

110. Background. The Commission's rules require stations to continue operating their existing licensed analog facilities until the statutory analog turn-off date.³¹⁶ Moreover, the Commission generally has not favored reductions in television service.³¹⁷ The Commission, however, has recognized that losses in service may be justified to facilitate a station's transition to DTV.³¹⁸ For example, the Commission permits the early return of out-of-core (*i.e.*, TV channels 52-69) analog channels under certain circumstances in order to facilitate the DTV transition.³¹⁹ In the *Third DTV Periodic Review*

³¹⁶ 47 U.S.C. § 312; *See also* 47 C.F.R. §§ 73.1615, 73.1690, 73.1740, 73.1745 and 73.1750. Moreover, the public has a legitimate expectation that existing broadcast services will be maintained. *See Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, 21 FCC Rcd 14212, 14230 ¶ 34 (2006); *See also* 47 U.S.C. § 307(b).

³¹⁷ Proposals that would result in a loss in television service have been considered to be *prima facie* inconsistent with the public interest, and must be supported by a strong showing of countervailing public interest benefits. *See West Michigan Telecasters, Inc.*, 22 FCC 2d 943 (1970), *recon. denied*, 26 FCC 2d 668 (1970), *aff'd*, *West Michigan Telecasters, Inc. v. FCC*, 460 F. 2d 883, 889 (D.C. Cir. 1972) (finding that losses in service are *prima facie* inconsistent with the public interest); *Triangle Publications, Inc.*, 37 FCC 307, 313 (1964) (finding that "once in operation, a station assumes an obligation to maintain service to its viewing audience and the withdrawal or downgrading of existing service is justifiable only if offsetting facts are shown which establish that the public generally will be benefited"); *Television Corporation of Michigan v. FCC*, 294 F.2d 730 (1961) (finding that deprivation of service to any group was undesirable, and can be justified only by offsetting factors); and *Hall v. FCC*, 237 F.2d 567 (D.C. Cir. 1956) (finding that a curtailment of service is not in the public interest unless outweighed by other factors).

³¹⁸ The Commission has placed a very high priority on accelerating the television industry's transition to DTV. *See, e.g., Fifth Report and Order*, 12 FCC Rcd at 12842-45 (1997). *See also Applications of KRCA License Corp., KSLs, Inc., Golden Orange Broadcasting Co. Inc.*, 15 FCC Rcd 1794 (1999) (allowing stations to collocate their NTSC and DTV facilities as a means to speed DTV conversion).

³¹⁹ The Commission established its policies on voluntary band-clearing for TV Channels 59-69 in a series of orders. The Commission initially stated that it would "consider specific regulatory requests needed to implement voluntary agreements" between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. *See 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). Next, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. *See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, 20870-71 ¶ 61 (2000). These policies were further extended to "three-way" band clearing arrangements, in which non-Channel 59-69 broadcasters were also potential parties. *See 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, *Carriage of the Transmissions of Digital Broadcast Stations*, CS Docket No. 98-120, *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Third Report and Order, 16 FCC Rcd 2703, 2718 ¶ 36 (2001). Finally, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements. *See Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001) ("Third R&O Recon"). The Commission established its policies on voluntary band-clearing for TV Channels 52-58 in a 2001 Report and Order. *See Lower 700 MHz Report and Order*, 17 FCC Rcd at 1095-96 ¶ 184. *See also* Johnson Broadcasting of Dallas, Inc. (KLDT, Lake Dallas- Fort Worth, TX), 21 FCC Rcd 13459 (2006) (returning NTSC Channel 55); Associated Christian Television System (WACX, Leesburg, FL), 20 FCC Rcd 12425 (MB 2005) (returning NTSC Channel 55); Puget Sound Educational TV (KWDC, Tacoma, WA), 20 FCC Rcd 12423 (MB 2005) (returning NTSC Channel 56); WLNY-TV, Inc. (WLNY, Riverhead, NY), 20 FCC Rcd 14765 (MB 2005) (returning NTSC Channel 55); WRNN TV Associates LP (WRNN, Kingston, NY), 19 FCC Rcd 12343 (MB 2004) (returning NTSC Channel 62); Commonwealth Public Broadcasting Corp. (WNVTV, Goldvein, VA), 18 FCC Rcd 18517 (MB 2003) (returning NTSC Channel 53); and Lenfest Broadcasting, LLC (WWAC, Atlantic City, NJ), 17 FCC Rcd 19148 (MB 2002) (returning NTSC Channel 53). In each of these cases, the Commission granted authority to stations to (i) cease analog broadcasting on their NTSC channel and surrender their license for that channel prior to the end of the DTV transition period and (ii) thereafter operate as a single channel, digital-only television station.

NPRM, the Commission recognized that stations may have a legitimate need to reduce or terminate their analog operations (even on in-core channels) before the transition date because such operations may impede construction and operation of post-transition (digital) facilities.³²⁰ We stated in the *Third DTV Periodic Review NPRM* that such circumstances may include (but are not limited to): (1) stations that need to reposition their digital and analog antennas before the end of the transition; (2) stations that need to add a third antenna to their tower but cannot do so without reducing or terminating analog service because the tower cannot support the weight of the additional transmission facilities; and (3) stations that are terminating analog service early as part of a voluntary band-clearing arrangement.³²¹ The Commission, therefore, proposed to provide stations with the flexibility to permanently reduce and/or terminate their analog service if they satisfied certain criteria, *i.e.*, a six-factor public interest test.³²²

111. Comments responding to the *Third DTV Periodic Review NPRM* discussed certain situations in which stations require the flexibility to reduce or terminate analog service early in order to complete their transition.³²³ For example, there are 49 stations with a documented side-mounted antenna problem.³²⁴ In order for the station to operate its top-mounted post-transition DTV facilities and accomplish its final transition, the station will have to relocate its analog antenna to another location on its tower and operate with reduced analog facilities.³²⁵ Other stations may have a tower at capacity preventing the installation of a third antenna on the tower. Therefore, the station will have to terminate its analog operations prior to the end of the transition in order to mount its post-transition DTV antenna.³²⁶ Some stations may be collocated on a shared tower and reduction or termination of analog operations may be necessary as the collocated stations coordinate the configuration of their final, post-transition facilities.³²⁷ Still other stations have equipment currently in use with their analog operations that they plan to use with their digital operations. This will necessitate the termination of their analog facilities prior to the transition so that the equipment can be reconfigured for use in their final, post-transition facilities. In addition, there may be other legitimate technical challenges, not anticipated at this time, which may warrant the flexibility of early analog service reduction or termination. We are persuaded by these real-world station examples of the necessity to afford stations regulatory flexibility in those types of circumstances.

112. While most commenters support giving stations the flexibility to reduce or terminate analog service before the transition date, they favor a “bright-line” test and streamlined approval or

³²⁰ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9493, ¶ 37.

³²¹ *Id.*

³²² *See id.* at 9496, ¶ 44. The Commission proposed to establish a presumption that any reduction in a station’s analog television service would be in the public interest if six factors were met: (1) the proposed reduction is directly related to the construction and operation of post-transition facilities and would ensure that the station or another station can meet the deadline; (2) the proposed reduction in analog service is less than five percent of either the station’s service area or its population served; (3) the proposed reduction does not cause the loss of an area’s only top-four network or NCE TV service; (4) the proposed reduction does not result in an unreasonable reduction in the number of services available in that area; (5) the broadcast station proposing the reduction is able to deliver its signal to cable and satellite providers so that the reduced analog signal does not prevent cable and satellite carriage; and (6) the broadcast station proposing the reduction commits to on-air consumer education about the station’s transition and how to continue viewing the station.

³²³ *See, e.g.*, Broadcast Company of Sarasota Comments at 4-5; Bakahel Comments at 3; Montecito of Wichita Comments at 2. *See also* MSTV/NAB Comments at 8.

³²⁴ *See* Section V.B.3., *supra*.

³²⁵ *See, e.g.*, Montecito of Wichita Comments at 2.

³²⁶ *See, e.g.*, Broadcast Company of Sarasota Comments at 4-5.

³²⁷ *See, e.g.*, Capitol Broadcasting *Ex Parte* at 1.

notification process, instead of the proposed six-factor public interest analysis.³²⁸ Commenters proposed a variety of different standards to permit flexible analog service reduction or termination. In their joint comments, MSTV and NAB assert that stations should be allowed to reduce analog service starting one year prior to the transition date (*i.e.*, February 17, 2008) and stations should be allowed to terminate analog service starting six months prior to the transition date (*i.e.*, August 17, 2008), provided stations notify the Commission within 15 days.³²⁹ Similarly, Tribune proposed allowing stations to reduce analog power temporarily by as much as 50 percent in the year leading up to February 17, 2009.³³⁰ LeSEA agreed with Tribune's approach provided the station is not a network affiliate.³³¹ Disney proposes that the Commission presume that short term, reduced power operations are in the public interest. In other words, Disney urges the Commission to apply a rebuttable presumption to the request of any station returning to its analog channel whose proposed reduction/termination is directly related to the construction and operation of post-transition facilities and is necessary to ensure that the station can meet the transition deadline.³³² Hoak and Granite suggest that the Commission employ two criteria: whether the termination/reduction (1) is directly related to the station's ability to complete construction of post-transition DTV facilities in a timely manner and (2) is as limited in nature and duration as reasonably necessary to accomplish the transition.³³³

113. We are persuaded that our proposed six-factor test should be adjusted to provide additional flexibility at this stage in the transition. However, we disagree with the suggestion of MSTV/NAB and Tribune that we should permit all stations to elect to terminate or reduce analog service early, starting on dates suggested by these commenters, without justification. We find that stations should be granted broad flexibility to reduce or terminate analog service as needed to further a station's transition, but should not be granted blanket authority to reduce or terminate analog service without providing a legitimate reason why the action is necessary. We have an important responsibility as guardians of the public interest to ensure that stations show a legitimate need for an early analog reduction or termination. In addition, we must ensure that viewers are informed about any permanent loss of analog service. Accordingly, as discussed more fully below, we steer a middle course by adopting a procedure that provides certainty to broadcasters regarding when pre-transition analog reduction and termination will be permitted. We find that our reduced showing requirement will reduce the administrative burden on stations and eliminate the delays that can occur with a more detailed approval process during this critical time in the DTV transition.³³⁴

114. Commission Approval Process. Stations must obtain prior Commission approval in order to reduce or terminate their analog service before the transition date. Stations must file requests for such

³²⁸ See, e.g., Quincy Comments at 2; Granite Comments at 3; Harris Comments at 4; Greater Dayton Comments at 7; Hawaii PTV Foundation Comments at 6. These commenters agree that a bright-line rule will be in the public interest because it will be more efficient and will rely on marketplace forces to provide needed services. Quincy Comments at 2; Granite Comments at 3; Harris Comments at 4; Greater Dayton Comments at 7; Disney Comments at 2; Christian Network Comments at 6.

³²⁹ MSTV/NAB Comments at 5.

³³⁰ Tribune Comments at 24.

³³¹ LeSEA Comments at 7.

³³² Disney Comments at 3-4. Disney appears most concerned with relatively short term reductions and terminations (*e.g.* 30 days or less). However, these short term actions fall under the category of temporary disruptions that, as noted above, are permitted under Section 73.1615 of our existing rules. See Section V.C. 1., *supra*.

³³³ Hoak Comments at 3; Granite Comments at 4.

³³⁴ MSTV/NAB further argue that the Commission need not impose "unnecessarily stringent levels of oversight." MSTV/NAB Comments at 4-5.

approval as a request for STA through the CDBS using the Informal Application filing form,³³⁵ and must indicate whether the request is either a service reduction or termination. Consistent with the handling of STA requests,³³⁶ stations will be notified of actions taken on their requests by Public Notice.³³⁷ We recognize that analog viewers must have adequate time to obtain digital equipment in advance of a station's early reduction or termination. We also must allow sufficient time for Commission review before stations commence notification to viewers. We believe that NTIA will process requests for coupons to subsidize the purchase of digital-to-analog converters in three weeks or less. Accordingly, stations must file requests for approval of analog reduction or termination at least 90 days in advance of their planned service reduction or termination to ensure that they can obtain timely Commission approval for their proposed actions. As discussed below, viewer notification must commence no fewer than 60 days prior to reduction or termination of the analog signal. We caution stations that some requests may require additional processing time. In these situations, we will work with the station involved to discuss the options available to that station.

115. Showing Required. We will permit stations to reduce or terminate their analog service before the transition date, provided: (1) They demonstrate that the analog service reduction or termination is directly related to the construction and operation of post-transition facilities, by either the station itself or by another station, and would ensure that the station, or another station, can meet the transition deadline; and (2) They notify viewers of the upcoming analog service loss (as discussed in detail below).³³⁸ Stations may not be permitted to reduce or cease analog service, where, among other possible reasons, the provision of public health and safety information is seriously affected or there are other public interest considerations that require that a station provide analog service. In addition, the showing should include all relevant information, including the station location, network affiliation if any, the circumstances requiring early reduction or termination of pre-transition digital service, and the number of viewers affected. This information will enable us to properly consider the impact of the service reduction or termination on the station's viewers, including the number of current viewers that will lose digital service, satellite and cable penetration, and the number and kind (network, independent, etc.) of other digital channels available to affected viewers.

116. The following are examples of situations where the service reduction or termination would be considered to be "directly related" to the construction and operation of post-transition facilities: (1) Stations that need to reposition their digital and analog antennas before the end of the transition; (2) Stations that need to add a third antenna to their tower but cannot do so without reducing or terminating analog service because the tower cannot support the weight of the additional transmission facilities; (3) Stations on a collocated tower that must coordinate a reduction or termination with other stations in order to configure their final, post-transition facilities; (4) Stations with equipment currently in use with their analog operations that they plan to use with their digital operations; and (5) Stations that must terminate operation on their analog channel in order to permit another station to construct its post-transition DTV facilities on that channel. We recognize, however, that there may be other legitimate situations where stations may be able to demonstrate that their planned service reduction or termination is directly related to the construction and operation of post-transition facilities and we will also consider these requests on a case-by-case basis.

³³⁵ Like other requests for STA, these requests to permanently reduce or terminate analog TV service before the transition date must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate Public Notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: http://fjallfoss.fcc.gov/prod/cdbfs/forms/prod/faq_informal.htm. To speed processing, stations should also email courtesy copies of their STA requests to analogrequests@fcc.gov.

³³⁶ See 47 C.F.R. § 73.1635.

³³⁷ As Bureau actions are recorded, CDBS will automatically generate Public Notice of the actions taken.

³³⁸ See ¶ 117, *infra*.

117. Viewer Notification. With respect to the required notification to stations' viewers, such notifications must occur every day on-air at least four times a day including at least once in primetime for the 60-day period prior to the planned service reduction or termination.³³⁹ These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;³⁴⁰ (5) information about the availability of digital-to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.³⁴¹

3. Pre-Transition Digital Service Reduction and Termination

118. In addition to the temporary disruption rules and the long term or permanent analog reduction or termination, we will also provide stations that will be returning to their analog channel or moving to a new channel for post-transition operations with the flexibility to reduce or terminate existing digital service on their pre-transition DTV channels prior to the transition date.³⁴² We are hopeful that the vast majority of stations currently providing digital service to the public on pre-transition DTV channels will continue to do so, until they convert to operations on their post-transition channel. However, we recognize that, in some instances, these stations may have to reduce or terminate their pre-transition digital service in order to complete the station's post-transition facilities. Thus, we provide flexibility to stations to reduce or terminate pre-transition digital service where a station can demonstrate that doing so is necessary to complete construction of, and commence operations on, its new post-transition channel. As discussed above, a station whose pre-transition digital channel is unbuilt and/or non-operational may choose to return the construction permit for that channel to the Commission and focus its efforts on construction of its post-transition channel.³⁴³

119. The following options are available for stations that need to reduce or cease operation on their pre-transition DTV channel prior to the transition date:

- (1) As explained above, a station may, pursuant to Section 73.1615,³⁴⁴ temporarily reduce or cease service a period of 30 days or less, upon notification to the Commission and without prior approval, when necessary to complete construction of its post-transition facility;³⁴⁵
- (2) A station may choose to transition early to its post-transition channel by terminating operation on its pre-transition DTV channel and commencing service on its post-transition channel prior to the transition date;³⁴⁶ or

³³⁹ Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations. *See supra* Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

³⁴⁰ Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

³⁴¹ *See DTV Consumer Education Initiative, supra* note 84.

³⁴² Stations that will be using their same digital channel for post-transition operations may not use the procedures outlined in this section.

³⁴³ *See, supra*, ¶ 45.

³⁴⁴ 47 C.F.R. § 73.1615(a) and (c).

³⁴⁵ *See, supra*, Section V.C.1.

³⁴⁶ *See, infra*, Section V.C.3.a.

- (3) A station may permanently reduce or terminate their pre-transition digital service before the transition date, provided it satisfies the following two requirements:
- a. First, the station must demonstrate that its service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facilities; and
 - b. Second, 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.

120. In general, our goal is to ensure the continuation of digital service that is now being provided to viewers. However, a substantial number of commenters responding to the *Third DTV Periodic Review NPRM* stated that the Commission should provide the maximum possible flexibility to stations to permit them to accomplish the transition in the manner that best suits the station's particular circumstances.³⁴⁷ We agree with MSTV/NAB that stations generally will be reluctant to terminate their new digital services at a time when they are trying to establish a digital audience,³⁴⁸ and, therefore, stations will only take advantage of this option where necessary to finalize post-transition facilities.³⁴⁹ While we are concerned about reducing digital service to the public pre-transition, we recognize that doing so may be the best, or only, possible approach to achieving a successful and timely transition.

a. Termination of Digital Service on Pre-Transition Channel When Associated with Early Digital Operation on Post-Transition Channel

121. We adopt our proposal in the *Third DTV Periodic Review NPRM*³⁵⁰ to allow stations that will use a different DTV channel for post-transition operations to cease operations on their pre-transition DTV channels and begin operating on their new channels before the transition date. Specifically, a station will be permitted to transition early if the following requirements are met:

- (1) The early transitioning station must not cause impermissible interference to another station; and
- (2) The early transitioning station must continue to serve its existing viewers for the remainder of the transition and commence its full, authorized post-transition operations on February 18, 2009.

The record supports the allowance of early post-transition operations, although (as previously discussed above³⁵¹) some commenters oppose any accompanying restrictions on stations' ability to reduce or terminate pre-transition television service.³⁵² We agree that early transitions will advance and facilitate the transition by freeing engineering and construction resources for those stations building later.³⁵³ For

³⁴⁷ See, e.g., Nebraska PTV Licensees Comments at 4; Quincy Comments at 1; Rocky Mountain Comments at 1.

³⁴⁸ See MSTV/NAB Comments at 19. MSTV/NAB note that there may be situations where, due to tower weight issues or lack of space for a new transmitter, a station will have no option but to terminate its digital service in order to complete construction on its final digital channel. *Id.*

³⁴⁹ See MSTV/NAB Comments at 19.

³⁵⁰ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9514, ¶ 88.

³⁵¹ See ¶ 114, *supra*. (discussing commenters' opposition to restrictions on analog service reduction and termination) This discussion focuses solely on a station's ability to use its post-transition channel before the transition date.

³⁵² For example, MSTV/NAB and APTS/PBS argue that a station should be permitted to transition early subject only to interference concerns. NAB/MSTV comments at 14-16; APTS/PBS Comments at 20-21. For additional support for allowing early post-transition operations, See *also, e.g.*, Disney Comments at 2-5; Harris Comments at 4; Quincy Comments at 1.

³⁵³ See, e.g., Harris Comments at 4.

example, MSTV/NAB states that early post-transition operations may advance the transition by setting in motion “daisy-chains” of early transitions, *i.e.*, as channels are vacated by the departing station they will be freed-up for the incoming stations.³⁵⁴ Stations interested in commencing early post-transition operations should indicate their intent to do so in their construction permit or modification applications for post-transition facilities.³⁵⁵

122. We will permit early transitioning stations to operate at facilities that are less than their full, authorized facilities until the date of their construction deadline, at which date these stations must commence their full, authorized post-transition operations. MSTV/NAB suggest that we require early transitioning stations to serve only their respective communities of license during the transition period.³⁵⁶ We disagree with MSTV/NAB that market factors alone will protect against viewer disenfranchisement and find that, absent a showing of good cause, stations must maintain current digital service to consumers, who have prepared for the transition and will expect to continue to receive such service. Broadcasters seeking to commence early post-transition operations must indicate in their applications for post-transition facilities whether such operations will result in a loss of their own analog or digital service.³⁵⁷

123. **Interference Criteria.** We adopt our proposal in the *Third DTV Periodic Review NPRM*³⁵⁸ to require that early transitioning stations comply with both the current interference standard³⁵⁹ and the interference standard we adopt here for post-transition operations.³⁶⁰ Accordingly, early transitioning stations must not cause more than 2.0 percent interference to any authorized analog or pre-transition DTV station (with a 10 percent limit on cumulative interference) and must meet the post-transition protection standard (0.5 percent additional interference to Appendix B facilities for all stations).

b. Termination of Digital Service on Pre-Transition Channel When Associated with Flash-cut

124. For stations needing long term or permanent reduction or termination (significantly more than 30 days), we adopt streamlined procedures to provide stations with the flexibility to permanently reduce or terminate their pre-transition digital service before the transition date if necessary to complete their transition.³⁶¹ The Commission has previously granted general approval for satellite stations and most stations with an out-of-core DTV channel to terminate pre-transition digital service and transition directly from their analog to their post-transition digital channel (*i.e.*, “flash cut” approval).³⁶² We will continue to permit these stations to seek flash cut approval under those existing standards. For all other

³⁵⁴ NAB/MSTV Comments at 15.

³⁵⁵ Stations must follow the post-transition applications procedures in Section V.D., *infra*. We are proposing to revise FCC Forms 301 and 340 to allow stations to simultaneously apply for both pre- and post-transition facilities. See form changes in Appendix C.

³⁵⁶ MSTV/NAB Comments at 16 (arguing that market factors will protect against viewer disenfranchisement).

³⁵⁷ See Section V.C.2., *supra*.

³⁵⁸ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9514, ¶ 88.

³⁵⁹ See 47 C.F.R. § 73.623.

³⁶⁰ See Section V.F., *infra* (discussing the post-transition interference standard).

³⁶¹ We will consider a reduction or termination of pre-transition digital service to be “permanent” if the station seeks to discontinue operation on that channel for more than 30 days. See, *supra*, ¶ 99. If the station intends to discontinue operation on that channel for the remainder of the transition, the station must return the pre-transition channel to the Commission and flash cut directly from operation on their analog channel to operation on their post-transition (digital) channel on or before the transition date.

³⁶² *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18322, ¶ 95. See *DTV Transition – Approval of “Flash Cut” Requests*, 22 FCC Rcd 7581 (2007) (“Flash Cut PN”).

stations seeking Commission approval for reduction or termination of pre-transition digital service, we will permit a station to reduce or terminate its pre-transition digital service before the transition date in the same manner adopted for approving an analog service reduction or termination.³⁶³ Accordingly, we will permit a station to permanently reduce or terminate their pre-transition digital service before the transition date, provided the station satisfies the following two requirements:

- (1) The station demonstrates that its pre-transition digital service reduction or termination is directly related to the construction and operation of its, or another station's, post-transition facility; 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.

Stations must obtain prior Commission approval in order to reduce or terminate their pre-transition digital service before the transition date. To allow the Media Bureau sufficient time to process these requests, stations should file these requests for STA approval at least 60 days in advance of their planned service reduction or termination. Stations must file these requests electronically through the CDBS using the Informal Application filing form.³⁶⁴ We expect that stations that will reduce or terminate their pre-transition digital service will commence early post-transition operations if possible.

125. **Background.** The *Second DTV Periodic Report and Order* permitted stations in certain situations to surrender their pre-transition DTV channel, operate in analog on their analog channel, and then flash cut to digital by the end of the transition on their post-transition channel.³⁶⁵ As the Commission noted, the potential public interest benefits of allowing stations to flash cut include freeing the station to focus its efforts on completion of its post-transition channel and the creation of opportunities for the provision of public safety and other wireless services on the pre-transition DTV channel.³⁶⁶ In the *Second DTV Periodic Report and Order*, the Commission permitted satellite stations to flash cut because of their unique status and circumstances and provided for these stations to notify the Commission of their decision to flash cut by their initial channel election deadline.³⁶⁷ The Commission stated that satellite stations opting to flash cut would retain their interference protection (defined in the proposed new DTV Table Appendix B) as if they had met the applicable replication/maximization build-out requirements.³⁶⁸ The Commission also permitted stations with out-of-core DTV channels to flash-cut under certain conditions and required notification of their decision to flash cut by their initial channel election

³⁶³ See Section V.C.2., *supra*.

³⁶⁴ See ¶ 132 and *see also* note 390, *infra*.

³⁶⁵ In April 2007, the Media Bureau approved by Public Notice the flash cut requests of 32 stations based on the criteria established in the *Second DTV Periodic Report and Order*. See *Flash Cut PN*, 22 FCC Rcd at 7581. These stations were approved to turn off or discontinue construction of their pre-transition DTV channel. In addition, the Public Notice invited any other station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order*.

³⁶⁶ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18323, ¶ 96.

³⁶⁷ *Id.* at 18325, ¶ 102. TV satellite stations are full-power broadcast stations authorized under Part 73 of the Commission's rules to retransmit all or part of the programming of a parent station that is typically commonly owned. *Id.* at 18323, ¶ 98. Unlike full-service stations, satellite stations have chosen to forego or relinquish full-service status and instead retransmit the programming of a parent station because full-service operation of the satellite facility is not economically viable. Eligible satellite stations were assigned a paired DTV channel in the current DTV Table. The *Second DTV Periodic Report and Order* recognized that most satellite stations operate in small or sparsely populated areas that have an insufficient economic base to support full-service operations. *Id.* at 18324 ¶ 100.

³⁶⁸ *Id.* at 18325, ¶ 104.

deadline.³⁶⁹ The Commission presumed that granting such requests would be in the public interest if the station demonstrated that (1) it was assigned an out-of-core DTV channel,³⁷⁰ and (2) grant of the request would not result in the loss of a DTV channel affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox).³⁷¹ In the case of requests that did not meet these criteria, the Commission stated that it would consider all the relevant public interest factors in deciding whether to approve the request. These factors include the advancement of the provision of wireless and public safety services, the acceleration of the DTV transition, and the loss of broadcast service. Like satellite stations, full-service out-of-core stations that are permitted to flash cut would retain their interference protection (defined in the new DTV Table Appendix B, as adopted) as if they had met the applicable replication/maximization build-out requirements.³⁷² In April 2007, the Media Bureau released the *Flash Cut PN* inviting any station to flash cut if it meets the criteria established in the *Second DTV Periodic Report and Order*.³⁷³

126. In the *Third DTV Periodic Review NPRM*, the Commission invited comment on whether we should expand the range of circumstances in which we would accept new requests by stations to return their pre-transition DTV channel (*i.e.*, a DTV channel that is not their final, post-transition channel) before the end of the transition and “flash cut” at or before the transition deadline from their current analog channel to their post-transition channel. Specifically, we sought comment on whether the following factors should be considered in evaluating flash cut requests: (1) whether the DTV station is operating on TV channels 52-69; (2) whether the station is affiliated with one of the four largest national television networks (ABC, CBS, NBC, or Fox); (3) whether the station’s pre-transition DTV channel is allotted to another station for post-transition use and the station’s return of the channel will facilitate the other station’s construction of its post-transition digital facility; and (4) the station’s financial hardship.

127. Commenters responding to the *Third DTV Periodic Review NPRM* generally argued that, at this point in the transition, we should provide flexibility to stations that want to return their pre-transition DTV channel and flash-cut directly from analog to digital operation on the post-transition channel.³⁷⁴ NAB/MSTV argued that the flash cut option should be made available to all stations during the last six months of the DTV transition, provided the station notifies the Commission within 15 days of terminating service.³⁷⁵ NAB/MSTV also argued that the Commission should not establish a “complicated factor test” for approving flash cuts.³⁷⁶ While we agree that the flash-cut option should be made available to more stations, as our approach adopted herein does, we disagree with NAB/MSTV that any station should be permitted to flash-cut six months prior to the transition deadline. A station that seeks to flash cut seeks to terminate its pre-transition digital service. While there may be situations where stations must cease service on a pre-transition channel in order to complete post-transition service, we are not prepared

³⁶⁹ *Id.* at 18322 ¶ 95.

³⁷⁰ *Id.* The Commission noted the “greater potential for wasted expenditures in DTV facilities built in the 700 MHz band (since there will not be an opportunity to remain in that band after the transition)” and “the potential for earlier use of this spectrum by public safety and other 700 MHz licensees.” *Id.*

³⁷¹ The Commission has “relied on affiliates of the four largest national television networks to achieve the necessary milestones throughout the DTV transition.” *Id.* The Commission also noted that the presumption is neither conclusive nor dispositive and that special circumstances raised by the resulting loss of digital broadcast service could rebut the presumption. *Id.* at 18323, ¶ 96.

³⁷² *See id.*

³⁷³ *See Flash Cut PN*, 22 FCC Rcd 7581 (2007).

³⁷⁴ *See APTS/PBS Comments* at 18-19.

³⁷⁵ *See MSTV/NAB Comments* at 19-20.

³⁷⁶ *Id.*

to permit stations (other than satellite or operating out-of-core) to terminate pre-transition digital service absent a compelling reason. As the transition deadline nears, viewers should - and will - become increasingly reliant on receiving digital service. Permitting stations to cease digital service as the transition nears, absent compelling circumstances, could undermine viewer expectations and the success of the transition itself.

128. Existing Flash Cut Authority for Satellite Stations and Stations With An Out-of-Core DTV Channel. As we stated in the *Third DTV Periodic Review NPRM*, stations may continue to seek flash cut approval pursuant to the *Second DTV Periodic Report and Order* and *Flash Cut PN*.³⁷⁷ Thus, satellite stations may still flash cut upon simple notification to the Commission.³⁷⁸ Stations with an out-of-core DTV channel may either take advantage of our existing flash cut approval for these stations, as adopted in the *Second DTV Periodic Report and Order* and *Flash Cut PN*, or may seek approval under the new test described herein that applies to all non-satellite stations.³⁷⁹

129. In an effort to provide additional flexibility to out-of-core stations, we adopt our proposal³⁸⁰ to extend the current band-clearing “rebuttable presumption” favoring band-clearing arrangements for stations on TV channels 59-69 to cover the requests of all out-of-core stations (*i.e.*, TV channels 52-69). The comments addressing this issue support adoption of our proposal.³⁸¹ The Commission established policies to facilitate voluntary “band-clearing” of the 700 MHz bands to allow for the introduction of new public safety and other wireless services and to promote the transition of out-of-core analog TV licensees to DTV service inside the core TV spectrum.³⁸² Generally speaking, these

³⁷⁷ *Third DTV Periodic Review NPRM*, 22 FCC Rcd 9499, ¶ 51.

³⁷⁸ Consistent with rules 47 C.F.R. §§73.1750, 73.3580 and 73.1750 (termination of service), 73.1690(b) (modification of license or authorization), stations may declare their intent to flash cut by sending a letter to the Video Division of the Media Bureau and an e-mail to flashcut@fcc.gov. See *Flash Cut PN*, 22 FCC Rcd at 7583, n.16, 18.

³⁷⁹ For stations with an out-of-core DTV channel, we will continue to presume that a flash cut request is in the public interest if the station is not affiliated with a top-four network. For out-of-core stations with a top four network affiliation that seek to flash cut, this expanded flash cut option offers additional flexibility for these stations.

³⁸⁰ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9495-96, ¶ 42.

³⁸¹ See MSTV/NAB Comments at 12. Although only MSTV/NAB expressly addressed and supported expansion of the band-clearing presumption, most commenters favored regulatory flexibility whenever possible. See, *e.g.*, AFCCE Comments at 4-6; Allbritton Comments at 8-9; APTS/PBS Comments at 11-12; Hubbard Comments at 6; Montecito of Wichita Comments at 1-2; MSTV/NAB Comments at 24; Quincy Comments at 2-3; Red River Comments at 6; Sky Comments at 6; Tribune Comments at 13; Twin Cities Comments at 4; University of Alaska Comments at 2-3; University of Houston System Comments at 4; Univision Comments at 22; West Virginia Media Holdings Comments at 5; WQED Reply at 2.

³⁸² The Commission established its policies on voluntary band-clearing for TV Channels 59-69 in a series of orders. The Commission initially stated that it would “consider specific regulatory requests needed to implement voluntary agreements” between incumbent broadcasters and new licensees to clear the Upper 700 MHz Band early, if consistent with public interest. See *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). Next, the Commission established a rebuttable presumption favoring the grant of requests that would both result in certain specific benefits and avoid specific detriments. See *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 20845, 20870-71 ¶ 61 (2000). These policies were further extended to “three-way” band clearing arrangements, in which non-Channel 59-69 broadcasters were also potential parties. See *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, Carriage of the Transmissions of Digital Broadcast Stations, CS Docket No. 98-120, Review of the Commission’s Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, Third Report and Order, 16 FCC Rcd 2703, 2718 ¶ 36 (2001). Finally, the Commission provided certain additional flexibility to facilitate voluntary agreements for early clearing and granted a request for relief from two specific DTV-related requirements. See *Order on Reconsideration of the Third Report and Order*, 16 FCC Rcd 21633 (2001) (continued....)

policies provide that the Commission will approve voluntary agreements between incumbent broadcasters and new licensees to clear the 700 MHz band early if consistent with the public interest. The Commission has approved several such requests to return out-of-core channels in accordance with this band-clearing policy.³⁸³ Previously, the Commission's 700 MHz band-clearing policies have differed somewhat depending on whether a station is located on TV channels 59-69, which might affect use of the upper portion of the band, or on TV channels 52-58, which would only affect use of the lower portion of the band.³⁸⁴ We find that this disparate band-clearing treatment with respect to stations in the lower 700 MHz band (*i.e.*, TV channels 52-58) is no longer appropriate. We agree with MSTV/NAB that the presumptive standard currently applied to band clearing arrangements on channels 59-69 should be applied immediately to all band-clearing proposals.³⁸⁵ The hard deadline applies equally to both portions of the 700 MHz band. In addition, Congress has mandated that the Commission begin the auction of recovered analog broadcast spectrum in the 700 MHz band no later than January 28, 2008.³⁸⁶ We find that extension of the band-clearing policy is appropriate to facilitate the clearing of the 700 MHz band in anticipation of the Commission's upcoming auction of licenses for services in the 700 MHz band (698-806 MHz) scheduled to begin on January 24, 2008.³⁸⁷ We will apply the same "rebuttable presumption" standard to voluntary agreements for clearing TV channels 52-58 as now applies to such agreements for clearing TV channels 59-69.³⁸⁸ As requested by MSTV/NAB,³⁸⁹ we clarify that, to the extent a station seeks to terminate analog service on its out-of-core channel in accordance with the procedures established

(Continued from previous page) —————
("Third R&O Recon"). The Commission established its policies on voluntary band-clearing for TV Channels 52-58 in a 2001 Report and Order. *See Lower 700 MHz Report and Order*, 17 FCC Rcd at 1095-96 ¶ 184.

³⁸³ *See, e.g., Johnson Broadcasting of Dallas, Inc.* (KLDT, Lake Dallas- Fort Worth, TX), 21 FCC Rcd 13459 (2006) (returning NTSC Channel 55); Associated Christian Television System (WACX, Leesburg, FL), 20 FCC Rcd 12425 (MB 2005) (returning NTSC Channel 55); Puget Sound Educational TV (KWDC, Tacoma, WA), 20 FCC Rcd 12423 (MB 2005) (returning NTSC Channel 56); WLNY-TV, Inc. (WLNY, Riverhead, NY), 20 FCC Rcd 14765 (MB 2005) (returning NTSC Channel 55); WRNN TV Associates LP (WRNN, Kingston, NY), 19 FCC Rcd 12343 (MB 2004) (returning NTSC Channel 62); Commonwealth Public Broadcasting Corp. (WNVTV, Goldvein, VA), 18 FCC Rcd 18517 (MB 2003) (returning NTSC Channel 53); and Lenfest Broadcasting, LLC (WWAC, Atlantic City, NJ), 17 FCC Rcd 19148 (MB 2002) (returning NTSC Channel 53). In each of these cases, the Commission has granted authority to stations to (i) cease analog broadcasting on their NTSC channel and surrender their license for that channel prior to the end of the DTV transition period and (ii) thereafter operate as a single channel, digital-only television station.

³⁸⁴ Envisioning the early recovery of TV channels 60-69, the Commission established a "rebuttable presumption" favoring requests for voluntary band-clearing involving channels 59-69. In contrast, the Commission did not anticipate recovery of TV channels 52-59 until after the DTV transition was complete and, as a result, decided to consider requests for voluntary band-clearing involving those channels on a case-by-case basis.

³⁸⁵ MSTV/NAB Comments at 12.

³⁸⁶ DTV Act § 3003 unified the timing of auctions for the assignment of remaining spectrum from TV Channels 52-69. The Communications Act now requires the Commission to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. 47 U.S.C. § 309(j)(15)(C)(v).

³⁸⁷ *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 and Other Procedures for Auctions 73 and 76," DA 07-4171 (WTB rel. Oct. 5, 2007) ("Auction Nos. 73 and 76 Procedures Public Notice"). The Commission is required to commence the auction of recovered analog broadcast spectrum no later than January 28, 2008 and deposit the proceeds of such auction in the Digital Television Transition and Public Safety Fund no later than June 30, 2008. 47 U.S.C. § 309(j)(15)(C)(v).

³⁸⁸ *See Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9494 ¶ 40 (discussing "rebuttable presumption" standard).

³⁸⁹ MSTV/NAB Comments at 12.

above, the station will not also be required to make a showing regarding the “rebuttable presumption” applicable to band-clearing arrangements.

130. Commission Approval Process. Stations must obtain prior Commission approval in order to reduce or terminate their pre-transition digital service before the transition date. Stations must file requests for such approval as a request for STA through the CDBS using the Informal Application filing form,³⁹⁰ and must indicate whether the request is either a service reduction or termination. Consistent with the handling of STA requests,³⁹¹ stations will be notified of actions taken on their requests by Public Notice.³⁹² We encourage stations to file these requests at least 60 days in advance of their planned service reduction or termination to ensure that they can obtain timely Commission approval for their proposed actions. We caution stations that some requests may require more than 60 days of processing time. In these situations, we will work with the station involved to discuss the options available to that station.

131. Showing Required. For stations not otherwise eligible for flash-cut approval, we will permit stations to reduce or terminate their pre-transition digital service before the transition date, provided: (1) They demonstrate that the pre-transition digital reduction or termination is directly related to the construction and operation of post-transition facilities, by either the station itself or by another station, and would ensure that the station, or another station, can meet the transition deadline; and (2) They notify viewers of the upcoming pre-transition digital loss (as discussed in detail below).³⁹³ Stations may not be permitted to reduce or terminate their pre-transition digital service, where, among other possible reasons, the provision of public health and safety information is seriously affected or there are other public interest considerations that require that a station provide analog service. In addition, the showing should include all relevant information, including the station location, network affiliation if any, the circumstances requiring early reduction or termination of pre-transition digital service, and the number of viewers affected. This information will enable us to properly consider the impact of the service reduction or termination on the station’s viewers, including the number of current viewers that will lose digital service, satellite and cable penetration, and the number and kind (network, independent, etc.) of other digital channels available to affected viewers. In addition, stations must explain why they cannot commence digital operation early on their post-transition channel (early transition) in order to continue to provide digital service to viewers.

132. Viewer Notification. With respect to the required notification to stations’ viewers, such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the planned service reduction or termination.³⁹⁴ These notifications must include: (1) the station’s call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station’s post-transition digital signal can be received;³⁹⁵ and (5) the street address, email

³⁹⁰ Like other requests for STA, these requests to permanently reduce or terminate pre-transition DTV service before the transition date must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate Public Notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq_informal.htm. To speed processing, stations should also email courtesy copies of their STA requests to dtvrequests@fcc.gov.

³⁹¹ See 47 C.F.R. § 73.1635.

³⁹² As Bureau actions are recorded, CDBS will automatically generate Public Notice of the actions taken.

³⁹³ See ¶ 132, *infra*.

³⁹⁴ Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station’s post-transition service limitations. See *supra* Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

³⁹⁵ Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.³⁹⁶

4. Service Reductions or Terminations 90 Days Before the Transition Date

133. As an exception to the approval process described above for permanent service reductions and terminations,³⁹⁷ we instead adopt a streamlined notification procedure for stations planning a permanent service reduction or termination (analog or digital) within 90 days of the February 17, 2009, transition date (*i.e.*, beginning on or after November 19, 2008). We find that a more relaxed notification procedure is more appropriate than the approval process established above to provide stations with additional flexibility as we approach the transition date.³⁹⁸ As discussed in detail above,³⁹⁹ the record amply favors affording stations this additional flexibility so close to the end of the transition. Therefore, we will permit a station to reduce or terminate its analog or digital service within 90 days before the transition date by filing a notification with the Commission. The notification must be filed 30 days in advance of the planned service reduction or termination and must include a showing that the service reduction or termination is necessary for purposes of the transition. Although we will not require prior Commission approval, stations must notify their viewers on their pre-transition channel(s) (analog and digital) about the planned service reduction or termination and inform them about how they can continue to receive the station. Like the Section 73.1615 notifications, stations must file these notifications electronically through the CDBS using the Informal Application filing form.⁴⁰⁰

134. Viewer Notification. We will require stations filing a notification with the Commission regarding permanent reduction or termination within 90 days of the transition date to notify their viewers on their pre-transition channel(s) (both analog and digital) about the early service reduction or termination and inform them about how they can continue to receive the station.⁴⁰¹ Such notifications must occur every day on-air at least four times a day including at least once in primetime for the 30-day period prior to the planned service reduction or termination. These notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or pre-transition digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, *i.e.*, how and when the station's digital signal can be received;⁴⁰² (5) information about the availability of digital- to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. We note that these viewer notifications are in addition to, and separate from, any notification requirements that we may adopt pursuant to our DTV Consumer Education Initiative.⁴⁰³

³⁹⁶ See *DTV Consumer Education Initiative*, *supra* note 84.

³⁹⁷ See, *supra*, Sections V.C.2.-3.

³⁹⁸ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9506, ¶ 44.

³⁹⁹ See, *supra*, Sections V.C.2.-3. See also *MSTV Ex Partes* (dated Dec. 18, 2007), *MSTV Ex Partes* (dated Nov. 26, 2007) and *MSTV Ex Partes* (dated Dec. 26, 2007).

⁴⁰⁰ See ¶ 106 and see also note 302, *infra*.

⁴⁰¹ Stations that will not be serving at least the same population that receives their current analog TV and DTV service on February 18, 2009 are also required to notify viewers about the nature, scope, and anticipated duration of the station's post-transition service limitations. See *supra* Sections V.B.5. (¶ 80) and V.B.7. (¶ 91).

⁴⁰² Alternatively, the notification could describe how to get service from another station affiliated with the same network and serving the same lost area.

⁴⁰³ See *DTV Consumer Education Initiative*, *supra* note 84.

D. Applications to Construct or Modify DTV Facilities

135. As we stated in the *Third DTV Periodic Review NPRM*, stations that need to request authority to construct or modify their post-transition facilities must file construction permit (CP) or modification applications.⁴⁰⁴ Commercial stations that need to construct or modify their post-transition facilities must file FCC Form 301 for a minor modification⁴⁰⁵ and submit the appropriate fee.⁴⁰⁶ Noncommercial educational (NCE) stations must file FCC Form 340. We received no comments on our proposed revised FCC Forms 301 and 340, and we adopt those revised forms as proposed. These forms will be available following their approval by the Office of Management and Budget (OMB).

136. Stations Whose Post-Transition Channel is Different From Their Pre-Transition DTV Channel. Stations whose pre- and post-transition DTV channels are different may begin filing their applications for a CP on the final DTV channel following the effective date of this Report and Order. As discussed below, these stations may qualify for expedited processing of their CP applications.

137. Stations Whose Post-Transition Channel is the Same as Their Pre-Transition DTV Channel. Stations whose pre- and post-transition DTV channels are the same fall into three categories. First, some of these stations may not have a licensed DTV facility or CP to construct a facility that matches the final DTV Table Appendix B and the station wants to construct the facility listed in Appendix B for that station's post-transition operation. Such stations must file an application to modify their authority on their current DTV channel, and we encourage these stations to file immediately.⁴⁰⁷ As these stations already have a CP for their final post-transition channel, they do not need to wait for the effective date of this Report and Order or the rules adopted herein to file a modification application, and will get more rapid processing if we receive their applications before stations that are changing channels file their applications.⁴⁰⁸

⁴⁰⁴ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd 9516, ¶ 92. See also 47 C.F.R. §§ 73.1690(b), 73.3533(a), 73.3538.

⁴⁰⁵ Applications to construct or modify post-transition facilities specified in the final DTV Table Appendix B involve a minor change in facilities and we will process them accordingly. Section 73.3572(a)(1) of the Commission's rules defines a major change in a television station's facilities as any change in frequency or community of license. See 47 C.F.R. § 73.3572(a)(1). Several stations may be changing channels as a result of the channel election process; however, these stations will be applying for the frequency and community of license assigned to them in the new DTV Table that was adopted in the *Seventh Report and Order* in MB Docket No. 87-268, and accordingly we will treat their applications as not involving a change in frequency. We believe this treatment will speed processing. We also note that this is consistent with our implementation of the initial DTV Table in 1998.

⁴⁰⁶ See 47 C.F.R. § 73.3533(a); See also 47 C.F.R. § 1.1104. As discussed above, this application and its associated fee will be for a minor change.

⁴⁰⁷ Stations are reminded that applications filed at this time must not request an expansion of service area that would violate the filing freeze. See *August 2004 Filing Freeze PN*, *supra*, note 20. See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

⁴⁰⁸ Following are examples of situations in which a station that is staying on the same DTV channel for post-transition operation may have to file an application for modification of its CP. A station that intends to operate its post-transition facility pursuant to an existing STA operation must file an application to modify its CP to match its STA facility. Also, some of these stations may need to apply to increase power or otherwise adjust their facilities because they are now operating under STA at reduced power and they are unable to construct their authorized CP facilities, but intend to operate with more than their current STA facilities (for example, they intend to raise their transmitting antenna to a higher height on their tower, but are unable to mount it at the authorized height). Other stations may need to apply to modify their licensed or CP facilities in order to match their DTV Table Appendix B coverage if such coverage was based on a certification that differs from their current license or CP.

138. Second, some stations whose pre- and post-transition DTV channels are the same may want to request changes to Appendix B as adopted in the *Seventh Report and Order* to match their existing facility. In such circumstances, we expect that these stations should have a petition for reconsideration of the *Seventh Report and Order* pending, which we will address in a separate proceeding.⁴⁰⁹ If a station has completed construction of the facility it intends to operate after the transition, it does not need to file an application at this time.⁴¹⁰

139. Third, there are some stations that already have a license to operate or a CP to construct their post-transition channel that matches the facility specified in the new DTV Table Appendix B for that station. These stations do not need to file any additional CP applications. These stations are building their post-transition facilities on the CPs granted for pre-transition operation. Once these stations have completed construction and have begun operating pursuant to program test authority, they must file an application for a license to cover (FCC Form 302).⁴¹¹

1. Expedited Processing

140. As we stated in the *Third DTV Periodic Review NPRM*, it is each station's responsibility to ensure that it can begin operations on its post-transition channel upon expiration of the deadline for the transition on February 17, 2009.⁴¹² To ensure that they meet this deadline, stations should file their applications as soon as possible in order to have the maximum time to order equipment and build their facilities. In order to provide further incentive for stations to timely file applications for their post-transition facilities, we hereby adopt our proposal to provide expedited processing for certain stations that timely apply for a construction permit to build their post-transition channel.⁴¹³ Specifically, we will provide expedited processing (generally within 10 days) to a station whose application demonstrates all three of the following requirements:

- (1) The application does not seek to expand the station's facilities beyond its final post-transition DTV Table Appendix B facilities;⁴¹⁴
- (2) The application specifies facilities that match or closely approximate the DTV Table Appendix B facilities (*i.e.*, if the station is unable to build precisely the facilities specified in the new DTV Table Appendix B, then it must apply for facilities that are no more than five percent smaller than its facility specified in Appendix B facilities with respect to predicted population); and
- (3) The application is filed within 45 days of the effective date of this Report and Order, pending OMB approval.

⁴⁰⁹ Approximately 123 Petitions for Reconsideration of the *Seventh Report and Order* were filed by October 26, 2007, the close of the pleading cycle.

⁴¹⁰ If there are minor differences between the station's completed or CP facility and the facility described in Appendix B for that station, such station may continue operating its licensed facility or continue constructing its CP facilities. If major differences exist between a station's completed or CP facility and the facility specified in Appendix B for that station, and the station has not filed a petition for reconsideration and fails to promptly seek changes to Appendix B according to the procedures set forth above in paragraph 9, the station may be subject to enforcement action.

⁴¹¹ See 47 C.F.R. § 73.3536.

⁴¹² *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9517, ¶ 94.

⁴¹³ *Id.*

⁴¹⁴ See Section V.E., *infra.* (permitting certain stations to expand up to five miles). Applications for such expanded facilities will be processed as quickly as possible after processing is completed for stations eligible for expedited processing.

141. In general, the commenters agreed that expedited processing of applications is important to ensure that stations can meet the transition deadline.⁴¹⁵ We find that setting an application filing deadline for expedited processing of 45 days after the effective date of this Report and Order will give stations time to prepare for these filings.⁴¹⁶ We anticipate that we will be able to process qualified applications expeditiously, generally within 10 days of filing. We remind stations that expedited processing does not necessarily mean that the application will be granted.⁴¹⁷ Applications that receive expedited review but that are not readily grantable by the Commission will require further action by the station.⁴¹⁸

142. Some commenters proposed that we designate additional categories of stations that would be eligible for expedited processing. Specifically, APTS argues that we should provide expedited processing to stations with Congressionally-authorized funding that is contingent upon the receipt of a construction permit.⁴¹⁹ In addition, West Virginia Media Holdings suggests that we provide expedited processing to stations moving to a different post-transition channel.⁴²⁰ We note that the criteria and procedures we adopt today encompass a broader group of stations than the categories identified by APTS and West Virginia Media Holdings and will provide relief both to these stations as well as others that may need expedited application processing.

143. A number of stations proposed that we further streamline our procedures by adopting a one-step application process for certain stations. For example, MSTV/NAB propose that, where the proposed facilities conform to Appendix B, the Commission should not require a construction permit application but instead should only require an application for license.⁴²¹ MSTV/NAB maintain that this proposal would streamline the current “two-step” construction permit/license process and would minimize administrative burdens.⁴²² Norwell Television LLC also proposes a “one-step” licensing process for stations whose post-transition DTV facilities are identical (in channel, location, height, and

⁴¹⁵ See, e.g., Central Michigan University Comments at 6; Greater Dayton Comments at 6 (pledging to continue to use their best efforts, and devote all appropriate resources, to obtaining permission to construct their final DTV facilities, but maintaining that the Commission must do its part and expedite permits on “final” channels).

⁴¹⁶ We expect that the 45-day application deadline will coincide with final OMB approval for revised FCC Forms 301 and 340. The Media Bureau will issue a Public Notice announcing that the forms have been approved and are ready for use, as well as the date by which applications must be filed to take advantage of expedited processing.

⁴¹⁷ Stations that receive expedited processing are not guaranteed that their application will be granted; the application still must satisfy the criteria on Form 301 (or 340 for NCEs), as revised in this proceeding. Similarly, stations that do not qualify for expedited processing will not necessarily have their applications denied; rather, their applications simply will not be processed on an expedited basis.

⁴¹⁸ To be eligible for grant, the applicant must certify in the application that the proposed facility: (1) will not have a significant environmental impact; (2) will serve the principal community of license; (3) will provide necessary protection to radio astronomy installations and FCC monitoring stations; and (4) has had its tower approved by FAA, if necessary. See 47 C.F.R. § 73.622(f)(2) (checklist criteria). These criteria must be met by all applications on FCC Form 301 and 340, including both those eligible for expedited processing as well as those not eligible for expedited processing.

⁴¹⁹ APTS/PBS Comments at 5.

⁴²⁰ West Virginia Media Holdings Comments at 3.

⁴²¹ MSTV/NAB Comments at 32.

⁴²² *Id.* MSTV/NAB claim that Section 319 of the Communications Act permits the Commission to waive the requirement of a construction permit application for minor changes. When construction is complete, stations could file a notice with the Commission to inform the Commission of this fact and to certify that construction has been completed in conformance with the license. *Id.*

power) to those specified in Appendix B.⁴²³ APTS proposes a similar measure. APTS suggests that, for stations whose signal does not reach beyond the service contour specified in Appendix B, the station should not be required to file a modification application even if its facilities do not precisely match those in Appendix B.⁴²⁴ APTS states that this procedure would permit the Commission to focus its efforts on the needs of stations changing channels and those that do not yet have construction permits or licenses, and would prevent stations from expending scarce resources to make unnecessary changes.⁴²⁵

144. Upon careful consideration, we find that the procedures suggested by MSTV/NAB, Norwell, and APTS pose more potential risk than might be warranted by the potential benefit. Under these suggested approaches, a station could make modifications to its final DTV facility and begin operating that facility without prior authorization from the Commission and then report the changes on its license application. We continue to believe that the best policy is for a station to first obtain approval of its modified facilities prior to initiating operation. Otherwise, a station could modify its facility, begin operating without prior approval, and cause harmful interference to existing broadcast stations, stations in other services such as mobile operations, and to medical devices.⁴²⁶ Although, as MSTV/NAB reminds us,⁴²⁷ Congress amended Section 319 to provide the Commission with the discretion to allow for one-step licensing, we have exercised this discretion and allowed this procedure only in cases where the potential for interference was much smaller.⁴²⁸ For example, we permitted one-step licensing for FM stations that were proposing to reduce their power from a level previously authorized.⁴²⁹ Similarly, we permitted one-step licensing in the Instructional Television Fixed Service where the power levels involved were much lower and the potential for interference much smaller.⁴³⁰ We do not find such factors in this case. Furthermore, departing from our long-standing “two-step” process is not necessary in this case as it will not help to greatly expedite the final DTV transition. If a station completes its final DTV facilities pursuant to a previously-issued construction permit and finds that it needs to make last-minute changes, that station may avail itself of our expedited processing procedures and expect a quick evaluation of its application. We find that the procedures we adopt today will provide stations that need to make changes to their facilities more than enough time to complete their final DTV facilities even if last-minute corrective filings are necessary.

145. In response to the comments of Broadcasting Company of Sarasota,⁴³¹ we note that the Commission currently accepts electronically-filed requests for STA through our CDBS database and will

⁴²³ Norwell Comments at 5.

⁴²⁴ APTS/PBS Comments at 18.

⁴²⁵ *Id.*

⁴²⁶ Certain very minor changes to television facilities may be reported on a license application but none of the more complicated changes proposed by MSTV/NAB. *See Amendments of Part 73 and 74 of the Commission's Rules to Permit Certain Minor Changes in Broadcast Facilities Without a Construction Permit*, Report and Order, 12 FCC 12371 (1997) (allowing changes without a construction permit such as slight changes in height of antenna radiation center, main studio waivers, changes in noncommercial educational status).

⁴²⁷ MSTV/NAB Comments at 32.

⁴²⁸ MSTV/NAB Comments at 32 *citing* 47 U.S.C. § 319 (1996).

⁴²⁹ *See 1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules*, Report and Order, 14 FCC Rcd 5272 (2000).

⁴³⁰ *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 18 FCC Rcd 6722 (2003).

⁴³¹ Broadcast Company of Sarasota Comments at 5.

continue to do so.⁴³² Generally, the Commission has notified stations of action on their STA requests by mail; however, to speed the process as suggested by Broadcast Company of Sarasota,⁴³³ we may also contact stations by telephone or email, with confirmation of Commission action via entries in the station's CDBS records.

146. Finally, a number of commenters suggested that the Commission expedite application processing by approving applications where the proposed service contour does not exceed the contour predicted by the Appendix B facility by more than a certain amount.⁴³⁴ These proposals are discussed in Section V.E., *infra* (Expanding Facilities).

2. Program tests/License to Cover CP

147. As we stated in the *Third DTV Periodic Review NPRM*,⁴³⁵ stations must not commence program tests on their post-transition channels until they are ready to begin post-transition operations under program test authority. Stations that want to conduct program tests on their post-transition facilities must comply with the Commission's rules⁴³⁶ and coordinate with any affected stations prior to the time of testing. Each station is responsible for determining which other stations may be affected and coordinate accordingly. We expect that stations will work together cooperatively to facilitate testing. Upon completion of the construction of a television facility as authorized by a CP,⁴³⁷ a station may commence program tests upon notification to the Commission, provided that an application for a license to cover the CP for the post-transition facility, on FCC Form 302, is filed within 10 days, along with the appropriate fee.⁴³⁸

E. Expanding Facilities

148. 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

⁴³² Like other requests for STA, these requests must be filed electronically using the Informal Filings Menu of CDBS. As requests are submitted, CDBS will automatically generate Public Notice of these filings. For more information on Informal Filings in CDBS, please refer to this web page: http://fjallfoss.fcc.gov/prod/cdbforms/prod/faq_informal.htm.

⁴³³ *Id.*

⁴³⁴ *See, e.g.,* MSTV/NAB Comments at 33 (proposing that for stations returning to their analog channels that intend to use their analog antennas for post-transition operation, the station applications should be approved for these stations if the service contours do not exceed the contour predicted by the Appendix B facilities by more than 5 miles in any direction, provided a thorough interference analysis is performed within 18 months after the transition date); APTS/PBS Comments at 13-14 (proposing to permit stations to forego correcting minor discrepancies between their final facilities as constructed and their Appendix B facilities if the signal of their final facilities does not reach beyond the service contour specified in Appendix B).

⁴³⁵ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9518-9519, ¶ 96.

⁴³⁶ 47 C.F.R. § 73.1620(a).

⁴³⁷ Stations must comply with the terms of their CP as well as the technical provisions of the application, or rules and regulations, and the applicable engineering standards.

⁴³⁸ *See* 47 C.F.R. §§ 73.1620, 73.3536. We remind stations that will be using Channel 14 for post-transition operations that they must take special precautions to avoid interference to adjacent spectrum land mobile radio service facilities before commencing program testing. Where a TV station is authorized and operating prior to the authorization and operation of the land mobile facility, a Channel 14 station must attenuate its emissions within the frequency range 467 to 470 MHz if necessary to permit reasonable use of the adjacent frequencies by land mobile licensees. 47 C.F.R. § 73.687(e)(3). A licensee on channel 14 may not commence program test authority without specific Commission approval. *See* 47 C.F.R. § 73.687(e)(4)(ii) (stating that such licensees must submit evidence that there will be no interference to land mobile stations before the station will be permitted to transmit programming on the new facilities).

build their post-transition facilities.⁴³⁹ Until this date, we will maintain the freeze and will not accept maximization applications to expand facilities. We will, nevertheless, consider requests to waive the freeze before August 17, 2008 in certain specified situations to provide for minimally expanded facilities where necessary to ensure that stations can serve their existing television viewers with their post-transition facilities, thereby meeting viewers' over-the-air reception expectations after the transition date.

149. During the channel election process, stations defined their post-transition facilities, deciding whether they would (1) replicate their allotted facilities, (2) maximize to their currently authorized facilities, or (3) reduce to a currently authorized smaller facility.⁴⁴⁰ Stations, however, were not allowed to seek facilities that would expand their coverage areas beyond that provided by their allotted facilities or authorized by a license, CP or STA.⁴⁴¹ The filing freeze precluded such expansion to provide a stable database for developing the post-transition DTV Table.⁴⁴²

150. Maximization Applications. We adopt our tentative conclusion in the *Third DTV Periodic Review NPRM* to not accept maximization applications until we have processed all stations' post-transition applications, as authorized by the post-transition DTV Table.⁴⁴³ We find that we must first ensure that all stations can at least provide digital service to their analog viewers by the transition date before considering new maximization applications. Several commenters have urged us to lift the freeze immediately and express concern about investing in equipment without knowing if and when they can maximize.⁴⁴⁴ In addition, they say that retrofitting their equipment later to maximize could be prohibitively expensive, thereby potentially limiting service to the public, particularly by public stations if they cannot afford to maximize later.⁴⁴⁵ We find, however, that processing maximization applications at this time would slow the resolution of stations' applications to construct final DTV facilities. For example, such applications could be mutually exclusive, which would result in a delay of several weeks or months. This delay would prevent us from resolving applications needed for stations to build their post-transition facilities. In addition, we find that allowing stations that are filing applications to construct post-transition facilities to propose expanded facilities would also be unfair to stations that have completed building their post-transition facilities and, therefore, are not filing applications now but might also want to expand their existing facilities. Therefore, before we consider maximization requests, which may cause interference to viewers accustomed to receiving service from particular stations, we conclude that we must first establish the initial DTV landscape and preserve existing service patterns to the extent possible.

⁴³⁹ As discussed in note 20, on August 3, 2004, the Media Bureau imposed a freeze on requests for changing DTV channels within the DTV Table and on new DTV channels, as well as on the filing of modification applications by television and Class A television stations, in order to provide a stable database for conducting the channel election process and developing a new DTV Table. The freeze does not prevent the processing of pending applications. *August 2004 Filing Freeze PN, supra*, note 20. See also 47 C.F.R. §§ 73.1690, 73.3533, 73.3538.

⁴⁴⁰ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18296, ¶ 41. See also FCC Form 381.

⁴⁴¹ See *id.*

⁴⁴² See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18293 ¶ 35. *Seventh Report and Order*, 22 FCC Rcd at 15618-9 ¶ 90.

⁴⁴³ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9519, ¶ 97.

⁴⁴⁴ See also, e.g., Tribune Comments at 6-8; Sinclair Comments at 1-3; South Carolina Educational Television Commission at 4, Nebraska PTV Licensees at 6, State of Wisconsin Board Comments at 6, Arkansas Educational Television Commission at 7-9, Multicultural at 8, LeSEA Comments at 3-4, Davis at 2-3, Bahakel Comments at 6-9.

⁴⁴⁵ See MSTV/NAB Comments at 27-28.

151. Filing Freeze Waiver Policy. We adopt a waiver policy, based on a proposal by MSTV/NAB,⁴⁴⁶ that will permit rapid approval of minor expansion applications filed by stations that are not using their pre-transition DTV channel for post-transition operation, provided the station demonstrates that such expansion:

- (1) Would allow the station to use its analog antenna or a new antenna to avoid a significant reduction in post-transition service from its analog service area;
- (2) Would be no more than five miles larger in any direction than their authorized service area, as defined by the post-transition DTV Table Appendix B; and
- (3) Would not cause impermissible interference, *i.e.*, more than 0.5 percent new interference, to other stations.⁴⁴⁷

Many commenters requested this relief, arguing that such relief was necessary to avoid a significant service loss to existing viewers.⁴⁴⁸ We agree with MSTV/NAB that we should generally permit stations to expand up to five miles in any direction beyond their authorized service area. While we generally will not permit more than 0.5 percent new interference, we will consider on a case-by-case basis allowing stations to cause additional new interference if stations can demonstrate that they need this additional flexibility to serve their analog viewers.⁴⁴⁹ Consistent with our existing rules,⁴⁵⁰ we will also consider on a case-by-case basis stations' negotiated interference agreements provided these agreements are consistent with the public interest.

152. We find that this waiver 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. This waiver policy addresses the concerns of those stations returning to their analog channel that may face significantly reduced facilities if some minimal expansion is not permitted.⁴⁵¹ For example, Tribune and Allbritton argue that many stations returning to their analog channels for post-transition operation plan to use their analog antennas but face the prospect of significant service losses because the "unbuildable, theoretical pattern" in Appendix B does not match the analog antenna pattern.⁴⁵² As previously discussed, several stations that faced this problem filed comments in our DTV Table proceeding. In the *Seventh Report and Order*, we permitted these stations to change their 2004 certifications and, thus, revised these stations' post-transition DTV Table Appendix B facilities to reflect their constructed final DTV facilities.⁴⁵³ Many more stations have since filed petitions for reconsideration of the *Seventh Report and Order* to obtain this same relief.⁴⁵⁴ We expect that we can

⁴⁴⁶ *Ex Parte* Comments of MSTV (dated November 26, 2007) ("MSTV *ex parte*"). MSTV proposed that the Commission allow stations returning to their analog channels to use their current antenna pattern, provided the pattern does not exceed DTV Table Appendix B coverage by 5 miles or cause more than 2.0 percent interference to surrounding stations. MSTV proposed for stations to have 12 months after February 17, 2009 to comply with the 0.5 percent interference standard above DTV Table Appendix B levels. *Id.*

⁴⁴⁷ This interference standard is consistent with the new interference standard adopted in Section V.F., *infra*.

⁴⁴⁸ See, e.g., CBS Comments at 8-9; Griffin Comments at 4-5; Hubbard Comments at 3-4; Twin Cities Comments at 5-7; Meredith Comments at 2-3; Univision at 5 n.7.

⁴⁴⁹ *Ex Parte* Comments of MSTV (dated December 19, 2007) ("MSTV *ex parte* letter, 12/19/07").

⁴⁵⁰ See 47 C.F.R. § 73.623(g).

⁴⁵¹ See, e.g., CBS Comments at 8-9; Tribune Comments at 8-10 Allbritton Comments at 2-5.

⁴⁵² Tribune Comments at 8-10 Allbritton Comments at 2-5.

⁴⁵³ See *Seventh Report and Order*, 22 FCC Rcd at 15607-15609, ¶¶62-67.

⁴⁵⁴ See MB Docket No. 87-268, Petitions for Reconsideration of the *Seventh Report and Order*.

provide the same relief to most of these stations as well. For those stations that cannot be fully accommodated with a change to their post-transition DTV Table Appendix B facilities (*e.g.*, stations that failed to request reconsideration of their post-transition DTV Table Appendix B facilities), we expect that this waiver policy should address their situations. In addition, this waiver policy should address many of the other concerns raised by commenters in seeking exemption from the freeze.⁴⁵⁵ Applications filed to maximize facilities pursuant to this waiver policy will not receive expedited processing, but these applications will be processed before the freeze is lifted and new maximization applications are accepted.

153. Filing Freeze to be Lifted August 17, 2008. We adopt the proposal of MSTV/NAB and others to set a date certain that is before the end of the transition for when we will lift the filing freeze and begin accepting stations' applications to maximize post-transition facilities and serve more viewers.⁴⁵⁶ Accordingly, we establish August 17, 2008 as that date.⁴⁵⁷ By this date, we expect to have completed processing all stations' applications for post transition facilities and, therefore find that we could then provide this opportunity for stations to expand their facilities and serve more viewers, possibly before the transition date. We agree with MSTV/NAB that establishing a date certain for lifting the freeze will assist stations in their post-transition plans.⁴⁵⁸ It is clear from the comments that many stations are eager to expand their facilities (beyond those specified in the post-transition DTV Table Appendix B) to serve more viewers.⁴⁵⁹ Stations' new channel assignments present them with new opportunities to offer expanded DTV coverage, either because the stations may be moving to a new channel that does not have the same interference restrictions or because other stations on adjacent channels may be moving away, thus eliminating prior interference conflicts. We expect that lifting the freeze six months before the transition date will enable many stations to conserve resources by purchasing equipment that anticipates the maximization of their facilities.⁴⁶⁰ Nevertheless, we will not accept future maximization as an excuse from stations not to file applications now nor to delay construction of their full, authorized facilities by their construction deadline. No commenter objected to the proposals to set a date to lift the freeze prior to the end of the transition.

154. Processing of Maximization Applications. Maximization applications will be processed in accordance with our existing rules.⁴⁶¹ While we will accept maximization applications after the freeze

⁴⁵⁵ See, *e.g.* Long Comments at 2-4; Griffin Comments at 3; Hearst-Argyle Comments at 4-5.

⁴⁵⁶ See MSTV/NAB Comments at 27-28. See also, *e.g.*, APTS/PBS Reply at 6-7; Griffin Comments at 2-3; Hubbard Comments at 2-3.

⁴⁵⁷ We recognize that we cannot predict with absolute certainty the date by which we will complete processing stations' initial applications to build facilities authorized by the post-transition DTV Table. While we believe this date represents a reasonable estimate concerning the time it should take us to process all the applications to permit stations to construct their final facilities, we may adjust this date, earlier or later, as we get closer to completing the processing of these applications. The Media Bureau will announce the exact date the freeze will be lifted and the associated terms and filing procedures.

⁴⁵⁸ See MSTV/NAB Comments at 27-28. See also, *e.g.*, APTS/PBS Reply at 6-7; Griffin Comments at 2-3; Hubbard Comments at 2-3.

⁴⁵⁹ See also, *e.g.*, Tribune Comments at 6-8; Sinclair Comments at 1-3; South Carolina Educational Television Commission at 4, Nebraska PTV Licensees at 6, State of Wisconsin Board Comments at 6, Arkansas Educational Television Commission Comments at 7-9, Multicultural Comments at 8, LeSEA Comments at 3-4, Davis Comments at 2-3, Bahakel Comments at 6-9. Granite argues for expansions for satellite stations' service areas to bring service to underserved areas. Granite Comments at 6. University of Michigan would like to maximize coverage before LPTV stations are permitted to apply for facilities that could inhibit maximization by full power stations. University of Michigan Comments at 10. See also *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9519, ¶ 97.

⁴⁶⁰ MSTV/NAB Comments at 27-28.

⁴⁶¹ 47 C.F.R. § 73.623. We remind stations that applications for maximization filed before the freeze is lifted will not be accepted for filing.

is lifted, such applications may not be processed in time for stations to build these new maximized facilities by their construction deadline. Stations with a pending maximization application on file are warned that such filing will not be considered a legitimate excuse for failing to build their full, authorized post-transition (DTV Table Appendix B) facilities by their construction deadline.

F. Post-Transition Interference Standards and Analysis Methodology

155. We are generally adopting the interference standards as proposed in the *Third DTV Periodic Review NPRM*, with adjustments based on the record. In brief, we adopt the following standards for evaluating post-transition interference:

- We will permit stations a limit of 0.5 percent new interference in addition to that in the DTV Table Appendix B. We will evaluate stations' applications to construct post-transition facilities using an engineering criteria based requirement (limiting the predicted interference that a station may cause to a protected station's service population) instead of using a geographic spacing requirement.
- We will discontinue the 10 percent cap on total interference.
- We will continue to evaluate requests for new DTV allotments using the DTV-to-DTV geographic spacing requirements contained in Section 73.623(d).
- For approximately a year after lifting the filing freeze, we will protect all stations' DTV Table Appendix B facilities, after which we will protect each station's new DTV Table Appendix B facilities' coverage only until the station has a CP or license for its post-transition operation, at which time we will limit its interference protection to its authorized coverage area.
- We will revise the OET 69 interference analysis methodology to make the results more accurate and ensure consistent methodology. Specifically, we adopt the use of 2000 census data for use in all applications and we adopt a limited set of cell sizes, which include 2 km, 1 km, and 0.5 km.
- We will eliminate the 1 dB power reduction requirement for UHF stations that use more than 1 degree of antenna beamtilt.

156. Interference Criteria for Applications. Commenters generally agreed with our proposal to use engineering criteria instead of geographic spacing for cases involving applications; however there was widespread difference of opinion over how strict the criteria should be.⁴⁶² In the *Third DTV Periodic Review NPRM*, we proposed an absolute 0.5 percent interference standard for requests to modify post-transition facilities. In the proposal, stations whose Appendix B allotments are already predicted to cause more than 0.5 percent interference to another station would not be allowed to expand beyond the amount of interference that would be caused by their allotment.

157. A study by du Triel, Lundin & Rackley, Inc (dLR) found that 50 percent of all VHF allotments already cause more than 0.5 percent interference and 40 percent of all VHF allotments already cause more than 1.0 percent interference, so that an absolute 0.5 percent limit would prevent many stations from expanding at all.⁴⁶³ MSTV/NAB noted that a number of commenters argue that the FCC should apply the proposed 0.5 percent standard by using the DTV Table Appendix B facilities as a baseline so that stations would be permitted to create no more than 0.5 percent additional interference

⁴⁶² Khanna 8/8/07 Comments at 4; Meredith Comments at 4-5.

⁴⁶³ dLR Comments at 1.

beyond the level authorized in the DTV Table Appendix B.⁴⁶⁴ MSTV/NAB support this approach on the grounds that it will ensure that stations have sufficient flexibility to expand or modify facilities, but will prevent substantial increases in interference between stations.⁴⁶⁵ Several other commenters wrote that the proposed 0.5 percent interference standard may be too strict and proposed alternate standards. Upper Cumberland Broadcast Council (UCBC) would permit up to 2 percent interference.⁴⁶⁶ Multicultural Television Broadcasting (MTB) supports a limit of 1 percent with no rounding and the masking of other stations taken into account and asks that we permit minor modifications where the increase in existing interference is less than or equal to 0.1 percent.⁴⁶⁷ Khanna & Guill Inc. proposed an alternative that would limit interference to small service areas to no more than 1,000 people and to large service areas to no more than 50,000 people.⁴⁶⁸

158. For purposes of the channel election process, the Commission generally applied the 0.1 percent interference standard to minimize as much as possible any interference as a result of a station moving to its analog channel for post-transition operation, rather than remaining on its pre-transition digital channel for post-transition service.⁴⁶⁹ For stations that had to change channels for post-transition operation, *e.g.*, because their digital channel was out-of-core, we allowed up to 2.0 percent interference. We conclude that after the transition, the stringent 0.1 percent standard for interference protection used to facilitate the development of the post-transition DTV Table will no longer be needed. In the post-transition environment, all stations will have channels that will allow them to adequately serve their viewers. We also find that it is now reasonable and desirable to afford stations opportunities to modify their service areas to improve service to viewers. We further recognize that in order to provide such opportunities, stations will need the flexibility to cause a small amount of new interference to neighboring stations. The interference standard we proposed and are adopting in this Report and Order will allow stations to request modifications to improve their service areas that would cause a small amount of new interference to other stations. We find that the benefits of improving station service in such cases will outweigh the very small amount of additional interference that will be permitted under the 0.5 percent standard.

159. In addition, we agree with the majority of commenters that new interference under the 0.5 percent standard should be evaluated using the DTV Table Appendix B allotments as a baseline in interference calculations. In contrast, as indicated by the dLR study, an absolute interference limit would preclude many stations from having the flexibility to modify their facilities. Even increasing the absolute interference limit to 1.0 percent as suggested by UCBC would still preclude 40 percent of VHF stations from having such flexibility, and using a higher interference limit would potentially subject stations to large amounts of new interference. Therefore, to provide an opportunity for at least modest modifications, we will allow stations to cause up to 0.5 percent new interference, in addition to interference reflected in the DTV Table Appendix B. Applying 0.5 percent to this baseline of existing interference will provide the flexibility and expansion sought by commenters that suggested allowing higher interference levels. It would also effectively control the amount of new interference that could be experienced by any one station. We find this approach provides a reasonable balance between having sufficient flexibility to expand and modify facilities while preventing substantial disruption for viewers

⁴⁶⁴ MSTV/NAB Reply at 16. See CBS Comments at 9-10, Allbritton Comments at 5-6, Tribune Comments at 4-6, Gray Comments at 8, Hammett and Edison Comments at 6-7, Davis Comments at 3-5, Cohen, Dippell & Everist Comments at 5-8, KSLs Comments, *passim*, WDEF Comments at 4, Disney Reply, *passim*.

⁴⁶⁵ MSTV/NAB Reply at 17.

⁴⁶⁶ UCBC Comments at 4.

⁴⁶⁷ Multicultural Comments at 4.

⁴⁶⁸ Khanna 8/8/07 Comments at 2-3.

⁴⁶⁹ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18302, ¶ 56.

due to interference between stations. We therefore adopt the 0.5 percent interference standard and will apply it using the DTV Table Appendix B facilities as a baseline.⁴⁷⁰

160. We also proposed to discontinue the 10 percent cap on total interference to a station from all sources, and instead proposed to limit the total interference any station would receive from all sources by requiring that stations already predicted to cause more than 0.5 percent interference to another station would not be allowed to increase the interference they are authorized to cause to that station.⁴⁷¹ MTB concurs with this proposal.⁴⁷² MSTV/NAB also submits that removing the cap would contribute to making the interference standard “simpler to administer than the 2 percent/10 percent rule (which requires consideration of the total amount of interference a station is receiving from all sources).”⁴⁷³ Since we are adopting the 0.5 percent interference standard, which is significantly more protection than the previous 2.0 percent standard, we find that the amount of new interference that will be accumulated by any one station is minimal. Removing the cap would also help those few stations in situations that exceed the 10 percent interference level share the flexibility to expand or modify their facilities. Therefore, as proposed, we will discontinue the 10 percent cap on total interference.

161. Interference Criteria for New Allotments. As proposed, we will use geographic spacing requirements as the standards for determining the technical acceptability of channel use in evaluating rulemaking petitions seeking new DTV channel allotments.⁴⁷⁴ While MSTV/NAB outlined in their comments that changes to the table should be analyzed under the 0.5 percent interference standard,⁴⁷⁵ as we said in the *Third DTV Periodic Review NPRM*, information about actual transmitter site locations and facilities are generally not available in rulemaking proceedings. Without such information, valuations based on minimum acceptable allotment facilities and the methodology for the analysis of a petition using an engineering criteria standard would not reflect the operation of an actual station and therefore would generally not be meaningful. For these reasons we will continue to use the DTV-to-DTV geographic separation requirements contained in Section 73.623(d) of the rules. After a new DTV allotment has been approved, we will regulate the extent of interference by requiring applications for these DTV allotments to comply with the same engineering criteria standards we are proposing for all other DTV applications.⁴⁷⁶

162. Protection of DTV Table Appendix B facilities. As proposed in the *Third DTV Periodic Review NPRM*, we will only protect stations’ DTV Table Appendix B facilities until stations have their CP or license for their post-transition facility, at which time we will limit interference protection to stations’ authorized coverage area.⁴⁷⁷ However, to avoid penalizing stations that apply for reduced

⁴⁷⁰ See revised rule 47 C.F.R. § 73.616 in Appendix B, *infra*. We will neither amend nor replace the existing interference rules in 47 C.F.R. §73.623, which will remain in effect to apply to any applications for pre-transition digital facilities. Petitions for rule making and applications for facilities that will operate after the end of the DTV transition must comply with section 73.616, with respect to post-transition operations, as well as with section 73.623, to the extent they will be in operation prior to the transition. We will consider whether to amend or eliminate the rule sections pertaining only to pre-transition digital facilities in a later proceeding.

⁴⁷¹ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 107.

⁴⁷² Multicultural Comments at 5.

⁴⁷³ MSTV/NAB Comments at 29.

⁴⁷⁴ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 111.

⁴⁷⁵ MSTV/NAB Comments at 29.

⁴⁷⁶ A new station would be allowed to create no more than 0.5 percent new interference to any station beyond the level of interference authorized by the allotment.

⁴⁷⁷ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 112. DTV Table Appendix B has been used to provide all stations with post-transition facilities. When a station applies for a CP to build the post-transition facility authorized by Appendix B, or applies for its license to cover the authorized post-transition facility it has already (continued....)