

facilities so as to not violate the freeze, we will continue to protect the DTV Table Appendix B facilities of stations until roughly one year after the date we intend to lift the filing freeze.⁴⁷⁸ We received very few comments directly on this point, but MSTV/NAB mentioned that it is appropriate for the Commission to give stations one year to complete their final facilities, and that during that year we should provide protection to stations' allotted facilities.⁴⁷⁹ New allotments as discussed in the previous paragraph will only be protected until a CP is granted for the new station. When applying the 0.5 percent new interference standard described above, we will continue to rely on the applicant's Appendix B or new allotment facility as a baseline for determining how much new interference the station may cause and avoiding cumulative applications of the 0.5 percent standard. When determining the amount of interference an applicant causes to other stations, we will use the protected stations' service areas based on their construction permits, licenses or new allotments as described in this paragraph.

163. Changes to Interference Analysis Methodology. We will adopt changes to our DTV interference analysis methodology to make the results more accurate and ensure consistent methodology. In the *Third DTV Periodic Review NPRM*,⁴⁸⁰ we proposed to evaluate compliance with the interference standard using the Office of Engineering and Technology's OET Bulletin No. 69 ("OET 69") methodology, but using 2000 census data as was done during the channel election process. We sought comment on whether other changes to the OET 69 methodology were necessary.⁴⁸¹ As an example, we proposed allowing the use of specific "cell" sizes smaller than the 2 kilometers per side cell size specified as the default in OET 69. We also sought comment on a proposal to use variable desired-to-undesired ("D/U") interference ratios to better analyze situations where adjacent-channel transmitters are to be located inside a desired station's noise-limited service contour.⁴⁸² Commenters also raised questions about the use of real vertical antenna patterns and beamtilting.

164. As proposed, we adopt the use of 2000 census data for use in all applications.⁴⁸³ Few commented on the issue, but those commenters that did were supportive of the proposal. This will result in more accurate modeling of the current population covered by DTV stations.

165. We also adopt use of specific smaller cell sizes for the Longley-Rice analysis as described in OET 69. Commenters were divided on the issue of the use of smaller cell sizes. As we explained in the *Third DTV Periodic Review NPRM*, we have generally allowed applicants to specify analysis based on cells that are smaller because such analysis is arguably more accurate. We understood that some applications had been based on evaluating many possible smaller cell sizes until the desired result was obtained. Such "shopping" for advantageous cell sizes does not improve the accuracy of the

(Continued from previous page)

built, then it will no longer be necessary or appropriate to protect the Appendix B facility. As noted above in *supra* ¶¶ 7 and 149, for many stations, DTV Table Appendix B represents the hypothetical facility that produces its certified service area. See also *Seventh Report and Order*, 22 FCC Rcd at 15588-89, ¶¶ 17-18. When a station applies for the construction permit to build its facility, it may need to vary the parameters listed on Appendix B to construct the actual facility, for example to reflect an achievable directional antenna pattern or to locate the antenna at a height on the tower where mounting is possible. In addition, in some cases, we will allow stations to expand their facilities beyond Appendix B. See, *supra*, Section V.E. (¶¶ 148-154). Thus, over time, many stations' facilities will no longer match the DTV Table Appendix B facility.

⁴⁷⁸ The Media Bureau will issue a Public Notice establishing the exact date, which may be earlier if appropriate.

⁴⁷⁹ MSTV/NAB Comments at 23, n. 43. University of North Carolina Comments at 3.

⁴⁸⁰ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 112.

⁴⁸¹ See OET Bulletin No. 69, "Longley-Rice Methodology for Evaluating TV Coverage and Interference," (Feb. 6, 2004) ("OET 69"), available at http://www.fcc.gov/Bureaus/Engineering_Technology/Documents/bulletins/oet69/oet69.pdf.

⁴⁸² *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9522-3, ¶ 110.

⁴⁸³ *Id.* at ¶ 109.

evaluation.⁴⁸⁴ dLR, for example, would permit the use of any cell size. Others, like MSTV/NAB and Khanna, would allow the use of some smaller cell sizes, but establish constraints as to what sizes are allowed. Khanna proposed a uniform use of 1 kilometer per side cells,⁴⁸⁵ which would avoid disputes over differing methodology. Establishing a minimum cell size of 1 kilometer per side, according to MSTV/NAB, would “discourage shopping for advantageous cell sizes.”⁴⁸⁶ While we recognize the concerns about shopping for advantageous cell size, we also would prefer to preserve the option to use alternative cell sizes that has been available over the course of the DTV transition. In this regard, our experience is that this option has generally not been abused. We do, however, find that it would simplify the process to specify a limited set of cell sizes; this would seem to better limit any size “shopping” that might occur. Therefore, we adopt a limited set of cell sizes: 2 km, 1 km, and 0.5 km. Adopting this method will allow for more accurate showings of DTV coverage based on smaller cell sizes, while discouraging the practice of “shopping” for cell sizes, which doesn’t contribute to improved accuracy.

166. Vertical Patterns. We will retain the existing OET 69 vertical antenna pattern and not make changes in the vertical patterns at this time. Vertical antenna radiation patterns are descriptions of antenna gain at various angles above and below the horizon. Several commenters asked us to modify the way in which vertical antenna patterns are considered. Currently, OET 69 specifies a standard vertical antenna pattern that is used for each station, regardless of the actual characteristics of the station’s antenna. Some commenters noted that allowing the use of actual vertical patterns would result in more accurate modeling of station coverage, and possibly more efficient use of the TV spectrum. Meredith Corporation notes that stations are required to submit vertical pattern information when applying for a CP, but that the data is not used when calculating the service area of the application. AFCCE recommends that actual vertical patterns and beamtilt be considered for modifications and new authorizations when calculating outgoing interference.⁴⁸⁷ Changing the interference analysis at this time would demand time and resources when we must process and grant a large number of applications as quickly as possible. Therefore, we will continue to rely on the existing OET 69 standard vertical antenna pattern for applications filed now for post-transition facilities. We expect, however, to revisit this issue in the future.

167. Beamtilting Penalty. We are eliminating the 1 dB power reduction requirement for UHF stations that use more than 1 degree of antenna beamtilt.⁴⁸⁸ This rule was introduced in February 1998, when we initially limited maximization requests by UHF stations to 200 kW ERP.⁴⁸⁹ The rule allowed UHF stations to increase power up to a maximum of 1000 kW provided beamtilting techniques were employed so that the field strengths at the outer edge of the stations service area were no greater than would exist if the station were operating at its assigned DTV power. The rule also required that the field strengths at the edge of the service area be calculated assuming 1 dB of additional antenna gain over the pattern specified by the manufacturer. Later that year, we ruled that all UHF stations could request an

⁴⁸⁴ See also *id.* at note 211. For example, if an application would fail based on 1.0 km cells but passes based on 1.5 km cells, the applicant would request evaluation based on the 1.5 km cell size.

⁴⁸⁵ Khanna 8/8/07 Comments at 3.

⁴⁸⁶ MSTV/NAB Comments at 29.

⁴⁸⁷ AFCCE Comments at 9. Specifically, AFCCE proposed that if a vertical pattern is on file for a protected station, the pattern will be used. If no such pattern is on file, but is necessary for an applicant to establish non-interference, the applicant would request that the manufacturer’s standard vertical pattern for the specified antenna be substituted for the FCC vertical pattern.

⁴⁸⁸ 47 C.F.R. § 73.622(f)(4) states that UHF DTV stations may request and increase in powers, up to a maximum of 1000 kW ERP ... through the use of antenna beamtilting in excess of 1 degree, as follows: ... (ii) where a station operates at higher power under the provisions of this paragraph, its field strengths at the edge of its service area are to be calculated assuming 1 dB of additional antenna gain over the antenna gain pattern specified by the manufacturer.

⁴⁸⁹ See *DTV Sixth Memorandum Opinion and Order*, 13 FCC Rcd at 7426, ¶ 82.

increase in power up to 1000 kW ERP provided they met the *de minimis* rules in Section 73.623(c)(2) of the rules, and did not require beamtilting to be employed.⁴⁹⁰ AFCCE suggested that the 1 dB penalty be rescinded to permit stations to employ large beamtilts and higher ERPs.⁴⁹¹ Tribune states that “once the 200 kW power cap was effectively eliminated ... there was no need for the 1 dB penalty to discourage stations from using the beamtilting exception to evade the 200 kW power cap.”⁴⁹² We agree and find that the rules under 73.622(f)(4) are outdated and should be amended. We note that stations may use section 73.622(f)(8) to increase their power above 200 kW. Sections 73.625(b)(2) and 73.625(c)(1) address how beamtilting can be used. Through the use of these rules, the effect of 73.622(f)(4) can be accomplished without the 1 dB penalty.⁴⁹³ We will, therefore, amend section 73.622(f)(4).⁴⁹⁴

168. Variable D/U Ratios. In the *Third DTV Periodic Review NPRM*,⁴⁹⁵ we sought comment on whether to adopt variable desired-to-undesired (D/U) interference ratios in situations where adjacent-channel transmitters are proposed to be located inside a desired station’s noise-limited service contour.⁴⁹⁶ MSTV/NAB submitted that consideration of this issue would be best addressed in our DTS proceeding.⁴⁹⁷ We find that the comments submitted in this record do not provide an adequate basis on which to make a decision to retain the current D/U ratios or to change them. We can address this topic in a future proceeding if parties submit data and arguments demonstrating a need for revising our current rules.

169. Channel 51. In *ex parte* comments, Cohen, Dippell and Everist, P.C. request the Commission to clarify the extent to which any Wireless Communications Services (“WCS”) that will operate in the spectrum currently designated as TV/DTV Channel 52 will offer interference protection to future DTV services offered on Channel 51.⁴⁹⁸ In the *Second DTV Periodic Report and Order* we stated

⁴⁹⁰ See *DTV Second Memorandum Opinion and Order*, 14 FCC Rcd at 1369, ¶¶ 48-49.

⁴⁹¹ AFCCE Comments at 10.

⁴⁹² Tribune Comments at 30.

⁴⁹³ See *DTV Second Memorandum Opinion and Order*, 14 FCC Rcd at 1369, ¶¶ 48-49.

⁴⁹⁴ See revised rule 47.C.F.R. § 73.622(f)(4) in Appendix B, *infra*.

⁴⁹⁵ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9523, ¶ 110.

⁴⁹⁶ We noted that such situations may become more prevalent if rules are adopted allowing distributed transmission systems (“DTS”). See *Digital Television Distributed Transmission System Technologies*, MB Docket No. 05-312, Clarification Order and Notice of Proposed Rulemaking, 20 FCC Rcd 17797 (2005). DTS employs multiple synchronized transmitters spread around a station’s service area, rather than the current single-transmitter approach. Each transmitter broadcasts the station’s DTV signal on the same channel. Due to the synchronization of the transmitted signals, DTV receivers treat the multiple signals as reflections or “ghosts” and use “adaptive equalizer” circuitry to cancel or combine them to produce a single signal. *Id.*

⁴⁹⁷ See *id.* We note that we did receive some comments on this issue in the DTS proceeding, but find that the record on this issue remains insufficient. See, e.g., Comments of MSTV in MB Docket No. 05-312 at 7-8 (dated Feb. 6, 2006) and Reply Comments of Merrill Weiss Group, LLC in MB Docket No. 05-312 at 6-8 (dated Mar. 8, 2006).

⁴⁹⁸ See *Ex Parte* Comments of Cohen, Dippell and Everist, P.C. (dated Sept. 27, 2007) (“*CDE Ex Parte*”). The commenters cited to 47 C.F.R. § 27.60 as the basis for their comment. This rule states that “transmitters in the 698-794 MHz and 776-794 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to the public reception of the signals of existing TV and DTV broadcast stations transmitting on TV channels 51 through 68.” They point out that the “existing” language implies, or might lead any future WCS auction winner to expect, that a WCS would not have to protect any future channel 51 station that was not “existing” as of the date of the DTV transition. We note that Section 27.60 applies to transitional operations, prior to the completion of the digital transition on February 18, 2009. This Section will be the subject of a rulemaking proceeding to update, inter alia, the reference to interference protections for “stations transmitting on TV Channels 51 through 68” post-transition. There will be no such television broadcast stations operational on Channels 52 through 68 after the transition. This rulemaking will also be an opportunity to harmonize the rule requirements with our conclusions in the *Second DTV Periodic Report and Order*.

that wireless and other operators on channel 52 must provide the interference protection prescribed in the Lower 700 MHz Report and Order to all broadcasters on channel 51, including any that may commence operation after the auction of adjacent channels in the 52-58 band, and we further stated that use of channel 51 for broadcast purposes should not be restricted in order to protect operations on channel 52, even if those operations predate the commencement of operations on channel 51.⁴⁹⁹ We reiterate and emphasize that this policy has not changed, and we will ensure that expanded operations by current channel 51 licensees and new channel 51 allotments will remain protected.

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

170. We establish no new rules governing the coordination of broadcasters and MVPDs, but remind all parties of their existing obligations, and observe that some coordination issues must be resolved in other dockets. As we recognized in the *Third DTV Periodic Review NPRM*,⁵⁰⁰ the transition to digital television necessarily involves coordination with Multichannel Video Programming Distributors (“MVPDs”).⁵⁰¹ No commenter disagreed, and indeed few commenters spoke to these coordination issues. Those who did generally assured the Commission that both coordination and the actual transition to digital signal reception are underway.⁵⁰² Therefore, as a general matter, Cox Broadcasting’s suggestion that the parties will coordinate independently is well taken.⁵⁰³ There remain, however, a few coordination issues that we need to specifically address.

1. Transition Status Filings

171. As discussed above,⁵⁰⁴ we adopt the requirement that broadcasters file a Transition Status Report (Form 387) with the Commission no later than February 18, 2008, and we will make the information from those forms publicly available. Broadcasters may also report their coordination efforts with MVPDs in their transition status reports. This information collection and availability is in line with that supported by a number of commenters, including NCTA.⁵⁰⁵ NCTA argues that a wide range of information must be available to “provide adequate lead time for cable operators to make technical modifications at cable headends, conduct tests, and provide timely notice to customers of channel changes and any other changes in their service.”⁵⁰⁶ These reports will provide a base of common information that broadcasters and MVPDs can look to in their voluntary coordination efforts, and will allow time for the resolution of those efforts. Reports filed with the Commission are, however, no substitute for direct communication between broadcasters and MVPDs and we strongly encourage active coordination between them.

172. Although NAB and MSTV propose that MVPDs themselves file Transition Status Reports similar to Form 387, they do not elaborate on this proposal.⁵⁰⁷ We find insufficient support in the

⁴⁹⁹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18333, ¶ 124.

⁵⁰⁰ *See Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9528, ¶ 124.

⁵⁰¹ *See* 47 U.S.C. 522(13). MVPDs include cable operators and Direct Broadcast Satellite carriers. *See also* 47 C.F.R. §§ 76.5, 76.501 (SMATV).

⁵⁰² *See, e.g.*, DIRECTV Comments at 3.

⁵⁰³ Cox Comments at 8-9.

⁵⁰⁴ *See supra* Section V.A.1.

⁵⁰⁵ *See, e.g.*, APTS/PBS Comments at 22; Capitol Comments at 9; NCTA Comments at 4-5.

⁵⁰⁶ NCTA Comments at 5.

⁵⁰⁷ MSTV/NAB Comments at 31; Cox Comments at 8-9; *See generally*, University of North Carolina Comments and Norwell Comments. MSTV/NAB’s Comments were not echoed by any of the individual broadcasters who filed in this docket, and they were opposed by Cox.

record for imposing this filing because it would provide information that is already generally available. NAB and MSTV also propose that MVPDs be required to register their headends and contact information, such that it will be available to broadcasters who wish to coordinate carriage issues.⁵⁰⁸ As noted above, we strongly support active coordination between the parties, and urge broadcasters to directly contact the MVPDs that carry their stations if they require specific information from MVPDs to ensure a successful transition. We also remind cable operators in particular of their existing requirement to notify all stations carried pursuant to must carry at least 60 days prior to any change in the designation of their principal headend.⁵⁰⁹ Furthermore, contact information for cable operators is already widely and publicly available through the FCC Cable Operations and Licensing System (“COALS”). Broadcasters can access this information online at any time.⁵¹⁰ We are unaware of any problem broadcasters have had in contacting MVPDs, and NAB and MSTV do not provide any such examples. Therefore, we decline to adopt an MVPD transition status report requirement at this time. We do urge broadcasters and MVPDs to report to the Media Bureau any specific difficulties with their coordination efforts, and we will take appropriate action against any party that consistently declines to actively coordinate on transition issues.

2. Cable Coordination

a. Timing of Transition

173. The Commission’s primary concern in this process is to ensure that the entire viewing public, those who watch broadcast stations on cable as well as those who watch them over the air, is able to view these signals as easily on February 18, 2009 as they can today. We remind cable operators that they have an obligation to carry digital must-carry signals, and to have reception equipment operational to receive those digital signals that go on the air on February 18, 2009.⁵¹¹ Furthermore, we remind them of their carriage obligations regarding digital-only stations established in the *First DTV Must Carry Order*.⁵¹² Stations that currently broadcast only a digital signal or that turn off their analog signal prior to February 17, 2009, in accordance with the policies and procedures adopted in this Report and Order are entitled to mandatory carriage on cable systems.⁵¹³ Similarly, we remind broadcasters that they are obliged to provide the cable operator with a good quality signal and, if they choose not to rely on over the air transmission, it is their obligation to contact the operator and resolve any issues necessary to provide the signal in an alternative manner.⁵¹⁴

⁵⁰⁸ MSTV/NAB Comments at 31.

⁵⁰⁹ See 47 C.F.R. § 76.1607.

⁵¹⁰ COALS is a publicly accessible online database that contains extensive information about cable operators. Cable operators are required to maintain updated contact information with the Commission. 47 C.F.R. § 76.1610. This information can be found online at: <http://www.fcc.gov/coals>. Contact information for a group of operators can be most easily accessed by selecting “Cable Search” from the bar on the left, choosing the relevant state from the “Community State” drop down box, and choosing “Community Registration” from the “Type of Filing” drop down box. The search can be narrowed by entering additional information, such as the name of the community in which the cable system is located or the name of the cable system.

⁵¹¹ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Carriage Issues*, MM Docket No. 92-259, Report and Order, 8 FCC Rcd 2965, 2990, ¶ 101 (1993) (“1993 Must Carry Order”); clarified in the Clarification Order, 8 FCC Rcd 4142, 4144, ¶ 11 (1993); see also 47 C.F.R. § 76.64(f)(4).

⁵¹² See *Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission’s Rules and Implementation of the Satellite Home Viewer Improvement Act of 1999*, First Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 2598, 2617, ¶ 29 (“First DTV Must Carry Order”); 47 C.F.R. § 76.64(f)(4).

⁵¹³ See 47 C.F.R. § 76.64.

⁵¹⁴ The signal may be provided in any manner chosen by the broadcaster, so long as its cost is borne by the broadcaster. See *1993 Must Carry Order*, 8 FCC Rcd at 2991, ¶ 104.

b. Signal Quality Standard

174. The Commission has previously established that, for cable companies, a “good quality digital signal” is one that provides a signal strength at the headend equal to -61 dBm.⁵¹⁵ For purposes of clarity, we find that it is now advisable to adjust Section 76.55 of our rules to conform to these requirements established in 2001.⁵¹⁶ Two broadcast commenters expressed concerns that stations could lose carriage rights for a full election cycle because of a temporary reduction in signal strength or area during their digital build-out.⁵¹⁷ UNC proposes that the Commission impose an interim quality standard, presumably requiring lower signal strength to qualify.⁵¹⁸ Norwell suggests that, where the predicted digital signal strength is at least as high as the analog signal it is replacing, the MVPD be required to carry the digital signal.⁵¹⁹ We decline to adopt these proposals. When the Commission adopted the -61 dBm standard for cable carriage, analysis indicated that it was the strength “necessary to provide a good quality digital television signal at a cable system’s principal headend.”⁵²⁰ Neither commenter provided evidence to refute that finding. If a broadcast signal is not delivered in good quality, it can not be carried in good quality, and carriage of a low quality signal mars the viewing experience, which in turn discourages viewership, and is thus harmful to the broadcaster by reducing advertising revenue. It may also be harmful to the MVPD by undermining subscribers’ perception of the quality of the programming offered by the operator and by increasing complaint calls and the likelihood that a customer will seek alternatives to their current MVPD. Broadcasters, MVPDs, and viewers, therefore, all benefit from delivery and carriage of clear, high quality signals. We also acknowledge the concerns of these broadcasters, and remind MVPDs that they are responsible for carriage as soon as a good quality signal is delivered.

3. DBS Coordination

175. We reiterate that MVPDs must work with broadcasters to ensure a smooth transition, and direct the parties to the DBS Carriage proceeding, MB Docket No. 00-96, where the final rules governing satellite carriage of digital broadcast signals will be adopted.⁵²¹ Both DIRECTV and EchoStar filed comments regarding the timing of the transition. DIRECTV states that it is already carrying a number of stations’ digital signals, and offers to work with any broadcaster that is currently providing and will continue to provide a good quality digital signal to its local receive facility, even if that station is not currently being carried by DIRECTV.⁵²² We note that 95 percent of stations are currently on the air with a digital signal. Nevertheless, a number of stations may not provide their post-transition digital signal to headends and receive facilities until the conclusion of the transition.⁵²³ We remind broadcasters of their

⁵¹⁵ *First DTV Must Carry Order*, 16 FCC Rcd at 2617, ¶ 46.

⁵¹⁶ See revised rule 47 C.F.R. § 76.55 in Appendix B, *infra*.

⁵¹⁷ University of North Carolina Comments at 9-10; Norwell Comments at 6-7.

⁵¹⁸ University of North Carolina Comments at 10.

⁵¹⁹ Norwell Comments at 6.

⁵²⁰ *First DTV Must Carry Order*, 16 FCC Rcd at 2617, ¶ 46.

⁵²¹ Although signal strength requirements for the delivery of digital signals to satellite receive facilities have not been finalized, we remind DBS providers of their obligation to carry local broadcast stations that provide a “good quality signal.” 47 C.F.R. § 76.66(g).

⁵²² DirecTV Comments at 3.

⁵²³ *Id.* at 3-4. See also NCTA Comments at 2-3. See also, e.g., Allbritton Comments at 3; APTS/PBS Comments at 16-18; Bahakel Comments at 4; Central Michigan University Comments at 6; Disney Comments at 5-6; Hawaii Public Television Foundation Comments at 5; MSTV/NAB Comments at 22-26; Nebraska PTV Licensees Comments at 4; PBNP Comments at 5; Quincy Comments at 5; Rocky Mountain Comments at 8; Scripps-Howard Broadcasting Comments at 3-4; Sistema Universitario Ana G. Mendez Comments at 6; South Carolina Educational Television Commission Comments at 1; St Louis PTV Comments at 4; University of Michigan Comments at 3.

obligation to provide a good quality signal,⁵²⁴ and therefore their obligation to coordinate the delivery of that signal, for example by coordinating with DBS and other MVPD operators during program test periods prior to February 17, 2009. EchoStar proposes that, for any station that does not make its digital signal available prior to February, 2009, MVPDs be given additional time to incorporate that signal into their system.⁵²⁵ We decline to adopt Echostar's proposal.

4. Private Cable Operators and Master Antenna System Providers

176. In the *Third DTV Periodic Review NPRM*, we asked for comments from private cable operators ("PCOs") (also known as Satellite Master Antenna Television or "SMATV" providers) and master antenna system providers regarding steps they are taking to ensure that their subscribers and residents will continue to receive local broadcast stations after the termination of over-the-air analog broadcast signals from full power stations.⁵²⁶ We received comments from the Independent Multi-Family Communications Council (IMCC), the PCO trade association, and agree with IMCC that it may be necessary for these operators to update their systems prior to the 2009 transition date.⁵²⁷ We support IMCC's proposed efforts to educate PCOs nationwide, and appreciate their efforts to keep their membership fully informed on this important issue.⁵²⁸ We note that viewers who rely on PCOs or master antenna systems will also need to be informed of the equipment they will need to continue viewing broadcast television after February 17, 2009.⁵²⁹

177. PCOs provide cable service on private property, and do not cross public rights of way. Typically they serve multiple dwelling units ("MDUs") and private residential communities, such as condominiums and homeowner associations. PCOs generally provide local TV broadcast signals to the residents/subscribers via one of four methods. The first alternative is to contract with a DBS provider that is providing local-into-local service, set up a DBS dish in a central location (e.g., the roof), and then remodulate the digital satellite signal into analog for distribution to residents/subscribers. The second alternative is for PCOs to set up satellite receivers for each local broadcaster, with an analog RF modulator for each program, and then combine the modulator outputs into a single cable for residents/subscribers. The third alternative is to provide a local digital broadcast package to residents/subscribers via a digital headend signal processor. Finally, the PCO can set up one or more over-the-air receive antennas and either simply pass the signal along to residents/subscribers or, more commonly, run it through an analog processor to provide a constant signal strength for residents/subscribers. Operators of master antenna systems (e.g., a landlord or condo association) provide one or more receive antennas and deliver local over-the-air television signals free of charge to residents, and generally also have an analog processor to ensure a constant signal strength.⁵³⁰

⁵²⁴ See 47 C.F.R. §§ 76.55(c)(3) and 76.66(g).

⁵²⁵ EchoStar Reply at 3. See also DIRECTV Reply at 5 (offering a similar proposal that would be limited to DBS providers and stations that commence digital service on or after February 17, 2009).

⁵²⁶ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9528-9, ¶ 124.

⁵²⁷ As discussed in ¶ 178, *infra*. See generally, Late-Filed Comments of the Independent Multi-Family Communications Council (IMCC). See also, IMCC Industry Issues Website, particularly "Conversion from Analog to Digital," available at <http://www.imcc-online.org/ISSUES/issues.htm>.

⁵²⁸ See Late-Filed Comments of IMCC at 4.

⁵²⁹ The Commission recently adopted an Order requiring that cable operators make digital signals "viewable" to all of their subscribers after the transition. *Cable Viewability Order*, *supra* note 78. PCOs and MATV providers, however, do not have "must carry" obligations under the Act, and are therefore not covered by this recent decision. 47 U.S.C. § 522 (7).

⁵³⁰ See Blonder Tongue Laboratories, Inc., "Broadcast Television's Analog to Digital Transition," available at http://www.imcc-online.org/ISSUES/RESOURCE%20Info/Analog%20to%20Digital/BT-broadcast_television-12-05.htm.

178. After the digital transition, PCOs who rely on the first or second alternatives will not need to make any changes. The satellite signal or signals will continue to be received in digital and can continue to be remodulated into analog for the residents/subscribers. If this alternative is used, however, there will be no digital signals, including high definition signals, available to the residents/subscribers, although they will all continue to receive television service without buying new equipment. PCOs under option three are already relying on an all-digital headend and distribution network, and will face no changes after the transition because all equipment on the system, including residents/subscribers' television receivers, is already capable of receiving, conveying, and displaying digital signals. PCOs who rely on local receive antennas will have two options, the same as those confronting operators of master antenna systems. First, they could use a digital-to-analog converter on all over-the-air signals to convert the digital broadcast signal to analog before being retransmitted to residents/subscribers, who will therefore be able to continue to rely on their existing television equipment. This solution results in the same problem faced by DBS subscribers, however; all residents/subscribers will receive television programming, but none will receive a standard or high definition digital signal. The other alternative is to retransmit the signal in digital format. In this case, residents/subscribers have access to the full benefits of the digital transition, but only if they have digital equipment. We recognize that some residents/subscribers may think of themselves as "cable subscribers," and therefore expect that the DTV transition will have no impact on their service, based on the Commission's recent decision ensuring continued viewability of stations carried on cable.⁵³¹ This problem can be largely ameliorated by proper education efforts by PCOs and MATV operators. In addition the OTA digital signal provided by PCOs will be processed, but not remodulated; therefore, off-the-shelf digital-to-analog converters, including those that will be available as part of the NTIA converter box coupon program, can be used by residents/subscribers with analog equipment to view the signal.⁵³²

H. Other Issues

1. DTV Transmission Standard (ATSC A/53)

179. We adopt our proposal in the *Third DTV Periodic Review NPRM*⁵³³ to update Section 73.682(d) of the rules⁵³⁴ to reflect the latest revisions to the ATSC DTV transmission standard, A/53, since the *Second DTV Periodic Report and Order*.⁵³⁵ Accordingly, we will incorporate into Section 73.682(d) by reference the latest version of the DTV transmission standard A/53: ATSC Digital Television Standard, Part 1-6:2007 ("A/53:2007").⁵³⁶ We will continue to encourage further improvements to the DTV standards and conduct additional rulemakings, as appropriate, to incorporate future updates of the ATSC DTV transmission standard into our rules.

⁵³¹ See *Cable Viewability Order*, *supra*, note 78.

⁵³² See Late-Filed Comments of IMCC at 4.

⁵³³ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9524-25, ¶ 114.

⁵³⁴ 47 C.F.R. § 73.682(d) states: "Effective February 1, 2005, transmission of digital broadcast television (DTV) signals shall comply with the standards for such transmissions set forth in ATSC A/52: 'ATSC Standard Digital Audio Compression (AC-3)' (incorporated by reference, See § 73.8000), ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2: 'ATSC Digital Television Standard,' except for Section 5.1.2 ('Compression format constraints') of Annex A ('Video Systems Characteristics') and the phrase 'See Table 3' in Section 5.1.1. Table 2 and Section 5.1.2 Table 4 (incorporated by reference, See § 73.8000), and ATSC A/65B: 'ATSC Program and System Information Protocol for Terrestrial Broadcast and Cable,' (Revision B) 2003 (incorporated by reference, See § 73.8000). Although not incorporated by reference, licensees may also consult ATSC Doc. A/54, Guide to Use of the ATSC Digital Television Standard, (October 4, 1995), and ATSC Doc. A/69, Recommended Practice PSIP Implementation Guidelines for Broadcasters (June 25, 2002)."

⁵³⁵ See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶ 145.

⁵³⁶ See revised rule 47 C.F.R. § 73.682(d) in Appendix B, *infra*.

180. We find that it is desirable and appropriate to update Section 73.682(d) of the rules to specify the use of the latest version of this ATSC DTV transmission standard, A/53:2007. All commenters on this issue support the adoption of the latest version of the standard into our rules.⁵³⁷ The ATSC notes that it has made further changes to its DTV transmission standard since the release of the *Third DTV Periodic Review NPRM*.⁵³⁸ Specifically, ATSC partitioned the standard into six parts to facilitate future “changes and enhancements” and encourages the Commission to adopt the newest version into the rules.⁵³⁹ We note that the A/53:2007 version of the standard does not differ from the A/53-E version that was mentioned in the *Third DTV Periodic Review NPRM*, other than these organizational changes.

181. The A/53:2007 version of the standard differs from the previously used standard, A/53-B,⁵⁴⁰ in several respects. First, A/53:2007 includes the specifications for, but does not require, Enhanced 8-VSB (“E8-VSB”) for terrestrial broadcast.⁵⁴¹ E8-VSB enables Enhanced Services, which allow broadcasters to allocate the base 19.39 Mbps data rate between Main Service data and Enhanced Services data.⁵⁴² Enhanced Services data is designed to have higher immunity to certain channel impairments than Main Service data, but Enhanced Services data is delivered at a reduced information rate selected by the broadcaster from the specified options.⁵⁴³ A/53:2007 further describes the coding constraints that apply to the use of the MPEG-2 systems specification⁵⁴⁴ in the DTV system, including mandatory main and optional enhanced services.⁵⁴⁵ It also improves the Active Format Description (“AFD”) specifications by revising and clarifying the relevant standards.⁵⁴⁶

182. Given these advantages, we find that updating the rules with the latest version of the ATSC DTV transmission standard today will benefit both broadcasters and consumers by allowing broadcasters the flexibility to offer new technological services. We cannot, however, establish Harris’ proposed streamlined approach⁵⁴⁷ to automatically update our rules when ATSC updates its standards.⁵⁴⁸

⁵³⁷ See ATSC Comments at 2-3; Harris Comments at 4-5; LG Comments at 2; MSTV/NAB Comments at 29-30.

⁵³⁸ ATSC Comments at 2-3.

⁵³⁹ *Id.*

⁵⁴⁰ See 47 C.F.R. § 73.682(d) (incorporating by reference ATSC Doc. A/53B, Revision B with Amendment 1 and Amendment 2). See also *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶ 145.

⁵⁴¹ A/53, Part 2:2007 at 6 (“The optional enhancements add additional forward error correction coding layers to the data before sending the data via a constrained version of 8-VSB called Enhanced 8-VSB (E8-VSB). Various coding rate options are defined, and the payload assignment between the Enhanced 8-VSB and the Main Mode data is selectable at discretely defined values.”).

⁵⁴² *Id.* at 19.

⁵⁴³ *Id.* at 9.

⁵⁴⁴ ISO/IEC IS 13818-1-2000 (E), International Standard, Information technology – Generic coding of moving pictures and associated audio information system.

⁵⁴⁵ A/53 Part 3:2007 at 9.

⁵⁴⁶ A/53 Part 4:2007 at 14.

⁵⁴⁷ Harris Comments at 4-5.

⁵⁴⁸ 5 U.S.C. § 553; See *Sprint Corp. v. Federal Communications Com’n*, 315 F.3d 369 (D.C. Cir. 2003) (changing the obligations of a party requires actual notice); *SBC Inc. v. Federal Communications Com’n*, 414 F.3d 486 (3d Cir. 2005) (a new rule is subject to notice and comment requirements if it would “impose new duties upon regulated parties” and could not be construed as “interpretative, clarifying and explaining [an] existing rule”). Furthermore, regulations prohibit incorporation of ATSC updates by reference. 1 C.F.R. 51.1 (disallowing “future amendments or revisions” to be incorporated by reference).

2. Active Format Description (AFD)

183. We will not require broadcasters to use AFD. Broadcasters that choose to use AFD, however, must adhere to the ATSC DTV transmission standard A/53:2007. Although the latest ATSC DTV transmission standard does not require the use of AFD,⁵⁴⁹ we sought comment in the *Third DTV Periodic Review NPRM*⁵⁵⁰ on whether to require AFD when the active video portion picture does not completely fill the coded picture. All commenters on this issue agree that AFD should remain voluntary.⁵⁵¹

184. We agree with commenters that it would be premature to require mandatory broadcaster use of AFD, given that the standard is relatively new and has not yet been required through the ATSC standard.⁵⁵² We do, however, encourage television manufacturers to implement the SMPTE standard and CEA-CEB16 into their TV sets, which will better allow broadcasters to take advantage of tools such as AFD to ensure that viewers receive a signal that is optimized for their TV set. We find that these voluntary, industry driven efforts are sufficient and, thus, will not require broadcasters to use AFD until such time that AFD data can be consistently deployed by manufacturers and content providers, and received by the public. For example, we recognize that not all content providers now uniformly provide AFD data to broadcasters. Moreover, not all consumers are equipped to obtain the benefits of AFD.⁵⁵³ We will monitor and may revisit it when more content providers provide AFD data to broadcasters and when more consumers obtain DTV receiving equipment that could pass through the AFD data to them.⁵⁵⁴ We expect that broadcasters will have an incentive to use AFD to make their programming attractive to viewers when they are ready and able to do so. We note that we will address the issue raised in comments concerning requirements that certain MVPDs pass through AFD data to their subscribers.⁵⁵⁵ This issue is raised in the *Third Further Notice of Proposed Rule Making in the DTV Must Carry* proceeding.⁵⁵⁶

3. Program System and Information Protocol ("PSIP") Standard

185. We adopt our proposal in the *Third DTV Periodic Review NPRM*⁵⁵⁷ to update Section 73.682(d) to reflect the latest revisions to the ATSC PSIP standard since the *Second DTV Periodic Report*

⁵⁴⁹ A/53, Part 4:2007 at 14. See also *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶ 145 (declining to mandate broadcasters' use of AFD).

⁵⁵⁰ *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9524, ¶ 116.

⁵⁵¹ MSTV/NAB Comments at 29-30; Cox Comments at 7 (citing lack of equipment and newness of the AFD and SMPTE standards). NCTA Reply at 10 (noting "it is still too early in the implementation and testing of AFD technology to determine whether it should be used ubiquitously by broadcasters or cable operators"); CEA Comments at 3.

⁵⁵² MSTV/NAB stated that at this time the Commission should refrain from requiring AFD because it would be premature to do so while the industry standard remains incomplete. MSTV/NAB Comments at 30. See also Cox Comments at 7-8 (noting that "the ink is barely dry on the ATSC and SMPTE standards"); NCTA Reply at 10.

⁵⁵³ See Cox Comments at 7-8 (stating that it is not clear to Cox that equipment necessary for robust insertion and reception of AFD data is generally available.)

⁵⁵⁴ In the *Second DTV Periodic Report and Order*, the Commission noted, "[A]s more consumers acquired widescreen aspect ratio sets, the problem of "postage stamp video" would become more prevalent if not addressed by broadcasters." Moreover, the Commission found "that broadcasters would want to make their programming attractive to viewers as they began to adopt DTV." *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18341-42, ¶¶ 143, 145.

⁵⁵⁵ See Tribune Comments at 23-26; NCTA Reply at 9-11.

⁵⁵⁶ See *Cable Viewability Order*, *supra*, note 78.

⁵⁵⁷ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9527, ¶ 118.

and Order.⁵⁵⁸ Accordingly, we will incorporate into Section 73.682(d) by reference the latest version of the ATSC PSIP standard A/65C into our rules.⁵⁵⁹ The record supports updating our rules to reflect the latest version of the ATSC PSIP standard,⁵⁶⁰ which includes additional benefits such as updated Event Information Tables (“EITs”). We find that the updated ATSC PSIP standard enhances consumers’ viewing experience by providing detailed information about digital channels and programs, such as how to find a program’s closed captions, multiple streams and V-chip information.⁵⁶¹ We agree with the commenters that the benefits of the updated ATSC PSIP standard to both broadcasters and consumers outweighs any additional burden placed on broadcasters.⁵⁶² We recognize, however, that it may take time for broadcasters to implement the new ATSC PSIP standard. Therefore, in order to give broadcasters adequate time to come into compliance, this requirement will take effect 120 days after publication in the Federal Register.⁵⁶³

186. PSIP data is transmitted along with a station’s DTV signal and provides DTV receivers with information about the station and what is being broadcast.⁵⁶⁴ PSIP data provides a method for DTV receivers to identify a DTV station and to determine how a receiver can tune to it. For any given station, the PSIP data transmitted along with the digital signal identifies both its DTV channel number and its analog channel number (referred to as the “major” channel number), thereby making it easy for viewers to tune to the station’s DTV channel even if they only know the station’s major channel number. In addition, PSIP data tells the receiver whether multiple program streams are being broadcast and, if so, how to find them. It also identifies whether the programs are closed captioned, conveys available V-chip information, and provides program information, among other things.

187. The updated ATSC PSIP standard further enhances the PSIP standard and support for delivery of data. This latest revision requires broadcasters to populate the EITs with accurate information about each event and to update the EIT if more accurate information becomes available. Under the previous version of the standard, A/65-B, many broadcasters provide only general information in the EIT. For example, a network affiliate may provide nothing more informative than “network programming” as the descriptor for the majority of its program offerings.

⁵⁵⁸ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18345-46, ¶ 152.

⁵⁵⁹ See revised rule 47 C.F.R. § 73.682(d) in Appendix B, *infra*.

⁵⁶⁰ ATSC Comments at 3; MSTV/NAB Comments at 30; Tribune Comments at 23-4; LG Comments at 3; Harris Comments at 4. We did not receive comments related to the proposal’s impact on small broadcasters.

⁵⁶¹ *Second DTV Periodic Report and Order*, 19 FCC Rcd at 18343-44, ¶ 149.

⁵⁶² Notably, we received no comments to our inquiry about the potential burden that compliance with the updated PSIP standard would place on broadcasters, and in particular small broadcasters. See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9527, ¶ 118.

⁵⁶³ See revised rule 47 C.F.R. § 73.682(d) in Appendix B, *infra*.

⁵⁶⁴ See ATSC website, PSIP Informational Documents at http://www.psip.org/psip_information.html. (“PSIP is a small collection of tables designed to operate within every Transport Stream (TS) for terrestrial broadcast of digital television. Its purpose is to describe the information at the system and event levels for all virtual channels carried in a particular TS. Additionally, information for analog channels as well as digital channels from other Transport Streams may be incorporated. There are two main categories of information in the ATSC PSIP Standard, system information and program data. System information allows navigation and access of the channels within the DTV transport stream, and the program data provides necessary information for efficient browsing and event selection. Some tables announce future events and some are used to locate the digital streams that make up an event. The PSIP data are carried via a collection of hierarchically arranged tables.”)

188. We expect broadcasters to fully implement PSIP to the extent that ATSC A/65C requires, once the revised Section 73.682(d) becomes effective.⁵⁶⁵ We remind broadcasters of the need to be consistent at all times and locations. For example, if a broadcaster transmits a program in standard definition, the PSIP information should state that the programming is being broadcast in standard definition, as opposed to High Definition. In addition, the Transport Stream Identifier (“TSID”) information should be consistent in the Terrestrial Virtual Channel Table (“TVCT”), Program Association Table (“PAT”). Moreover, when a program goes overtime, the station should update the EIT. Proper implementation of the standard requires broadcasters to populate the required tables and descriptors with the correct information to help receivers assemble functioning guides. Adoption of this standard also mandates completing tables and descriptors that require one time setup to be set correctly, including TSID, Short Channel Names, Service Type, Modulation Mode Source ID and Service Location Descriptor. Also, broadcasters must accurately fill the contents of the fields and the descriptors of each event descriptor loop with the known information about each event at the time the event is created and shall update each field if more accurate information becomes available. The Commission will continue to monitor these issues and act accordingly.

189. Finally, a couple of comments noted, in response to our inquiry in the *Third DTV Periodic Review NPRM*,⁵⁶⁶ that PSIP information may not be passed through to cable and satellite subscribers.⁵⁶⁷ We will address such program-related PSIP issues in our *DTV Must Carry* proceeding.⁵⁶⁸

190. DTV Tuner Requirement. We take this opportunity to correct a ministerial error to our rules regarding the DTV Tuner requirements for television receivers and receiving devices. As noted above,⁵⁶⁹ the Commission required in the 2005 DTV Tuner Order that “responsible parties equip television receivers with screens less than 13” that are imported into this country or shipped in interstate commerce on and after March 1, 2007, with the capability to receive broadcast digital television signals” because we concluded that “it would benefit consumers and the purposes of the broadcast television service and its transition to digital operation to require that receivers with screens less than 13” are able to receive digital signals on the same schedule as other TV receiver products.”⁵⁷⁰ We adopted these requirements through the appropriate notice and comment procedures, and modified the relevant section of our Rules to show March 1, 2007, as the accelerated deadline,⁵⁷¹ but we inadvertently omitted to delete the exception created by Section 15.117(i)(2) for “units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, *i.e.*, the vertical measurement of a screen in the 4:3 aspect ratio that measures 13’ [sic] diagonally across the picture viewing area.”⁵⁷² Accordingly, we shall correct Section 15.117(i)(2) by striking the inappropriate language.⁵⁷³

⁵⁶⁵ See *Ex Parte* Letter from Michael P. Fortkort, counsel to Wi-Lan V-Chip Corp. to Marlene Dortch, Secretary, FCC (dated Aug. 8, 2007) (“Wi-Lan *ex parte* letter”).

⁵⁶⁶ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9527, ¶ 119. Digital cable systems with activated channel capacity of 750 MHz or greater are required to include in-band PSIP when available from the provider. 47 C.F.R. § 76.640(b)(1)(iv).

⁵⁶⁷ See, *e.g.*, COAT Comments at 5; Capitol Comments at 11 (saying some cable and satellite headends may not receive a clear off-the-air signal).

⁵⁶⁸ See *Cable Viewability Order*, *supra*, note 78.

⁵⁶⁹ See *supra* note 71.

⁵⁷⁰ 2005 *DTV Tuner Order*, 20 FCC Rcd at 18616, ¶ 25.

⁵⁷¹ See 47 C.F.R. § 15.117(i)(1).

⁵⁷² 47 C.F.R. § 15.117 (i)(2).

⁵⁷³ See revised rule 47 C.F.R. § 15.117(i)(2) in Appendix B, *infra*.

191. V-Chip Requirements: We also take this opportunity to conform the V-Chip rule codified in the Code of Federal Regulations⁵⁷⁴ to the modification of that rule adopted in the *Second DTV Periodic Report and Order*.⁵⁷⁵ Section 15.120(b) of the Commission's rules requires that all TV broadcast receivers with picture screens 13 inches or larger in diameter comply with the V-Chip requirements. The codified rule provides:⁵⁷⁶

15.120 Program blocking technology requirements for television receivers.

(b) Effective January 1, 2000, all TV broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger in diameter shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

192. In 2004, the *Second DTV Periodic Report and Order* extended the V-Chip requirements to DTV tuners which are sold without an associated display device, such as analog-to-digital converter boxes, DVD recorders, and other nondisplay devices with DTV tuners. In addition, the *Second DTV Periodic Report and Order* adopted measurement criteria associated with the 16:9 aspect ratio for devices that include a display. Specifically, the *Second DTV Periodic Report and Order* provided:

193. Additionally, we are adopting our proposal to apply v-chip rules to digital television receivers with displays in the 16:9 aspect ratio that are 7.8 inches or greater in height. Furthermore, we are requiring that v-chip technology be included in all digital television receivers with integrated 4:3 displays measuring at least 13 inches diagonally. *Similar to our requirements for closed caption capabilities in digital television receivers, the rules will also be applicable to DTV tuners which are sold without an associated display device.*⁵⁷⁷

194. The Commission, however, did not make the corresponding revisions to section 15.120(b) as codified in the CFR to reflect these changes. We now make this adjustment to the codified rule to reflect the revision adopted in 2004. These changes are permitted because they simply conform the codified rule to the rule amendment adopted by the Commission in the *Second DTV Periodic Report and Order* after notice and comment. Therefore, we find "good cause" under Section 553 of the APA for making this conforming change because additional notice and comment is unnecessary.⁵⁷⁸

4. Fees for Ancillary and Supplementary Services

195. We hereby revise Section 73.624(g) to include permittees operating pursuant to an STA or any other FCC instrument authorizing DTV transmissions that earn revenue from feeable ancillary and supplementary services.⁵⁷⁹ As currently written, this rule refers to the payment of such fees only by "DTV licensees." In the *Third DTV Periodic Review NPRM*, we sought comment on Section 73.624(g) of the Commission's rules, which requires DTV licensees to report whether they have provided ancillary and supplementary services and, if so, pay a fee of five percent of gross revenues derived from certain of

⁵⁷⁴ See 47 C.F.R. § 15.120(b).

⁵⁷⁵ 19 FCC Rcd 18279, 18348.

⁵⁷⁶ 47 C.F.R. § 15.120(b).

⁵⁷⁷ 19 FCC Rcd 18279, 18348 (emphasis added).

⁵⁷⁸ See 47 U.S.C. § 553(b). Cf., *Federal Express Corp. v. Mineta*, 373 F.3d 112, 120 (D.C. Cir. 2004) (agency was found to have satisfied the notice and comment requirements of the APA where it provided an opportunity to comment before adopting the final rule and requiring the agency to take further comments would serve no useful purpose).

⁵⁷⁹ See revised rule 47 C.F.R. § 73.624(g) in Appendix B, *infra*.

those services. We asked whether the Commission can and should revise its rules to require that all DTV broadcasters should be subject to the provisions of Section 73.624(g).⁵⁸⁰ We did not receive any comments on this issue.

196. The Telecommunications Act of 1996 (“1996 Act”)⁵⁸¹ established the framework for licensing DTV spectrum to existing broadcasters and authorized the Commission to permit broadcasters the opportunity to offer ancillary or supplementary services consistent with the public interest.⁵⁸² The 1996 Act also required the Commission to establish a program to assess and collect fees for certain ancillary or supplementary services.⁵⁸³ In 1999, the Commission adopted rules implementing this provision.⁵⁸⁴ Section 73.624(g) of the Commission’s rules requires all “[c]ommercial and noncommercial DTV licensees” to remit annually to the Commission a fee of five percent of the gross revenues derived from feeable ancillary or supplementary services. The Commission created FCC Form 317 to be filed annually by DTV licensees to report whether they have provided ancillary or supplementary services in the previous year and whether any of the services provided were subject to a fee.⁵⁸⁵

⁵⁸⁰ 47 C.F.R. 73.624(g).

⁵⁸¹ Pub. L. No. 104-104, 110 Stat. 56 § 201 (1996), *codified at* 47 U.S.C. § 336.

⁵⁸² 47 U.S.C. § 336(b)(3), (5).

⁵⁸³ 47 U.S.C. § 336(e) provides, in pertinent part: FEES

(1) SERVICES TO WHICH FEES APPLY. If the regulations prescribed pursuant to subsection (a) permit a licensee to offer ancillary or supplementary services on a designated frequency –

(A) for which the payment of a subscription fee is required in order to receive such services, or

(B) for which the licensee directly or indirectly receives compensation from a third party in return for transmitting material furnished by such third party (other than commercial advertisements used to support broadcasting for which a subscription fee is not required),

the Commission shall establish a program to assess and collect from the licensee for such designated frequency an annual fee or other schedule or method of payment that promotes the objectives described in subparagraphs (A) and (B) of paragraph (2).

(2) COLLECTION OF FEES. The program required by paragraph (1) shall –

(A) be designed (i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource;

(B) recover for the public an amount that, to the extent feasible, equals but does not exceed (over the term of the license) the amount that would have been recovered had such services been licensed pursuant to the provisions of section 309(j) of this Act and the Commission’s regulations there under; and

(C) be adjusted by the Commission from time to time in order to continue to comply with the requirements of this paragraph.

⁵⁸⁴ See *Fees for Ancillary or Supplementary Use of Digital Television Spectrum Pursuant to Section 336(e)(1) of the Telecommunications Act of 1996*, MM Docket No. 97-247, Report and Order, 14 FCC Rcd 3259 (1998), *recon. denied*, 14 FCC Rcd 19931 (1999). Section 73.624(g) provides, in pertinent part: “Commercial and noncommercial DTV licensees must annually remit a fee of five percent of the gross revenues derived from all ancillary or supplementary services, as defined by paragraph (b) of this section, which are *feeable*, as defined in paragraphs (g)(2)(i) through (ii) of this section.” 47 C.F.R. § 73.624(g) (emphasis in original).

⁵⁸⁵ If a licensee has provided feeable services during the 12 month period ending on September 30, the licensee is required to remit the fee for such services by December 1 of that year on FCC Form 159. 47 C.F.R. § 73.624(g)(2)(ii).

197. The Commission has allowed some DTV stations to provide DTV service pursuant to an STA.⁵⁸⁶ Because the Commission's rules apply the fee requirement to "licensees," however, stations operating pursuant to an STA have not been filing Form 317 or paying fees on any feeable services they might be providing.

198. Section 336(e)⁵⁸⁷ of the Act uses the term "licensees" in directing the Commission to collect fees for ancillary or supplementary use of a frequency. However, neither the statute nor the legislative history suggest that the use of the term "licensee" was intended to create a limited identifiable class of DTV broadcasters that would be subject to the fee provisions of Section 336(e). In addition, we note that a primary goal of the legislation is: "(i) to recover for the public a portion of the value of the public spectrum resource made available for such commercial use, and (ii) to avoid unjust enrichment through the method employed to permit such uses of that resource."⁵⁸⁸ The statute is silent on the precise issue at hand, i.e., whether DTV broadcasters that are operating pursuant to STA or other FCC authorization should similarly be required to pay fees on revenues received in connection with feeable ancillary or supplementary services. However, we conclude that the current system, by excluding some broadcasters, limits the public's recovery and thus unfairly advantages those who fall outside the scope of the current rule. Accordingly, we will widen the class of broadcasters included in Section 73.624(g) to better carry out our obligation under Section 336(e) to ensure that the public recovers a portion of the value of the public spectrum resource made available for commercial use and avoid unjust enrichment of broadcasters that use that resource.⁵⁸⁹

5. Station Identification

199. We revise our rules regarding station identification requirements for digital stations in circumstances in which one of a station's multicast streams is being used to air programming provided by another broadcast station, such as a low power station, or another programming source. In these situations, we will not require that the source of the programming be identified by the station whose multicast stream is being used to carry the programming.⁵⁹⁰ However, if the station whose multicast stream is being used to carry the programming chooses to identify the station that is the source of the programming, we will require that the following format be used:⁵⁹¹

"Station WYYY-DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming)."

200. We invited comment in the *Third DTV Periodic Review NPRM* on whether our current station identification rules for digital stations provide sufficient clarity to broadcasters and viewers. We specifically invited comment on whether the current rules provide for appropriate identification of multicast channels, particularly in circumstances in which one of a station's multicast streams is being

⁵⁸⁶ See *Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MM Docket No. 00-39, Memorandum Opinion and Order on Reconsideration, 16 FCC Rcd 20594, 20607, ¶¶ 34-36 (2001).

⁵⁸⁷ 47 U.S.C. 336(e).

⁵⁸⁸ 47 U.S.C. § 336(e)(2)(A).

⁵⁸⁹ *Id.*

⁵⁹⁰ Thus, if Station WYYY-DT is using one of its multicast streams to carry the programming of WXXX, WYYY-DT is not required to identify WXXX as the source of this programming. However, both WYYY and WXXX must otherwise comply with the station identification requirements in 47 C.F.R. § 73.1201 and must air station identification announcements for programming being transmitted by the station. Thus, for example, WXXX must air announcements with respect to its transmissions in its local market.

⁵⁹¹ See revised rule 47 C.F.R. § 73.1201(b) in Appendix B, *infra*.

used to air programming provided by another broadcast station, such as a low power station. While we received no comment on this issue, we find that it is appropriate to revise our rules to enable stations that are sharing their broadcast streams with other licensees to provide clear identification of both the programming source (the station providing the programming) and the station on whose multicast stream the programming is transmitted.⁵⁹² We are aware that stations are increasingly sharing spectrum with other licensees and the Media Bureau receives numerous informal requests for guidance regarding station identification requirements in these circumstances. We find that the approach we adopt today will provide for clear identification of stations in situations in which a multicast station carrying programming provided by another station chooses to identify that station as the source of the programming. As stations transition to digital format and provide multicast programming, thereby increasing the number of program streams potentially available to the public, clear identification of the station providing the programming viewers are watching becomes increasingly important, both for the viewers and for stations themselves.⁵⁹³

201. **Background.** In 2004, the Commission established rules generally requiring DTV stations to follow the same rules for station identification as analog stations.⁵⁹⁴ Specifically, digital stations are required to make station identification announcements, either visually or aurally, at the beginning and end of each time of operation as well as hourly. The identification must consist of the station's call letters followed by the community or communities specified in the station's license as the station's location. Stations may insert between the call letters and the station's community of license the station's frequency, channel number, name of the licensee, and/or the name of the network, at their discretion.

202. A station choosing to include its channel number in its station identification must use the major (analog) channel number.⁵⁹⁵ The Commission adopted the ATSC A/65B standard and noted that PSIP, which is part of that standard, allows viewers to see a broadcaster's major channel number regardless of the broadcaster's allotted frequency for its digital broadcast channel.⁵⁹⁶ The Commission permitted stations choosing to multicast to include additional information in their station announcements identifying each of the station's program streams.⁵⁹⁷

203. **Discussion.** We hereby revise our station identification rules for those stations that broadcast a multicast stream that airs programming provided by another broadcast station and that choose to identify the station that is the source of the programming. When a station chooses to make such

⁵⁹² Station identification is required only for licensees and permittees. Other programming providers need not be identified except as required by the sponsorship identification rules. *See* 47 C.F.R. § 73.1212.

⁵⁹³ *See Second DTV Periodic Report and Order*, 19 FCC Rcd at 18354, ¶171.

⁵⁹⁴ *See id.* at 18353-55, ¶¶ 169-173. *See also* 47 C.F.R. § 73.1201.

⁵⁹⁵ *See Second DTV Periodic Report and Order*, 19 FCC Rcd at 18354-55, ¶¶ 172. *See also* 47 C.F.R. § 73.1201(b). Thus, a broadcaster who operates an NTSC service on channel "26" and a DTV service on channel "27" would use the major channel "26" in station identification announcements. *Id.*

⁵⁹⁶ *See id.* This allows broadcasters to keep their existing channel number in the digital world, thereby assisting viewers who have come to identify these numbers with particular broadcasters and preserving the investment broadcasters have made in marketing these numbers. *Id.*

⁵⁹⁷ *See id.* Thus, a station with major channel number 26 might have channel 26.0 (NTSC program stream), channel 26.1 (HDTV), and 26.2 (SDTV). Stations may provide information in the station announcement identifying the network affiliation of the program service (e.g., "WXXX-DT, channel 26.1, YYY (community of license), your QQ network channel"). Stations simulcasting their analog programming on their digital channel are permitted to make station identification announcements simultaneously for both stations as long as the identification includes both call signs (e.g., "WXXX-TV and WXXX-DT") if it is intended to serve as the identification for both program streams. Stations simulcasting the analog stream on the digital channel may also do a shortened identification for both streams (e.g., "WXXX-TV/DT"). *Id.*

identification, we will require that the following format be used: “Station WYYY-DT, community of license (call sign and community of license of the station whose multicast stream is transmitting the programming), bringing you WXXX, community of license (call sign and community of license of the licensee providing the programming).” The transmitting station may insert between its call letters and its community of license the following information: the frequency of the transmitting station, the channel number of the transmitting station, the name of the licensee of the transmitting station and the name of the licensee providing the programming, and/or the name of the network affiliation for either station. Where a multicast station is carrying the programming of another station and is identifying that station as the source of the programming, using the mandatory format described above, to avoid confusion the identification should not include the frequency or channel number of the program source.

VI. PROCEDURAL MATTERS

A. Final Regulatory Flexibility Analysis

204. As required by the Regulatory Flexibility Act of 1980 (“RFA”),⁵⁹⁸ the Commission has prepared a Final Regulatory Flexibility Analysis (“FRFA”) relating to this Report and Order. The FRFA is set forth in Appendix E.

B. Final Paperwork Reduction Act Analysis

205. This Report and Order has been analyzed with respect to the Paperwork Reduction Act of 1995 (“PRA”),⁵⁹⁹ and contains new and modified information collection requirements for full-power television broadcast stations, including the following: (1) Stations must file forms no later than February 18, 2008 detailing their transition plans and status (using FCC Form 387) and must update this form as events warrant and by October 20, 2008 if they have not completed construction;⁶⁰⁰ (2) Stations without a construction permit for their final, post-transition (DTV) facility must file an application to construct or modify that facility (using FCC Forms 301 and 340),⁶⁰¹ stations without a license for their final, post-transition (DTV) facility must file an application for a license to cover that facility (using FCC Form 302 DTV),⁶⁰² and stations may request authority to transition early to their post-transition channel (also using FCC Forms 301 and 340);⁶⁰³ (3) Stations with a construction deadline on or before February 17, 2009 may file a request for an extension of time to construct their final, post-transition (DTV) facility (using FCC Form 337); (4) Stations with a construction deadline occurring February 18, 2009 or later may file a notification of an event that would toll their deadline to construct their final, post-transition (DTV) facility (using FCC Informal Application Form),⁶⁰⁴ (5) Stations may file a request for STA approval to temporarily remain on their in-core pre-transition DTV channel after the transition date (using FCC Informal Application Form),⁶⁰⁵ (6) Stations may file a request for STA approval to build less than full,

⁵⁹⁸ See 5 U.S.C. § 603. The RFA, See 5 U.S.C. § 601 *et. seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996). The SBREFA was enacted as Title II of the Contract With America Advancement Act of 1996 (“CWAAA”).

⁵⁹⁹ The Paperwork Reduction Act of 1995 (“PRA”), Pub. L. No. 104-13, 109 Stat 163 (1995) (codified in Chapter 35 of title 44 U.S.C.).

⁶⁰⁰ See, *supra*, Section V.A.1. See OMB Control No. 3060-1105 (Form 387).

⁶⁰¹ See, *supra*, Section V.D. See OMB Control Nos. 3060-0027 (Form 301) and 3060-0029 (Form 340).

⁶⁰² See, *supra*, Section V.D.2. See OMB Control No. 3060-0029 (Form 302-DTV).

⁶⁰³ See, *supra*, Section V.C.3.a. See OMB Control Nos. 3060-0027 and 3060-0029.

⁶⁰⁴ See, *supra*, Section V.B.5. See OMB Control Nos. 3060-1001 (to be discontinued) and 3060-0407 (consolidating the collections for Form 337 and 47 C.F.R. § 73.3598).

⁶⁰⁵ See, *supra*, Section V.B.7.a. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

authorized post-transition facility by the transition date (using FCC Informal Application Form);⁶⁰⁶ (7) Stations may file a notification pursuant to Section 73.1615 to temporarily reduce or cease existing analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities (using FCC Informal Application Form);⁶⁰⁷ (8) Stations may file a request for STA approval to permanently reduce or terminate analog or pre-transition DTV service where necessary to facilitate construction of final, post-transition facilities (using FCC Informal Application Form);⁶⁰⁸ (9) Stations may file a notification to permanently reduce or terminate analog or pre-transition DTV service within 90 days of the transition date (using FCC Informal Application Form);⁶⁰⁹ (10) Stations must comply with the PSIP requirement to populate the Event Information Tables (“EITs”) with accurate information about each event and to update the EIT if more accurate information becomes available;⁶¹⁰ (11) Stations must comply with the station identification rules that require a DTV station which chooses to identify a licensee that it is transmitting on one of its multicast streams to follow a specific format for making such a station identification announcement;⁶¹¹ (12) Stations must comply with a viewer notification requirement (*i.e.*, stations must notify viewers about their planned service reduction or termination) if: (a) they will permanently reduce or terminate analog or pre-transition digital service before the transition date,⁶¹² or (b) they will not serve at least the same population that receives their current analog TV and DTV service on February 18, 2009;⁶¹³ and (13) Stations claiming a “unique technical challenge” warranting a February 17, 2009 construction deadline must file a notification to document their status (using FCC Informal Application Form), if they do not file, or do not include such information in, an application for post-transition facilities (Forms 301 or 340).⁶¹⁴

206. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the Office of Management and Budget (“OMB”) and the general public to comment on the information collection requirements contained in the *Third DTV Periodic Review NPRM*.⁶¹⁵ On June 22, 2007, the Commission submitted the proposed information collection requirements to OMB for review under Section 3507(d) of the PRA.⁶¹⁶ On July 9, 2007, the Commission published a Federal Register Notice addressing the burdens contained in the proposed information collection requirements and seeking comments from the public.⁶¹⁷ On August 15, 2007, OMB issued a Notice of Action and filed comments to each of these proposed information collection requirements. No other comments were filed with respect to these proposed collections. We note that some of the collections remain unchanged from when they were previously published in the Federal Register and submitted to OMB, while others that were submitted have been slightly revised, with such changes being largely procedural in nature (*e.g.*, filing

⁶⁰⁶ See, *supra*, Section V.B.7.b. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

⁶⁰⁷ See, *supra*, Section V.C.1. See OMB Control Nos. 3060-0181 (47 C.F.R. § 73.1615) and 3060-0386 (47 C.F.R. § 73.1635).

⁶⁰⁸ See, *supra*, Section V.C.2-3. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

⁶⁰⁹ See, *supra*, Section V.C.4. See OMB Control No. 3060-0386 (47 C.F.R. § 73.1635).

⁶¹⁰ See, *supra*, Section V.H.3. See OMB Control No. 3060-1104 (47 C.F.R. § 73.682(d)).

⁶¹¹ See, *supra*, Section V.H.5. See OMB Control No. 3060-0466 (47 C.F.R. § 73.1201(b)).

⁶¹² See, *supra*, Section V.C. (New collection.)

⁶¹³ See, *supra*, Sections V.B.5. and V.B.7. (New collection.)

⁶¹⁴ See, *supra*, Sections V.B.3. (New collection.)

⁶¹⁵ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9529-30, ¶¶ 127-129.

⁶¹⁶ 44 U.S.C. § 3507(d). See OMB Control Nos. 3060-0027, 3060-0029, 3060-0216, 3060-0386, 3060-0407, 3060-1104, and 3060-1105.

⁶¹⁷ See 72 Fed. Reg. 37310 (September 26, 2007).

date change, method of filing, etc.). In addition to the collections proposed in the *Third DTV Periodic Review NPRM*, this Report and Order also contains additional new or modified information collection requirements. Finally, we also note that, pursuant to the Small Business Paperwork Relief Act of 2002 (“SBPRA”), the Commission sought specific comment in the *Third DTV Periodic Review NPRM*⁶¹⁸ on how it might “further reduce the information collection burden for small business concerns with fewer than 25 employees.”⁶¹⁹ We received no comment on this issue.

207. The information collection requirements adopted in this Report and Order will be submitted to OMB for final review under Section 3507(d) of the PRA,⁶²⁰ and OMB and the public will be afforded an opportunity to file comments on these final information collections. The Commission will seek emergency approval from OMB for Items 1-3 (noted above in paragraph 193) based, in part, on the prior submission for OMB approval of these information collection requirements.⁶²¹ The Commission will publish a Federal Register Notice addressing the burdens contained in each final information collection adopted in this proceeding. The Commission will also publish a separate notice seeking comments from the public and OMB on the final information collection requirements.

C. Congressional Review Act

208. The Commission will send a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office, pursuant to the Congressional Review Act.⁶²²

D. Additional Information

209. For additional information on this proceeding, contact Evan Baranoff, Evan.Baranoff@fcc.gov, Eloise Gore, Eloise.Gore@fcc.gov, Kim Matthews, Kim.Matthews@fcc.gov, or Maureen McCarthy, Maureen.McCarthy@fcc.gov of the Media Bureau, Policy Division, (202) 418-2120; John Gabrysch, John.Gabrysch@fcc.gov, or Gordon Godfrey, Gordon.Godfrey@fcc.gov, of the Engineering Division, Media Bureau at (202) 418-7000; or Shaun Maher, Shaun.Maher@fcc.gov, or Nazifa Sawez, Nazifa.Sawez@fcc.gov, of the Media Bureau, Video Division, (202) 418-1600.

VII. ORDERING CLAUSES

210. IT IS ORDERED that pursuant to the authority contained in Sections 1, 4(i) and (j), 7, 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 of the Communications Act of 1934, 47 U.S.C §§ 151, 154(i) and (j), 157, 301, 302a, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336, and 337 that this Report and Order IS ADOPTED and the Commission’s rules ARE HEREBY AMENDED as set forth in Appendix B. FCC Forms 301, 337, 340, and 387 and rule sections 47 C.F.R. §§ 73.624(g), 73.682(d) and 73.1201 contain information collection requirements subject to the PRA and are not effective until approved by the OMB. FCC Forms 301 and 340 shall be published in the Federal Register and shall become effective and available for filing January 1, 2008, subject to OMB approval by this date. The Commission will publish a notice in the Federal Register announcing when OMB approval for these forms has been received. We find good cause for the procedures and forms to be effective by this date to ensure that full power television stations can meet the statutory deadline for transitioning to all

⁶¹⁸ See *Third DTV Periodic Review NPRM*, 22 FCC Rcd at 9530, ¶¶ 128.

⁶¹⁹ The Small Business Paperwork Relief Act of 2002 (“SBPRA”), Pub. L. No. 107-198, 116 Stat 729 (2002) (codified in Chapter 35 of title 44 U.S.C.); See 44 U.S.C. 3506(c)(4).

⁶²⁰ 44 U.S.C. § 3507(d).

⁶²¹ See OMB Control Nos. 3060-0027, 3060-0029, 3060-0407, and 3060-1105.

⁶²² See 5 U.S.C. § 801(a)(1)(A). The Congressional Review Act is contained in Title II, § 251, of the CWAAA; See Pub. L. No. 104-121, Title II, § 251, 110 Stat. 868.

digital service.⁶²³ Forms 337 and 387 and rule sections 47 C.F.R. §§ 73.624(g) and 73.1201 shall become effective upon announcement in the Federal Register of OMB approval. Rule section 47 C.F.R. § 73.682(d) shall be published in the Federal Register and shall become effective 120 days after publication in the Federal Register, subject to OMB approval by this date. The Commission will publish a notice in the Federal Register announcing when OMB approval for this rule section has been received and when this rule will take effect. All other forms, rules and procedures adopted in this Report and Order shall become effective 30 days after publication in the Federal Register.

211. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is GRANTED DELEGATED AUTHORITY to make revisions where necessary to and establish filing deadlines for the electronic forms adopted in this Report and Order.

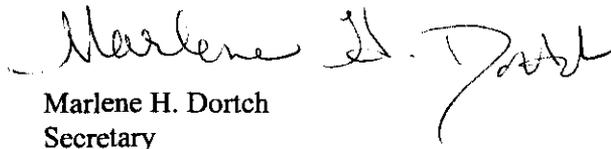
212. IT IS FURTHER ORDERED THAT the filing deadline for FCC Form 387 is February 18, 2008, subject to OMB approval by this date, for all television licensees and permittees.

213. IT IS FURTHER ORDERED that, pursuant to 47 U.S.C. § 155(c), the Chief, Media Bureau, is GRANTED DELEGATED AUTHORITY to conduct expedited rulemaking proceedings to amend the DTV Table of Allotments and Appendix B to the DTV Table of Allotments as needed up to the full power transition deadline, including, as appropriate, proceeding without notice and comment for changes that do not adversely affect other stations' post-transition operations.

214. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

215. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

⁶²³ See 5 U.S.C. § 553(d)(3) ("The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except...as otherwise provided by the agency for good cause found and published with the rule."). See also 47 C.F.R. §§ 1.103(a), 1.427(b). As described in this Report and Order, full power television stations must complete their transition from analog to digital service by February 17, 2009. For stations that must apply for a construction permit to build their post-transition facilities, it is essential that the procedures and forms be effective and available for filing no later than January 1, 2008 to afford adequate time for ordering equipment and scheduling construction in time to meet this deadline. Because these forms have previously been submitted to OMB and because any delay can result in harm to television stations, and, in turn, to their viewers, we find that there is good cause to expedite the effective date of this rule. For these reasons, we are also requesting emergency PRA approval from OMB.

APPENDIX A

List of Commenters

COMMENTS

1. 54 Broadcasting, Inc. (“54 Broadcasting”) (filed 8/15/07)
2. Advanced Television Systems Committee, Inc. (“ATSC”) (filed 8/7/07)
3. Agape Church, Inc. (“Agape”) (filed 8/3/07)
4. Allbritton Communications Company (“Allbritton”) (filed 8/16/07)
5. Anderson WFBC-TV Licensee, Inc. (“Anderson”) (filed 8/15/07)
6. Arkansas Educational Television Commission (filed 8/15/07)
7. Association for Maximum Service Television, Inc. and The National Association of Broadcasters, Joint Comments (“MSTV/NAB”) (filed 8/15/07)
8. Association of Federal Communications Consulting Engineers (“AFCCE”) (filed 8/15/07)
9. Association of Public Television Stations and the Public Broadcasting Service (“APTS/PBS”) (filed 8/15/07)
10. Bahakel Communications (“Bahakel”) (filed 8/15/07)
11. Banks Boise, Inc (filed 8/15/07)
12. Barrington Broadcasting Group, LLC (“Barrington”) (filed 8/15/07)
13. Benton Foundation (“Benton.”)¹ (filed 8/15/07)
14. Board of Governors of Missouri State University (filed 8/14/07)
15. Byron W. St. Clair (“St. Clair”) (filed 8/15/07)
16. Calipatria Broadcasting Company, LLC (“Calipatria”) (filed 8/15/07)
17. Capitol Broadcasting Company, Inc. (“Capitol”) (filed 8/15/07)
18. CBS Corporation (“CBS”) (filed 8/15/07)
19. Central Michigan University (filed 8/13/07)
20. Chelsey Broadcasting Company of Youngstown, LLC (“Chelsey”) (filed 8/15/07)
21. Christian Faith Broadcast, Inc. (“CFB”) (filed 8/15/07)
22. Christian Television Network, Inc, Christian Television Network of Iowa, Inc. and Volunteer Christian Television, Inc. (“Christian Network”) (filed 8/15/07)
23. Coalition of Organizations for Accessible Technology (“COAT”) (filed 8/9/07)
24. Cox Broadcasting (“Cox”) (filed 8/15/07)
25. Cohen, Dippell and Everist, P.C. (“Cohen, Dippell and Everist”) (filed 8/15/07)
26. Community Television of Southern California (filed 8/15/07)
27. Consumer Electronics Association (“CEA”) (filed 8/15/07)
28. DIRECTV (filed 8/30/07)
29. Du Treil, Lundin & Rackley (“dLR”) (filed 8/14/07)
30. Educational Broadcast Corporation (“EBC”) (filed 8/15/07)
31. Entravision Holdings (“Entravision”) (filed 8/15/07)
32. Esteem License Holdings, Inc. (“Esteem”) (filed 8/15/07)
33. Georgia Public Telecommunications Commission (filed 8/15/07)

¹ The complete list of commenters jointly filing with the Benton Foundation in this pleading include: The Campaign Legal Center, Free Press, communication Service for the Deaf, Hearing Loss Association of America – New York State, Northern Virginia Center for Deaf and Hard of Hearing Persons, United States Conference of Catholic Bishops, National Hispanic Media Coalition, Democracy Now, consumer Action, Common Cause, Citizen Advocacy Center, Common Cause Illinois, Common Cause Michigan, Common Cause Ohio, Common Cause Wisconsin, Illinois Campaign for Political Reform, Illinois PIRG, League of Women Voters of Minnesota, League of Women Voters of Wisconsin, Ohio Citizen Action Education Fund, Sunshine Project – University of Illinois at Springfield, Take Action Minnesota, Wisconsin Democracy Campaign, Michigan Campaign Finance Network, The Alliance for Community Media, The Center for Digital Democracy, Chicago Media Action

34. Glendive Broadcasting Corporation (“Glendive”) (filed 8/15/07)
35. Granite Broadcasting Corporation (“Granite”) (filed 8/15/07)
36. Gray Television, Inc. (“Gray Television”) (filed 8/15/07)
37. Greater Dayton Public Television, Inc. (“Greater Dayton”) (filed 8/15/07)
38. Griffin Communications, LLC (“Griffin”) (filed 8/15/07)
39. Hammett and Edison, Inc. (“Hammett and Edison”) (filed 8/10/07)
40. Harris Corporation (“Harris”) (filed 8/10/07)
41. Hawaii Public Television Foundation (“Hawaii PTV Foundation”) (filed 8/14/07)
42. Hoak Media, LLC (“Hoak”) (filed 8/15/07)
43. Hubbard Broadcasting, Inc. (“Hubbard”) (filed 8/15/07)
44. Independence Television Company (“Independence”) (filed 8/15/07)
45. Independent Communications, Inc. (“Independent, KTTM”) (filed 10/26/07)
46. Independent Communications, Inc. (“Independent, KTTW”) (filed 10/26/07)
47. Independent Multifamily Communications Council (“IMCC”) (filed 11/28/07)
48. Iowa Public Broadcasting Board dba Iowa Public Television (filed 8/15/07)
49. Joseph M. Davis, P.E. (“Davis”) (filed 8/15/07)
50. KCTS Television (filed 8/13/07)
51. Khanna & Guill, Inc. – Consulting Engineers (“Khanna”) (filed 8/29/07)
52. Khanna and Guill (“Khanna 8/8/07”) (filed 8/8/07)
53. KJLA (filed 8/15/07)
54. KRCA License, LLC (“KRCA”) (filed 8/15/07)
55. KSLS, Inc (“KSLS”) (filed 8/15/07)
56. Lambert Broadcasting of Burlington, LLC (“Lambert”) (filed 8/15/07)
57. LeSEA Broadcasting Corporation (“LeSEA”) (filed 8/15/07)
58. LATV Networks (“LATV”) (filed 8/15/07)
59. LG Electronics USA, Inc. (“LG”) (filed 8/15/07)
60. LIN Television Corporation (“LIN”) (filed 8/15/07)
61. Long Communications, LLC (“Long”) (filed 8/15/07)
62. Maranatha Broadcasting Company, Inc. (“Maranatha”) (filed 8/15/07)
63. Meredith Corporation (“Meredith”) (filed 8/15/07)
64. Metropolitan Television Alliance, LLC (filed 8/15/07)
65. Mid-South Public Communications Foundation (“Mid-South”) (filed 8/15/07)
66. Montecito Hawaii License, LLC (“Montecito Hawaii”) (filed 8/15/07)
67. Montecito Television License Corporation of Wichita (“Montecito of Wichita”) (filed 8/15/07)
68. Multicultural Television Broadcasting, LLC (“Multicultural”) (filed 8/15/07)
69. National Cable and Telecommunications Association (“NCTA”) (filed 8/15/07)
70. Native American Public Telecommunications (“NAPT”) (filed 8/15/07)
71. Nebraska Educational Telecommunications Commission and the University of Nebraska (“Nebraska PTV Licensees”) (filed 8/14/07)
72. Nexstar Broadcasting, Inc. (“Nexstar”) (filed 8/15/07)
73. Northeastern Educational Television of Ohio, Inc (filed 8/15/07)
74. Norwell Television, LLC (“Norwell”) (filed 8/15/07)
75. Oklahoma Educational Television Authority (filed 8/15/07)
76. Pappas Telecasting Companies (“Pappas”) (filed 8/15/07)
77. Parker Broadcasting (“Parker”) (filed 8/15/07)
78. Pennsylvania State University (“Penn State”) (filed 8/15/07)
79. Permian Basin Public Telecommunications, Inc. (“Permian Basin”) (filed 8/15/07)
80. Post-Newsweek Stations, Inc. (“Post-Newsweek”) (filed 8/15/07)
81. Public Broadcasting of Northwest Pennsylvania (“PBNP”) (filed 8/13/07)
82. Quincy Newspapers, Inc. (“Quincy”) (filed 8/15/07)
83. Raycom Media, Inc. (“Raycom”) (filed 8/15/07)
84. River Broadcast Co., LLC (“Red River”) (filed 8/15/07)
85. Rocky Mountain Public Broadcasting Network, Inc (“Rocky Mountain”) (filed 8/13/07)

86. Saga Quad States Communications, LLC (“Saga”) (filed 8/15/07)
87. School Board of Miami Dade County, Florida (filed 8/3/07)
88. Scripps Howard Broadcasting Company (“Scripps-Howard”) (filed 8/15/07)
89. Scripps Howard Broadcasting -- Engineering Statement by John F.X. Browne (“Scripps”) (filed 8/15/07)
90. Shenandoah Valley Educational Television Corporation (“SVETC Stations”) (filed 8/15/07)
91. Sinclair Broadcast Group, Inc. (“Sinclair”) (filed 8/15/07)
92. Sistema Universitario Ana G. Mendez, Inc. (filed 8/14/07)
93. Sky Television, LLC (“Sky”) (filed 8/15/07)
94. Smoky Hills Public Television Corporation (“Smoky Hills”) (filed 8/13/07)
95. Sorensen Television Systems, Inc (“Sorensen”) (filed 7/24/07)
96. South Carolina Educational Television Commission (filed 8/13/07)
97. Southeastern Media Holdings, Inc. (filed 8/15/07)
98. Southern Broadcast Company of Sarasota (“Broadcast Company of Sarasota”) (filed 8/15/07)
99. St. Louis Regional Educational and Public Television Commission (“St. Louis PTV”) (filed 8/13/07)
100. State of Wisconsin Educational Communications Board (“State of Wisconsin Board”) (filed 8/14/07)
101. Sunbelt Multimedia Co. (“Sunbelt”) (filed 8/15/07)
102. Sunflower Broadcasting, Inc (“Sunflower”) (filed 8/15/07)
103. Thunder Bay Broadcasting Corporation (“Thunder Bay”) (filed 8/15/07)
104. Tribune Broadcasting Company (“Tribune”) (filed 8/15/07)
105. Tri-State Public Teleplex, Inc. (“Tri-State”) (filed 8/15/07)
106. Twin Cities Public Television, Inc. (“Twin Cities”) (filed 8/15/07)
107. United Communications Corp. (“United”) (filed 8/16/07)
108. University of Alaska (filed 8/15/07)
109. University of Houston System (filed 8/15/07)
110. University of Michigan (filed 8/13/07)
111. University of North Carolina (filed 8/15/07)
112. University of Utah and the Utah State Board of Regents (“Utah Stations”) (filed 8/15/07)
113. Univision (filed 8/15/07)
114. Upper Cumberland Broadcast Council (“UCBC”) (filed 8/14/07)
115. Valley Public Television, Inc. (“Valley”) (filed 8/15/07)
116. Vermont ETV, Inc. (“Vermont ETV”) (filed 8/15/07)
117. Walt Disney Company (“Disney”) (filed 8/15/07)
118. WBOC, Inc. (“WBOC”) (filed 8/15/07)
119. WDEF-TV, Inc. (“WDEF”) (filed 8/15/07)
120. West Virginia Media Holdings, LLC (“West Virginia Media Holdings”) (filed 8/15/07)
121. WGBH Educational Foundation (“WGBH”) (filed 8/15/07)
122. WKSG Public Telecommunications Council (“WKSG”) (filed 8/15/07)
123. WLNY Limited Partnership (“WLNY”) (filed 7/9/07)
124. WPSD-TV, LLC (“WPSD”) (filed 8/15/07)
125. WYFF Hearst-Argyle Television, Inc. (“Hearst-Argyle”) (filed 8/15/07)

REPLY COMMENTS

1. Ackerley Broadcasting Operations, LLC (filed 8/30/07)
2. Allbritton Communications Co. and Gannett Co., Inc. (filed 8/30/07)
3. Association of Public Television Stations and the Public Broadcasting Service (filed 8/30/07)
4. Barrington Bay City License, LLC (filed 8/30/07)
5. Belo Corp. (filed 8/30/07)
6. Capitol Broadcasting Company, Inc. (filed 8/30/07)
7. Central NY News, Inc. (filed 8/30/07)
8. Cohen, Dippell and Everist, P.C. (filed 8/30/07)

9. Corridor Television, LLP (filed 8/30/07)
10. Dispatch Broadcast Group (filed 9/4/07)
11. DuTreil, Lundin & Rackley (filed 8/30/07)
12. Echostar Satellite L.L.C. (filed 8/30/07)
13. Grant Communications (filed 8/30/07)
14. Larry E. Will, P.E. (filed 8/30/07)
15. Mid State Television, Inc. (filed 8/30/07)
16. MSTV and NAB (filed 8/30/07)
17. National Cable and Telecommunications Association (“NCTA”) (filed 8/30/07)
18. Sonshine Family Television (filed 8/29/07)
19. Sunbeam Television Corp. (filed 8/30/07)
20. Tribune Broadcasting Company (filed 8/30/07)
21. Walt Disney Company (filed 8/30/07)
22. WQED Multimedia (“WQED”) (filed 8/30/07)

APPENDIX B

Rule Changes¹

PART 15—RADIO FREQUENCY DEVICES

Part 15 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 544A.

2. Amend Section 15.117(i)(2) to read as follows:

Section 15.117 TV broadcast receivers.

- (i) Digital television reception capability implementation schedule.

(2) For purposes of this implementation schedule, screen sizes are to be measured diagonally across the picture viewing area. ~~The requirement for equipping new TV broadcast receivers with DTV reception capability does not apply to units with integrated tuners/displays that have screen sizes measuring less than 7.8 inches vertically, i.e., the vertical measurement of a screen in the 4:3 aspect ratio that measures 13" diagonally across the picture viewing area.~~

3. Amend Section 15.120(b) to read as follows:

15.120 Program blocking technology requirements for television receivers.

(b) Effective January 1, 2000, all TV broadcast receivers as defined in section 15.3(w) of this chapter, including personal computer systems meeting that definition, with picture screens 33 cm (13 in) or larger in diameter **or with displays in the 16:9 aspect ratio that are 19.8 cm (7.8 in) or greater in height and digital television receivers without an associated display device** shipped in interstate commerce or manufactured in the United States shall comply with the provisions of paragraphs (c), (d), and (e) of this section.

PART 73—RADIO BROADCAST SERVICES

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

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

¹ New text is shown in **bold** and deleted text is shown in ~~strikethrough~~.

2. Add a new Section 73.616 to read as follows:

Section 73.616 Post-transition DTV station interference protection.

(a) Applications seeking facilities that will operate prior to the end of the DTV transition must also comply with section 73.623.

(b) A petition to add a new channel to the post-transition DTV Table of Allotments contained in section 73.622(i) of this subpart will not be accepted unless it meets: the DTV-to-DTV geographic spacing requirements of sections 73.623(d) with respect to all existing DTV allotments in the post-transition DTV Table; the principle community coverage requirements of section 73.625(a); the Class A TV and digital Class A TV protection requirements in paragraph (f) of this section; the land mobile protection requirements of section 73.623(e); and the FM radio protection requirement of section 73.623(f).

(c) The reference coordinates of a post-transition DTV allotment shall be the authorized transmitter site, or, where such a transmitter site is not available for use as a reference point, the coordinates as designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(d) The protected facilities of a post-transition DTV allotment shall be the facilities (effective radiated power, antenna height and antenna directional radiation pattern, if any) authorized by a construction permit or license, or, where such an authorization is not available for establishing reference facilities, the facilities designated in the FCC order creating or modifying the post-transition DTV Table of Allotments.

(e) An application will not be accepted if it is predicted to cause interference to more than an additional 0.5 percent of the population served by another post-transition DTV station. For this purpose, the population served by the station receiving additional interference does not include portions of the population within the noise-limited service contour of that station that are predicted to receive interference from the post-transition DTV allotment facilities of the applicant or portions of that population receiving masking interference from any other station.

(1) For evaluating compliance with the requirements of this paragraph, interference to populations served is to be predicted based on the 2000 census population data and otherwise according to the procedure set forth in OET Bulletin No. 69, including population served within service areas determined in accordance with section 73.622(e), consideration of whether F(50,10) undesired signals will exceed the following desired-to-undesired (D/U) signal ratios, assumed use of a directional receiving antenna, and use of the terrain dependent Longley-Rice point-to-point propagation model. Applicants may request the use of a cell size other than the default of 2.0 km per side, but only requests for cell sizes of 1.0 km per side will be considered. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, Room CY-C203, 445 12th Street, SW., Reference Information Center, Washington, DC 20554. These documents are also available through the Internet on the FCC Home Page at <http://www.fcc.gov>. The threshold levels at which interference is considered to occur are:

(i) For co-channel stations, the D/U ratio is +15 dB. This value is only valid at locations where the signal-to-noise ratio is 28 dB or greater. At the edge of the noise-limited service area, where the signal-to-noise (S/N) ratio is 16 dB, this value is +23 dB. At locations where the S/N ratio is greater than 16 dB but less than 28 dB, D/U values are computed from the following formula:

$$D/U = 15 + 10 \log_{10} [1.0 / (1.0 \cdot 10^{-x/10})]$$

Where $x = S/N - 15.19$ (minimum signal to noise ratio)

(ii) For interference from a lower first-adjacent channel, the D/U ratio is -28 dB.