct their post-transition facilities,¹¹³ but offer flexibility to certain stations if they can build facilities that would serve at least the same population that served by their current television service and would not cause impermissible interference to other stations.¹¹⁴

38. Commenters generally disagreed with our proposed deadlines¹¹⁵ and sought more time to complete construction of their full, authorized post-transition facilities.¹¹⁶ Many commenters noted that Congress did not expressly mandate the date by which broadcasters must operate at full, authorized facilities on their post-transition channel, only that stations must operate in digital and inside the TV core spectrum.¹¹⁷ Thus, several commenters argued for significant flexibility to achieve their construction deadline, with some seeking the discretion to take up to one year, or more, after the transition date to complete their full, authorized facilities, while stations are providing digital service only to their communities of license.¹¹⁸ In addition, other commenters argued that the Commission should view the final DTV Table Appendix B as setting forth the maximum coverage contour in which a station may operate, rather than the exact parameters on which they must operate.¹¹⁹

39. We find that compliance with our construction deadlines is necessary to ensure that consumers are not left behind in the transition.¹²⁰ Viewers who have prepared for the DTV transition should be able to receive television service when analog transmissions cease on February 17, 2009. To achieve this goal, it is imperative that all stations finalize construction of their post-transition facilities and operate at full, authorized facilities by the deadline. Given the February 17, 2009 deadline established by Congress for full-power stations to end analog service, stations’ primary goal must now be to ensure that

¹¹³ See Section V.B.5., *infra*.

¹¹⁴ See Section V.C., *infra*.

¹¹⁵ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9503, 9506-07, ¶¶ 60, 73.

¹¹⁶ See, e.g., Allbritton Comments at 3; APTS/PBS Comments at 16-18; Bahakel Comments at 4; Central Michigan University Comments at 6; Disney Comments at 5-6; Hawaii Public Television Foundation Comments at 5; MSTV/NAB Comments at 22-26; Nebraska PTV Licensees Comments at 4; PBNP Comments at 5; Quincy Comments at 5; Rocky Mountain Comments at 8; Scripps Howard Broadcasting Comments at 3-4; Sistema Universitario Ana G. Mendez, Inc. Comments at 6; South Carolina Educational Television Commission Comments at 1; St Louis Public Television Comments at 4; University of Michigan Comments at 3.

¹¹⁷ Public Broadcasting of Northwest Pennsylvania Comments at 5; Hawaii Public Television Foundation Comments at 5; Central Michigan University Comments at 6; Nebraska Educational Telecommunications Commission and the University of Nebraska Comments at 4; Sistema Universitario Ana G. Mendez, Inc. Comments at 7; South Carolina Educational Television Commission Comments at 4; St. Louis PTV Comments at 4; University of Michigan Comments at 4; Gray Television Comments at 4; Northeastern Educational Television of Ohio, Inc. Comments at 3; University of North Carolina Comments at 5; APTS/PBS Comments at 14-15; Greater Dayton Public Television, Inc. Comments at 6; AFCCE Comments at 2.

¹¹⁸ See, e.g., MSTV/NAB Comments at 22 (seeking a “one-year post-transition digital ramp-up period”); Quincy Comments at 5 (seeking until February 10, 2010); University of North Carolina Comments at 2 (seeking 12 to 24 months after the transition date).

¹¹⁹ APTS/PBS Comments at 11-12.

¹²⁰ As discussed further below, we will afford regulatory flexibility to stations where doing so would not cause existing viewers to lose service. See discussion of phased transition in Section V.C., *infra*.

DTV stations will be operating at their full, authorized facilities on their final, post-transition channels by that date.¹²¹ Previously, our efforts had been to facilitate the initiation of DTV service to the public during the transition.¹²² This approach was designed, in part, to accomplish the goal of completing the transition by the original December 31, 2006 deadline established by Congress, a deadline that could have been extended under several circumstances. We recognize, as noted by some commenters,¹²³ that strict compliance with our DTV construction deadlines would require some stations to reduce or terminate their analog service before the transition date. In those cases in which the potential impact of the loss of service prior to the transition would be more disruptive than the effect of reduced coverage area for a limited period of time after the transition, we are providing for flexibility. However, in other cases, the loss of a station's analog service to some viewers pre-transition, will be necessary to enable construction of post-transition facilities and can be preferable to viewers losing all television service from that station after the transition date if DTV facilities are not ready and analog service must cease. To ensure that this flexibility serves the public interest, we are requiring that stations that choose either pre-transition service reduction or post-transition phase-in must inform their viewers of what to expect and the options for continuing to have service.

40. We reject commenters' arguments that we should provide blanket authority for stations to operate at less than full, authorized post-transition facilities after the transition date. Commenters offered several reasons why they may need more time to build their final DTV facilities, which reasons include the following: (1) stations may need to make "complicated technical changes" to their facilities to achieve their transition (e.g., those returning to their analog channel and intending to reuse their analog antenna);¹²⁴ (2) there may be a shortage of equipment and qualified tower crews needed to implement final DTV construction;¹²⁵ (3) winter weather may prevent some stations from constructing their final facilities;¹²⁶ or (4) a single deadline for many stations may cause delays in the processing of needed construction permit applications.¹²⁷ We appreciate these specific concerns, but find that giving blanket authority for an industry-wide, staggered deadline beyond the transition date would leave a significant number of over-the-air viewers without television service on and after the transition date, as analog service will have ceased, but some stations would not yet have been required to complete DTV facilities. Only by requiring that full, post-transition facilities are operating on the transition date can we ensure a successful DTV transition; namely, the continued availability of television service.

41. While we set strict construction deadlines in this Report and Order, we also adopt flexible rules and procedures that will address the specific concerns raised by commenters, such as those noted above. For example, we are affording stations facing unique technical challenges, such as the need to reposition their side-mount antennas, until the transition date to construct their full, authorized post-transition facilities, and we anticipate that many of these stations may also qualify for extensions – even under our stricter extension criteria,¹²⁸ as well as for the provisions for a "phased transition."¹²⁹ We also expect that these stations will benefit from the new flexible rules for service reduction and termination in

¹²¹ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9500, ¶ 54.

¹²² See *id.*

¹²³ See, e.g., AFCCE Comments at 4-6 (arguing that analog service may be disrupted well before the transition date if stations are not permitted additional time after the transition date to construct post-transition facilities).

¹²⁴ See, e.g., AFCCE Comments at 4-6; APTS/PBS Comments at 17-18; Quincy Comments at 5.

¹²⁵ See, e.g., AFCCE Comments at 4-6; MSTV/NAB Comments at 20-21.

¹²⁶ See, e.g., AFCCE Comments at 4-6; APTS/PBS Comments at 17-18; Quincy Comments at 5.

¹²⁷ APTS/PBS Comments at 17-18.

¹²⁸ See Section V.B.5., *infra*.

¹²⁹ See Section V.B.7., *infra*.

advance of the transition date.¹³⁰ Similarly, while we generally will not consider extension requests by stations on the basis of weather or a shortage of equipment and qualified tower crews, our new extension rules will still allow consideration of requests from those stations with demonstrable and genuine difficulties because of weather or equipment problems.¹³¹ Furthermore, we expect that many stations will transition early and begin operating their final post-transition facilities in advance of the deadline and the onset of the winter months.¹³² Finally, we adopt rules for the expedited processing of stations' post-transition construction permit applications to address commenters' concerns about the potential for delays in obtaining the necessary Commission authorizations to construct their final DTV facilities.¹³³ In addition, our processing rules address commenters' concerns¹³⁴ that stations may not be able to use their existing analog channel antennas because the antenna patterns of those antennas may not match the antenna patterns specified for them in the post-transition DTV Table Appendix B.¹³⁵ In sum, we find that the rules and policies we adopt in this Report and Order will ensure that stations have sufficient time to complete construction of their final DTV facilities by their respective deadlines.

1. Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel

42. For stations whose pre-transition DTV channel is different from their post-transition channel (*i.e.*, stations returning to their analog channel or moving to a new channel for post-transition operations), we adopt our proposals in the *Third DTV Periodic Review NPRM*¹³⁶ to:

- (1) Establish February 17, 2009 as the deadline by which these stations must complete their post-transition (DTV Table Appendix B) facilities; and
- (2) Permit these stations to forego construction of their pre-transition DTV channel.

Approximately 634 stations fall into this category.¹³⁷ We find that these stations face a greater challenge than stations that will remain on the same DTV channel for post-transition operations. Stations moving to a new channel must apply for a construction permit on that channel and build new facilities based on the channel allotments in the post-transition DTV Table Appendix B.¹³⁸ We find that stations facing the challenges associated with moving to a new DTV channel should be afforded the maximum possible time to complete their post-transition facilities before analog transmissions must cease. As discussed above, we disagree with commenters that seek a blanket extension for additional time beyond the transition date

¹³⁰ See Section V.C., *infra*.

¹³¹ See Section V.B.5., *infra*.

¹³² See Section V.C., *infra*.

¹³³ See Section V.D.1., *infra*. Stations that apply for the facilities to which they certified in 2004 and, thus, are now specified for them in the post-transition DTV Table Appendix B will have this opportunity for expedited processing.

¹³⁴ See, e.g., AFCCE Comments at 4-6. AFCCE states that there is a high probability that a new DTV antenna will be required for many of these stations because the new Appendix B directional pattern probably does not match their current analog antenna.

¹³⁵ See Section V.E., *infra*. We adopt a waiver policy that will permit rapid approval of minor (*i.e.*, not exceeding 5 miles) expansion applications filed by stations that are not using their pre-transition DTV channel for post-transition operation.

¹³⁶ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9503, ¶ 60.

¹³⁷ This number includes 517 stations returning to their analog channel post-transition and 117 moving to a new channel for post-transition operations. We note, however, that some of these stations may have a documented unique technical challenge and, therefore, would fall into category three; see Section V.B.3, *infra*.

¹³⁸ See *id.* See also Northeastern Educational Television of Ohio, Inc. Comments at 4.

because that would leave a significant number of viewers without any television service.¹³⁹ However, as discussed above, we adopt flexible rules and procedures to assist stations with specific transition challenges and anticipate that those stations that genuinely need additional time to complete construction of their final, post-transition facilities may seek an extension of time pursuant to our revised rules or may avail themselves of our provisions for a “phased transition.”

43. We also find that these stations may terminate further construction of their pre-transition DTV channel facilities in order to focus their efforts on constructing their permanent DTV facilities on their post-transition channel. Our examination of the record strongly favors affording stations whose pre-transition DTV channels are different from their post-transition channels the flexibility to stop construction of their pre-transition DTV channel facilities.¹⁴⁰ We agree with commenters that argue in favor of such flexibility and find that requiring stations to build or expand facilities that would only be operated until the end of the transition – *i.e.*, for less than 14 months – potentially could undermine the more important public interest objective of ensuring a timely transition to digital broadcasting by diverting limited resources from the construction of final, post-transition facilities. Accordingly, we adopt our proposal to change our “use or lose” policy for these stations to allow them to retain interference protection to their full, authorized post-transition facilities.¹⁴¹ We discuss below the options available to these stations based on their individual circumstances.

44. We recognize that many of these stations (whose pre-transition DTV channels are different from their post-transition channels) have been diligent in meeting the deadlines established by the Commission for completing construction of their pre-transition facilities in order to provide DTV service to the public and to be permitted to carry over interference protection to their permanent DTV channel. We do not intend to treat these stations unfairly or reward stations that have been less diligent in providing DTV service during the transition. We note that many stations that have not built their transitional facilities have faced impediments to doing so. In addition, most stations that have applied for an extension of time to construct and/or a waiver of the applicable use-or-lose deadline have had those requests granted, indicating that we found they have a valid reason for not meeting the applicable deadline. Finally, we find that we must permit stations to cease investing time and resources in completing pre-transition DTV facilities to ensure that stations are focused on finalizing their post-transition facilities so that viewers will continue to receive television service when analog service ends.

45. Pre-Transition DTV Channel Unbuilt or Not in Operation. We will permit a station that has not constructed an operational pre-transition DTV facility to elect simply to return its construction permit for that facility to the Commission and focus its efforts on construction of its post-transition facility.¹⁴² As stations in this situation are not currently providing digital service to the public, we find it is appropriate at this stage in the transition to allow these channels to be returned. Stations choosing this approach will be able to carry over interference protection to their post-transition channel.

46. Pre-Transition DTV Channel in Operation. We will offer a station with an operational DTV facility on a pre-transition channel several options that would allow it to carry over interference protection to its post-transition channel. First, the station may discontinue further construction on its pre-transition DTV facility and operate that partially-built facility during the remainder of the transition, while it focuses on building its permanent DTV facility. A station choosing this option must file an

¹³⁹ See, e.g., MSTV/NAB Comments at 22 (seeking a “one-year post-transition digital ramp-up period”); Quincy Comments at 5 (seeking until February 10, 2010); University of North Carolina at 2 (seeking 12 to 24 months after the transition date).

¹⁴⁰ See, e.g., CBS Comments at 5; Gray Television Comments at 4; MSTV/NAB Comments at 18-19; Nexstar Comments at 3; Thunder Bay Comments at 1.

¹⁴¹ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9504, ¶ 63.

¹⁴² 47 C.F.R. § 73.1750.

application to modify its existing construction permit to match its partially-built pre-transition DTV facility.¹⁴³ The station would then continue operation of the facility for the remainder of the transition without devoting resources to further build-out of that facility. Second, the station may cease operating its pre-transition DTV facility in certain circumstances, which are discussed below.¹⁴⁴ Third, the station may decide to continue construction of its pre-transition DTV facility. We do not want to deny a station in this third category the opportunity to continue to build its pre-transition DTV facility and to provide service on this facility for the remainder of the transition; however, we find it is appropriate to require that these facilities be completed expeditiously. Therefore, we adopt our proposal in the *Third DTV Periodic Review NPRM* to require that such a facility be completed by the station's current (pre-transition) DTV construction deadline.¹⁴⁵ The station will not be eligible for any further extensions to build its pre-transition DTV facility.

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

47. For stations whose post-transition channel is the same as their pre-transition DTV channel (*i.e.*, stations remaining on their current DTV channel for post-transition operations), we adopt construction deadlines based on whether a station has an existing license or construction permit that matches its facility defined in the post-transition DTV Table Appendix B. Approximately 1,178 stations fall into this category.¹⁴⁶

- (1) May 18, 2008 will be the construction deadline for stations in this category that already have a construction permit that matches their post-transition (DTV Table Appendix B) facilities.
- (2) August 18, 2008 will be the construction deadline for stations in this category, but which do not have a license or construction permit that matches their post-transition (DTV Table Appendix B) facilities and, therefore, need to apply for a new or modified construction permit.

Although we are moving back the deadline we proposed in the *Third DTV Periodic Review NPRM*,¹⁴⁷ which would have required stations in this category to have completed construction of their final post-transition (DTV Table Appendix B) facilities by November 18, 2007,¹⁴⁸ we find that it is appropriate to require stations in this category to complete construction prior to February 17, 2009. These stations have already had a significant period of time in which to build digital facilities on their post-transition channels and, indeed, should already have constructed these facilities by their previously established DTV construction deadline,¹⁴⁹ which for many stations was November 18, 2007.¹⁵⁰ Unlike stations that will be moving to a different DTV channel for post-transition use, these stations have generally had the advantage of being able to plan for and commence construction of their post-transition facilities for more than 10 years. In contrast, stations moving to a different channel for post-transition operations have only

¹⁴³ 47 C.F.R. §§73.3533, 3538.

¹⁴⁴ See discussion in Section V.C.3., *infra*.

¹⁴⁵ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9505, ¶ 66 (proposing to apply the construction deadline established for such a station in the *Construction Deadline Extension Order* or *Use or Lose Order*).

¹⁴⁶ We note, however, that some of these stations may have a documented unique technical challenge and, therefore, would fall into category three; see Section V.B.3, *infra*.

¹⁴⁷ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 70.

¹⁴⁸ This is the deadline established for these stations in both the *Construction Deadline Extension Order* and the *Use-or-Lose Order*. See *supra* note 48.

¹⁴⁹ See 47 C.F.R. § 73.624(d). See also *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18287, ¶ 23.

¹⁵⁰ Approximately 83 stations have filed requests for an extension of time of this deadline.