

4. Waiver of Post-Transition Consumer Education Requirements

67. We propose to waive the post-transition consumer education requirements for stations that participate in the statutory nightlight program. The broadcasters in Wilmington, North Carolina, who volunteered to transition their market on September 8, 2008, ceased analog broadcasting on that date but voluntarily participated in a “nightlight”-type program for roughly one month afterward, displaying a “slate” describing the transition and explaining how people could obtain additional information about it.¹²⁴ In consideration of the fact that the entire market was transitioning at once, and upon the request of the broadcasters, the Commission found that the nightlight fulfilled the Wilmington stations’ consumer education obligations, and waived the remainder of those obligations for both the analog and digital signals.

68. As discussed above, after the conclusion of the nationwide transition many stations will have the option to participate in the statutory nightlight program created by Congress and implemented in our *Analog Nightlight Order*. Should we, as we did in Wilmington, consider participation in this program, or support of another station’s participation, sufficient to meet a station’s consumer education obligations, to the extent that they apply after June 12, 2009? We seek comment on this proposal.

C. Other Issues

69. Finally, we welcome comment on any actions “necessary or appropriate to implement the provisions, and carry out the purposes” of the DTV Delay Act that have not been resolved by or addressed above

V. PROCEDURAL MATTERS

A. Statutory Authority and Good Cause Findings

70. For the reasons below, pursuant to section 4(c) of the DTV Delay Act, we conclude that the rule changes and other actions herein are not subject to the rulemaking requirements of the Administrative Procedure Act,¹²⁵ Congressional Review Act,¹²⁶ Regulatory Flexibility Act,¹²⁷ or any other provision of law that otherwise would apply and would impede implementation of the statutory directives. In any event, we also conclude that there is good cause for departure from such requirements here. Nevertheless, we are providing notice and an abbreviated opportunity for public comment regarding the issues addressed in Section IV above to allow interested parties to contribute to our consideration of these issues to the extent possible in the limited time that Congress has provided.

71. Section 4 of the DTV Delay Act provides that, “[n]otwithstanding any other provision of law,” the Commission must “adopt or revise its rules, regulations, or orders or take such other actions as may be necessary or appropriate to implement the provisions, and carry out the purposes, of this Act and the amendments made by this Act” within 30 days of the date of its enactment.¹²⁸ The “notwithstanding” clause plainly excuses compliance with otherwise applicable legal requirements that would impede FCC actions to implement the DTV Delay Act by the statutory deadline. In other contexts, the D.C. Circuit has interpreted similar “notwithstanding” language “to supersede all other laws, stating that ‘a clearer statement is difficult to imagine.’”¹²⁹ The plain meaning of the DTV Delay Act’s language is reinforced by the circumstances surrounding its passage. Congress extended the imminent DTV transition deadline

¹²⁴ *Wilmington Nightlight News Release* at note 4.

¹²⁵ 5 U.S.C. §§ 551, *et seq.* (APA).

¹²⁶ 5 U.S.C. §§ 801, *et seq.* (CRA).

¹²⁷ 5 U.S.C. § 601, *et seq.* (RFA).

¹²⁸ DTV Delay Act § 4(c).

¹²⁹ *Liberty Maritime Corp. v. United States*, 928 F.2d 413, 416 (D.C. Cir. 1991) (internal cites omitted).

to enhance national preparedness for the DTV transition, and examination of the legislative history reflects its recognition that accomplishing this goal would require extraordinary and immediate action by the Commission and others.¹³⁰ Thus, the Act requires the FCC to act not later than 30 days after the date of enactment, and grants it broad discretion within that brief period to take such actions “as may be necessary or appropriate” to accomplish the Act’s goals.¹³¹ For the reasons explained elsewhere in this *Order*, we find that the rule making and other actions herein are necessary and appropriate to implement the DTV Delay Act and carry out its purposes. As discussed below, compliance with the APA and other procedural administrative law requirements would frustrate or impede the FCC’s ability to meet the statutory deadline. Therefore, section 4(c) of the Act supersedes such legal requirements.

72. Even if the statutory language were ambiguous, we would interpret it to exempt the Commission from APA and other procedural administrative law requirements that cannot be reconciled with the statutory mandate.¹³² As stated above, the Act requires the FCC to implement its provisions and purposes within 30 days. The fact that many Commission rules, regulations and orders are tied to the original statutory deadline of February 17, 2009, combined with the Act’s enactment only a few business days before February 17, reduced the time frame for many of the necessary actions from one month to a matter of days. Moreover, given the number and complexity of rule making and other actions required to implement the DTV Delay Act and accomplish its purposes, combined with the fact that the Act itself postpones the nationwide DTV transition for a limited period, the FCC cannot fulfill the statutory mandate and comply with otherwise applicable rule making and other legal requirements. There is insufficient time to publish a Notice of Proposed Rulemaking in the Federal Register, allow time for meaningful comment and consider those comments before taking all of the necessary legal actions. The APA also requires Federal Register publication at least 30 days before a rule’s effective date.¹³³ Here, a standard comment period after Federal Register publication and a 30-day waiting period before rules become effective would exceed the 30-day period after enactment during which agency implementation is required.¹³⁴ Other legal requirements cited above likewise require more time than circumstances allow. Therefore, even if the statute were ambiguous, we would interpret it to supersede requirements that cannot be harmonized with the statutory mandate, including the APA, CRA, and RFA.

73. We also find that there is good cause for departure from the APA requirements of notice

¹³⁰ See, e.g., *Cong. Rec.* H895 (daily ed. February 4, 2009) (“we are now less than 2 weeks from the February 17 digital television transition date, and millions of American households remain totally unprepared... It’s clear to me that the only way to avoid a massive disruption affecting 5.7 percent of the entire viewing public is to delay the transition and provide the funding in the meantime to assure that when the transition does occur, it occurs smoothly.”) (statement of Rep. Boucher); *id.* at H896 (stating that, if the DTV Delay Act is enacted into law, “[w]e will have time to get this program properly structured. We will have the resources necessary to make sure that the program can be smooth and effective when the transition occurs in June.”); *Cong. Rec.* H585 (daily ed. January 27, 2009) (“This delay is a one-time occurrence taking place for predictable but extraordinary reasons”) (statement of Rep. Boucher). The House floor debates comprise the only legislative history of the DTV Delay Act.

¹³¹ DTV Delay Act § 4(c).

¹³² See, e.g., *Verizon Comm’ns, Inc. v. FCC*, 535 U.S. 467, 539 (2002) (under *Chevron* doctrine, courts generally defer to an agency’s reasonable interpretation of an ambiguous provision in its enabling statute). Cf. *Asiana Airlines v. FAA*, 134 F.3d 393, 398 (D.C. Cir. 1998) (“when Congress sets forth specific procedures that ‘express[] its clear intent that APA notice and comment procedures need not be followed, an agency may lawfully depart from the normally obligatory procedures of the APA”), quoting *Methodist Hospital of Sacramento v. Shalala*, 38 F.3d 1225, 1235 (1994). The D.C. Circuit upheld agency findings that the APA did not apply in the absence of express exemptions in *Asiana* and *Methodist*, despite an APA provision that modifications must be express, because the statutes specified procedures that could not be harmonized with the APA.

¹³³ *Id.* at § 553(d).

¹³⁴ See 5 CFR § 1302.12. The RFA does not apply to rules that are not adopted in notice and comment rulemaking proceedings. 5 U.S.C. § 603(a).

and comment, the requirements of the CRA, and a 30-day delay before rules become effective under the circumstances here.¹³⁵ As discussed above, the extraordinary circumstances surrounding the DTV Delay Act create an urgent need for rapid action.¹³⁶ The statutory deadline for Commission action is no more than 30 days from enactment. The D.C. Circuit has held that “the extremely limited time given by Congress” to an agency for adoption of regulations “is a crucial factor in establishing ‘good cause’” under the APA.¹³⁷ We note that many of our actions are of an interim nature, in that they will no longer be in force after June 13, 2009.¹³⁸ Moreover, some of our actions, such as extending the terms of the licenses for the recovered spectrum (including the license period and construction requirements associated with those licenses) for 116-day period, are non-discretionary or ministerial in nature.¹³⁹ Accordingly, even if our actions were subject to the APA (and, as explained above, they are not), we find that there is good cause for departure from APA requirements because the circumstances make compliance impracticable or unnecessary. Nevertheless, as indicated above, we are providing notice and an abbreviated opportunity for public comment regarding the issues addressed in Section IV above to allow interested parties to contribute to our consideration of these issues to the extent possible in the limited time that we have. We find that the five-day comment period provided herein is the maximum possible opportunity for public comment that we can provide and still fulfill our statutory mandate to take such actions as are necessary or appropriate to implement the DTV Delay Act and accomplish its purposes within 30 days of the Act’s enactment, or no later than March 13, 2009.

B. Filing Requirements

74. ***Ex Parte Rules.*** This proceeding will be treated as a “permit-but-disclose” proceeding subject to the “permit-but-disclose” requirements under Section 1.1206(b) of the Commission’s rules.¹⁴⁰ *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally

¹³⁵ See 5 U.S.C. §§ 553(b)(3)(B) (notice and comment not required “when the agency for good cause finds ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.”), 553(d)(1) (exception to 30-day waiting period for a rule’s effectiveness where agency finds good cause and publishes finding with the rule). See also 5 U.S.C. §§ 608 (agency “may waive or delay the completion of some or all of the [initial regulatory flexibility analysis] requirements ... by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding ... that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance ... impracticable.”) and 808(2) (notwithstanding the requirements of the CRA, “any rule which an agency for good cause finds ... that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the Federal agency promulgating the rule determines.”).

¹³⁶ See *supra*, ¶ 71; *Petry v. Block*, 737 F.2d at 1200 (upholding good cause finding where, *inter alia*, “both Congress and the President articulated a profound sense of ‘urgency’ in the need for implementation of the legislation”).

¹³⁷ *Id.* at 1200-01 (upholding agency finding of good cause to adopt interim rule without notice and comment where statute directed agency to promulgate implementing regulations “[n]ot later than 60 days after the date of enactment”).

¹³⁸ See *American Federation of Gov’t Employees v. Block*, 655 F.2d 1153, 1156 (good cause existed to issue new rates effective immediately without notice and comment but not to make them permanent).

¹³⁹ See *Metzenbaum v. FERC*, 675 F.2d 1282, 1291 (D.C. Cir. 1982) (agency orders that were nondiscretionary ministerial actions issued in conformity with statute were properly issued without notice and comment).

¹⁴⁰ See 47 C.F.R. § 1.1206(b).

required.¹⁴¹ Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b).

75. **Comments.** Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on or before the date indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System ("ECFS") or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998). To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). We find that the five-day comment period provided herein is the maximum possible opportunity for public comment that we can provide and still fulfill our statutory mandate to take such actions as are necessary or appropriate to implement the DTV Delay Act and accomplish its purposes within 30 days of the Act's enactment; therefore, we find good cause to waive the requirement for Reply Comments established in our rules.¹⁴²

76. Comments filed through ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal mailing address, and the applicable docket number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message: "get form <your e-mail address>." A sample form and directions will be sent in reply.

77. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C., 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD, 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail, should be addressed to 445 12th Street, SW, Washington, D.C., 20554. All filings must be addressed to the Commission's Secretary: Office of the Secretary, Federal Communications Commission.

78. **Availability of Documents.** Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, S.W., CY-A257, Washington, D.C., 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418-0267 (voice), (202) 418-7365 (TTY), or bill.cline@fcc.gov. These documents also will be available from the

¹⁴¹ See *id.*, § 1.1206(b)(2).

¹⁴² See, e.g., *Verizon Comm'ns, Inc. v. FCC*, 535 U.S. 467, 539 (2002) (under *Chevron* doctrine, courts generally defer to an agency's reasonable interpretation of an ambiguous provision in its enabling statute). Cf. *Asiana Airlines v. FAA*, 134 F.3d 393, 398 (D.C. Cir. 1998) ("when Congress sets forth specific procedures that 'express[] its clear intent that APA notice and comment procedures need not be followed, an agency may lawfully depart from the normally obligatory procedures of the APA"), quoting *Methodist Hospital of Sacramento v. Shalala*, 38 F.3d 1225, 1235 (1994). The D.C. Circuit upheld agency findings that the APA did not apply in the absence of express exemptions in *Asiana* and *Methodist*, despite an APA provision that modifications must be express, because the statutes specified procedures that could not be harmonized with the APA.

Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C., 20554; they can also be reached by telephone, at (202) 488-5300 or (800) 378-3160; by e-mail at fcc@bcpiweb.com; or via their website at <http://www.bcpiweb.com>. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

79. **Additional Information.** For more information, please contact Nazifa Sawez, Nazifa.Sawez@fcc.gov, at 202-418-7059 or Shaun Maher, Shaun.Maher@fcc.gov, at 202-418-2324, of the Video Division, Media Bureau; or Evan Baranoff, Evan.Baranoff@fcc.gov, at 202-418-7142; Lyle Elder, Lyle.Elder@fcc.gov, at 202-418-2120; or Kim Matthews, Kim.Matthews@fcc.gov, at 202-418-2154, of the Policy Division, Media Bureau; or Eloise Gore, Eloise.Gore@fcc.gov, at 202-418-7200, of the Media Bureau.

C. Final Paperwork Reduction Act of 1995 Analysis

80. This Report and Order was analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA")¹⁴³ and contains modified information collection requirements. Specifically, this Report and Order modifies several existing DTV transition-related information collection requirements to reflect the statutory change in the nationwide transition date to June 12, 2009.¹⁴⁴ The Commission has obtained OMB approval for these non-substantive changes,¹⁴⁵ and is seeking OMB approval under OMB's emergency processing rules for the requirement on broadcast stations to file a binding notice of their proposed analog service termination date.¹⁴⁶ For additional information concerning the information collection requirement contained in this Report and Order, contact the Office of Managing Director (OMD), Performance Evaluation & Records Management (PERM): Cathy Williams, Cathy.Williams@fcc.gov, at 202-418-2918.

D. Initial Paperwork Reduction Act of 1995 Analysis

81. This Notice of Proposed Rulemaking was analyzed with respect to the Paperwork Reduction Act of 1995 ("PRA")¹⁴⁷ and contains modified information collection requirements. Specifically, this Notice proposes to modify existing DTV transition-related information collection requirements to (1) expand viewer notification and other public interest obligations for early terminators of analog service; and (2) amend consumer education requirements to provide more detailed and accurate information to television viewers.¹⁴⁸ The Commission is seeking OMB approval for these changes under OMB's emergency processing rules.¹⁴⁹

¹⁴³ 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.).

¹⁴⁴ See OMB Control Nos. 3060-0386 (CDBS Informal Filing Form), 3060-0407 (Form 337), 3060-1105 (Form 387), 3060-1115 (Form 388), 3060-1117 (viewer notifications).

¹⁴⁵ See Notices of Office of Management and Budget Actions for: OMB Control Nos. 3060-0386 (approved Feb. 10, 2009), 3060-0407 (approved Feb. 10, 2009), 3060-1105 (approved Feb. 11, 2009), 3060-1115 (approved Feb. 10, 2009), 3060-1117 (approved Feb. 10, 2009).

¹⁴⁶ 5 C.F.R. § 1320.13. See OMB Control Nos. 3060-0386 (modification of existing collection).

¹⁴⁷ 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.).

¹⁴⁸ See, e.g., OMB Control Nos. 3060-0386 (CDBS Informal Filing Form), 3060-1115 (consumer education requirements), and 3060-1117 (viewer notifications).

¹⁴⁹ 5 C.F.R. § 1320.13.

82. Written comments by the public on the new and/or modified information collections are due on or before 5 days after the date of publication in the Federal Register. In addition to filing comments with the Office of the Secretary, a copy of any comments on the proposed information collection requirements contained herein should be submitted to Cathy Williams, Federal Communications Commission, 445 12th St, S.W., Room 1-C823, Washington, D.C., 20554, or via the Internet to Cathy.Williams@fcc.gov.

83. *Further Information.* For additional information concerning the PRA proposed information collection requirements contained in this *Notice*, contact Cathy Williams at 202-418-2918, or via the Internet to Cathy.Williams@fcc.gov.

E. Petitions for Reconsideration to be Expeditiously Resolved

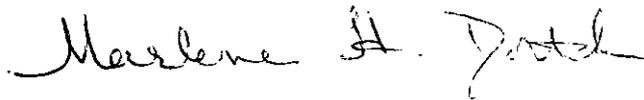
84. Although, as discussed above, the DTV Delay Act did not provide sufficient time to take comments on each aspect of the necessary rule revisions, Petitions for Reconsideration of this Order will be addressed and resolved in an expeditious manner.

VI. ORDERING CLAUSES

85. **IT IS ORDERED** that, pursuant to the authority contained in Sections 1, 2, 4, 7, 303, 309, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154, 157, 303, 309, and 337, and Sections 2 and 4 of the DTV Delay Act, Pub. L. No.111-4, 123 Stat. 112, *to be codified at* 47 U.S.C. §§ 309(j)(14) and 337(e), this Report and Order IS ADOPTED and the Commission's Rules ARE HEREBY AMENDED as set forth in the Appendix.

86. IT IS ALSO ORDERED, pursuant to the authority contained in Section 4(c) of the DTV Delay Act, DTV Delay Act § 4(c), the rules, forms and procedures adopted in this Report and Order will be effective upon publication of the summary of the Report and Order in the Federal Register, except for the revisions to Parts 15, 54, and 76 of Title 47 of the Code of Federal Regulations, which are effective beginning April 1, 2009.¹⁵⁰

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

¹⁵⁰ 47 C.F.R. §§ 15.124, 54.418, and 76.1630. We anticipate that the summary of the Order will be published in the Federal Register at least 30 days before the effective date of April 1, 2009. In the event that publication is delayed, however, we find good cause for these rules to be effective on April 1, 2009, to ensure that consumers are informed about the digital television transition that is occurring on a rolling basis nationwide, and no later than June 12, 2009.

APPENDIX

Amended Rules¹⁵¹

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 15, 27, 54, 73, 76, and 90 to read as follows:

Part 15 – RADIO FREQUENCY DEVICES

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

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

2. Section 15.124 is revised to read as follows:§ 15.124 DTV Transition Notices by Manufacturers of Televisions and Related Devices

(a) Television receivers and related devices manufactured between ~~May 30, 2008~~ **April 1, 2009** and ~~March 31, 2009~~ **June 30, 2009** must include notices about the digital television (DTV) transition. Related devices covered by this requirement: all television broadcast receivers as defined in Section 15.3(w); TV interface devices as defined in Section 15.3(y); devices that record and/or display signals received from television broadcast receivers; and set-top boxes available for sale at retail that receive video programming provided by multi-channel video programming distributors.

(b) The notices required under (a) must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) ~~After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over the air broadcasts with an antenna because of the Nation's transition to digital broadcasting. The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting.~~ Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from **your local television stations**, www.DTV.gov, or 1-888-CALL-FCC (TTY 1-888-TELL-FCC), and from www.dtv2009.gov or 1-888-DTV-2009 (TTY 1-877-530-2634) for information about subsidized coupons for digital-to-analog converter boxes; and

(3) Explain clearly what effect, if any, the DTV transition will have on the use of the receiver or related device, including any limitations or requirements associated with connecting a related device to a DTV receiver.

¹⁵¹ Changes are indicated in **bold**.

(c) This notice requirement applies to all responsible parties, as defined in § 2.909 of this chapter.

Part 27 -- MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

1. The authority citation for Part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

2. Section 27.13 is revised to read as follows:

§ 27.13 License Period

* * * * *

(b) 698-763 MHz, ~~and~~ 776-793 MHz, **775-776, and 805-806** MHz bands. Initial authorizations for the 698-763 MHz and 776-793 MHz bands will extend for a term not to exceed ten years from ~~February 17~~ **June 13**, 2009, except that initial authorizations for a Part 27 licensee that provides broadcast services, whether exclusively or in combination with other services, will not exceed eight years. Initial authorizations for the ~~775-776~~ **775-776** MHz and ~~805-806~~ **805-806** MHz bands shall not exceed ~~January 1~~ **April 27**, 2015. Licensees that initiate the provision of a broadcast service, whether exclusively or in combination with other services, may not provide this service for more than eight years or beyond the end of the license term if no broadcast service had been provided, whichever period is shorter in length.

* * * * *

3. Section 27.14 is revised to read as follows:

§ 27.14 Construction requirements; Criteria for Renewal

* * * * *

(g) WCS licensees holding EA authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, cellular market authorizations for Block B in the 704-710 MHz and 734-740 MHz bands, or EA authorizations for Block E in the 722-728 MHz band, if the results of the first auction in which licenses for such authorizations are offered satisfy the reserve price for the applicable block, shall provide signal coverage and offer service over at least 35 percent of the geographic area of each of their license authorizations no later than ~~February 17~~ **June 13**, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after ~~February 17~~ **June 13**, 2009), and shall provide such service over at least 70 percent of the geographic area of each of these authorizations by the end of the license term. In applying these geographic benchmarks, licensees are not required to include land owned or administered by government as a part of the relevant service area. Licensees may count covered government land for purposes of meeting their geographic construction benchmark, but are required to add the covered government land to the total geographic area used for measurement purposes. Licensees are required to include those populated lands held by tribal governments and those held by the Federal Government in trust or for the benefit of a recognized tribe.

- (1) If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no later than ~~February 17~~ **June 13**, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after ~~February 17~~ **June 13**, 2009), the term of that license authorization will be reduced by two years and such licensee may be subject to

enforcement action, including forfeitures. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below this interim benchmark may lose authority to operate in part of the remaining unserved areas of the license.

* * * * *

(h) WCS licensees holding REAG authorizations for Block C in the 746-757 MHz and 776-787 MHz bands or REAG authorizations for Block C2 in the 752-757 MHz and 782-787 MHz bands shall provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area no later than ~~February 17~~ **June 13**, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after ~~February 17~~ **June 13**, 2009), and shall provide such service over at least 75 percent of the population of each of these EAs by the end of the license term. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

- (1) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area by no later than ~~February 17~~ **June 13**, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after ~~February 17~~ **June 13**, 2009), the term of the license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, a licensee that provides signal coverage and offers service at a level that is below this interim benchmark may lose authority to operate in part of the remaining unserved areas of the license.

* * * * *

(i) WCS licensees holding EA authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, cellular market authorizations for Block B in the 704-710 MHz and 734-740 MHz bands, or EA authorizations for Block E in the 722-728 MHz band, if the results of the first auction in which licenses for such authorizations in Blocks A, B, and E are offered do not satisfy the reserve price for the applicable block, as well as EA authorizations for Block C1 in the 746-752 MHz and 776-782 MHz bands, are subject to the following:

- (1) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 40 percent of the population in its license area by no later than ~~February 17~~ **June 13**, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after ~~February 17~~ **June 13**, 2009), the term of that license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, such licensee that provides signal coverage and offers service at a level that is below this interim benchmark may lose authority to operate in part of the remaining unserved areas of the license. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

* * * * *

(l) WCS licensees holding authorizations in the spectrum blocks enumerated in paragraphs (g), (h), or (i), excluding any licensee that obtained its license pursuant to the procedures set forth in subsection (j), shall file reports with the Commission that provide the Commission, at a minimum, with information concerning the status of their efforts to meet the performance requirements applicable to their authorizations in such spectrum blocks and the manner in which that spectrum is being utilized. The information to be reported will include the date the license term commenced, a description of the steps the

licensee has taken toward meeting its construction obligations in a timely manner, including the technology or technologies and service(s) being provided, and the areas within the license area in which those services are available. Each of these licensees shall file its first report with the Commission no later than ~~February 17~~ **June 13**, 2011 and no sooner than 30 days prior to this date. Each licensee that meets its interim benchmark shall file a second report with the Commission no later than ~~February 17~~ **June 13**, 2016 and no sooner than 30 days prior to this date. Each licensee that does not meet its interim benchmark shall file this second report no later than on ~~February 17~~ **June 13**, 2015 and no sooner than 30 days prior to this date.

* * * * *

(m) The WCS licensee holding the authorization for the D Block in the 758–763 MHz and 788–793 MHz bands (the Upper 700 MHz D Block licensee) shall comply with the following construction requirements.

- (1) The Upper 700 MHz D Block licensee shall provide a signal coverage and offer service over at least 75 percent of the population of the nationwide Upper 700 MHz D Block license area within four years from ~~February 17~~ **June 13**, 2009, 95 percent of the population of the nationwide license area within seven years, and 99.3 percent of the population of the nationwide license area within ten years.

* * * * *

4. Section 27.20 is revised to read as follows:

§ 27.20 Digital Television Transition Education Reports

(a) The requirements of this section shall apply only with regard to WCS license authorizations in Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Block C, C1, or C2 in the 746–757 MHz and 776–787 MHz bands, and Block D in the 758–763 MHz and 788–793 MHz bands.

(b) By the tenth day of the first calendar quarter after the initial grant of a WCS license authorization subject to the requirements of this section – and on a quarterly basis thereafter as specified in subsection (c) – the licensee holding such authorization must file a report with the Commission indicating whether, in the previous quarter, it has taken any outreach efforts to educate consumers about the transition from analog broadcast television service to digital broadcast television service (DTV) and, if so, what specific efforts were undertaken. Thus, for example, if the license authorization is granted during the April-June quarter of 2008, the licensee must file its first report by July 10, 2008. Each quarterly report, either paper or electronic, must be filed with the Commission in Docket Number 07-148. If the quarterly report is a paper filing, the cover sheet must clearly state “Report,” whereas if the report is filed electronically using the Commission’s Electronic Comment File System (ECFS), the “Document Type” on the cover sheet should indicate “REPORT.”

(c) The reporting requirements under this section cover the remaining period of the DTV transition. Accordingly, once the licensee files its quarterly report covering the ~~first~~ **second** quarter of 2009, the requirements of this section terminate.

5. Section 27.1310 is revised to read as follows:

§ 27.1310 Network sharing agreement

* * * * *

(j) The NSA must have a term, not to exceed 10 years from ~~February 17~~ **June 13**, 2009, that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

Part 54 – UNIVERSAL SERVICE

1. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

2. Section 54.418 is revised to read as follows:

§ 54.418 Digital Television Transition Notices by Eligible Telecommunications Carriers

(a) Eligible telecommunications carriers (ETCs) that receive federal universal service funds shall provide their Lifeline or Link-Up customers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the “DTV Transition”) in the monthly bills or bill notices received by such customers, or as a monthly stand-alone mailer (e.g., postcard, brochure), beginning ~~30 days after the effective date of these rules~~ **April 1, 2009**, and concluding ~~in March~~ **on June 30, 2009**.

(b) The notice must be provided as part of an information section on the bill or bill notice itself or on a secondary document mailed with the bill or bill notice, or as part of a monthly stand-alone mailer (e.g., postcard, brochure) in the same language or languages as the bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) ~~After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation’s transition to digital broadcasting. The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting.~~ Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from **your local television stations**, www.DTV.gov, or **1-888-CALL-FCC (TTY 1-888-TELL-FCC)**, and from www.dtv2009.gov or **1-888-DTV-2009 (TTY 1-877-530-2634)** for information about subsidized coupons for digital-to-analog converter boxes;

(c) If an ETC’s Lifeline or Link-Up customer does not receive paper versions of either a bill or a notice of billing, then that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill or as a monthly stand-alone mailer (e.g., postcard, brochure).

(d) ETCs that receive federal universal service funds shall provide information on the DTV Transition that is equivalent to the information provided pursuant to paragraph (b)(2) of this section as part of any Lifeline or Link-Up publicity campaigns conducted by the ETC between the effective date of these rules and ~~March 31, 2009~~ **June 30, 2009**.

Part 73 – RADIO BROADCAST SERVICES

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

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

2. Section 73.624 is revised to read as follows:

§ 73.624 Digital television broadcast stations

(d) Digital television broadcast facilities that comply with the FCC DTV Standard (section 73.682(d)), shall be constructed in the following markets by the following dates:

(1) * * *

(vii) **June 12, 2009** ~~February 17, 2009~~ in all markets for completion of construction of post-transition (DTV) facilities for all commercial and noncommercial television stations whose post-transition digital channel is different from their pre-transition digital channel and for those stations whose post-transition channel is the same as their pre-transition channel but that are subject to a unique technical challenge that has been specifically recognized as such by the Commission.

(3) Authority delegated.

(i) Authority is delegated to the Chief, Media Bureau to grant an extension of time of up to six months beyond the relevant construction deadline specified in paragraph (d)(1) of this section upon demonstration by the DTV licensee or permittee that failure to meet that construction deadline is due to circumstances that are either unforeseeable or beyond the licensee's control where the licensee has taken all reasonable steps to resolve the problem expeditiously.

(ii) For construction deadlines occurring prior to ~~February 18, 2009~~ **June 13, 2009**, the following circumstances may include, but shall not be limited to:

- (A) Inability to construct and place in operation a facility necessary for transmitting digital television, such as a tower, because of delays in obtaining zoning or FAA approvals, or similar constraints; or
- (B) Where the licensee or permittee is currently the subject of a bankruptcy or receivership proceeding, or is experiencing severe financial hardship as defined by negative cash flow for the past three years.

(iii) For construction deadlines occurring after ~~February 17, 2009~~ **June 12, 2009**, the tolling provisions of §73.3598 shall apply.

(iv) The Bureau may grant no more than two extension requests upon delegated authority. Subsequent extension requests shall be referred to the Commission. The Bureau may deny extension requests upon delegated authority.

- (v) Applications for extension of time shall be filed no earlier than 90 and no later than 60 days prior to the relevant construction deadline, absent a showing of sufficient reasons for filing within less than 60 days of the relevant construction deadline.

3. Section 73.674 is revised to read as follows:

§ 73.674 Digital Television Transition Notices by Broadcasters

(a) Each full-power commercial and noncommercial educational television broadcast station licensee or permittee must air an educational campaign about the transition from analog broadcasting to digital television (DTV). For each such commercial station, a licensee or permittee must elect, by the effective date of these rules, to comply with either paragraph (c) or (d) of this Section. For each such noncommercial station, a licensee or permittee must elect, by the effective date of these rules, to comply with paragraph (c), (d), or (e) of this Section. A licensee or permittee must note their election via the filing of Form 388 as required by Section 73.3526 and 73.3527 of this Part.

(b) The following requirements apply to paragraphs (c), (d), and (e):

- (1) The station must comply with the requirements of the paragraph it elects with respect to its analog channel and its primary digital stream.
- (2) Any Public Service Announcement aired to comply with these requirements must be closed-captioned, notwithstanding Section 79.1(d)(6) of this chapter.
- (3) The campaign must begin no later than the effective date of these rules and continue at least through ~~March 31, 2009~~ **June 30, 2009**. After ~~March 31, 2009~~ **June 30, 2009**, any station that has filed a request for an extension to serve its full operating area or is operating under such an extension must continue its education campaign until the request is withdrawn or denied or, if granted, until it expires.

(c) Consumer Education Campaign Option One

- (1) From the effective date of these rules through ~~March 31, 2009~~ **June 30, 2009**, a licensee or permittee must, at a minimum, air one transition-related public service announcement (PSA), and one transition-related informative text crawl, in every quarter of every broadcast day. This minimum will increase to two of each, per quarter, from April 1, 2008 through September 30, 2008, and to three of each, per quarter, from October 1, 2008 through the conclusion of the campaign. At least one PSA and one informative text crawl per day must be aired between 8:00 pm and 11:00 pm in the Eastern and Pacific time zones, and between 7:00 pm and 10:00 pm in the Mountain and Central time zones.
- (2) For the purposes of this section, each broadcast day consists of four quarters; 6:01 am to 12:00 pm, 12:01 pm to 6:00 pm, 6:01 pm to 12:00 am, and 12:01 am to 6 am.
- (3) Informative text crawls must:
 - (i) Air during programming;
 - (ii) Air for no fewer than 60 consecutive seconds;
 - (iii) Be displayed so that the text travels across the bottom or top of the viewing area

- at the same speed used for other informative text crawls concerning news, sports, and entertainment information;
- (iv) Be presented in the same language as a majority of the programming carried by the station;
 - (v) Be displayed so that they do not block and are not blocked by closed-captioning or emergency information; and
 - (vi) Contain at least the following information, but may contain more, provided they contain no misleading or inaccurate statements:
 - (A) ~~After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over-the-air broadcasts with an antenna because of the Nation's transition to digital broadcasting. The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting.~~ Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.
 - (B) More information is available by phone and online, and provide appropriate contact information, including means of contacting the station or the network.
- (4) Public service announcements must have a duration of no fewer than 15 consecutive seconds, and contain, at a minimum, the information described in Paragraph (c)(3)(vi) of this section. They must also address the following topics at least once each during every calendar week:
- (i) The steps necessary for an over-the-air viewer or a subscriber to a multichannel video programming distributor to continue viewing the station after the transition;
 - (ii) Changes in the geographic area or population served by the station during or after the transition;
 - (iii) The channel on which the station can be viewed after the transition;
 - (iv) Whether the station will be providing multiple streams of free video programming during or after the transition;
 - (v) Whether the station will be providing a High Definition signal during or after the transition;
 - (vi) The exact date and time that the station will cease analog broadcasting, if it has not already done so; and
 - (vii) The exact date and time that the station will begin digital broadcasting on its post-transition channel, if it has not already done so.

(d) Consumer Education Campaign Option Two

- (1) A licensee or permittee must, at a minimum, air an average of sixteen transition-related PSAs per week, and an average of sixteen transition-related crawls, snipes, and/or tickers per week, over a calendar quarter.
- (2) For the purposes of calculating the average number of PSAs aired, a 30-second PSA qualifies as a single PSA, and two 15-second PSAs count as a single PSA.
- (3) PSAs, crawls, snipes, and/or tickers aired between the hours of 1:00 am and 5:00 am do not conform to the requirements of this section and will not count toward calculating the average number of transition-related education pieces aired.
- (4) Over the course of each calendar quarter, 25 percent of all PSAs, and 25 percent of all crawls, snipes, and/or tickers, must air between 6:00 pm and 11:35 pm (Eastern and Pacific time zones) or between 5:00 pm and 10:35 pm (Central and Mountain time zones).
- (5) Stations must also air a 30-minute informational program on the digital television (DTV) transition between 8 am – 11:35 pm on at least one day prior to ~~February 17, 2009~~ **June 12, 2009**.
- (6) Beginning on ~~November 10, 2008~~ **March 4, 2009**, all stations will begin a 100-Day Countdown to the transition. During this period, each station must air at least one of the following per day:
 - (i) *Graphic Display*. A graphic super-imposed during programming content that reminds viewers graphically there are “x number of days” until the transition. They will be visually instructed to call a toll-free number and/or visit a Website for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.
 - (ii) *Animated Graphic*. A moving or animated graphic that ends up as a countdown reminder. It would remind viewers that there are “x number of days” until the transition. They will be visually instructed to call a toll-free number and/or visit a Website for details. The length of time will vary from 5 to 15 seconds, at the discretion of the station.
 - (iii) *Graphic and Audio Display*. Option #1 or option #2 with an added audio component. The length of time will vary from 5 to 15 seconds, at the discretion of the station.
 - (iv) *Longer Form Reminders*. Stations can choose from a variety of longer form options to communicate the countdown message. Examples might include an “Ask the Expert” segment where viewers can call in to a phone bank and ask knowledgeable people their questions about the transition. The length of these segments will vary from 2 minutes to 5 minutes, at the discretion of the station (Some stations may also choose to include during newscasts DTV “experts” who may be asked questions by the anchor or reporter about the impending ~~February 17, 2009~~ **transition** deadline).

(e) Consumer Education Campaign Option Three

- (1) Only a licensee or permittee of a noncommercial television station may elect this option.

Under this option, from the effective date of these rules, through April 30, 2008, a noncommercial broadcaster must, at a minimum, air 60 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 7.5 minutes per month between 6 pm and 12 am. From May 1, 2008, through October 31, 2008, a broadcaster must, at a minimum, air 120 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 15 minutes per month between 6 pm and 12 am. From November 1, 2008, through ~~March 31, 2009~~ **June 30, 2009**, a broadcaster must, at a minimum, air 180 seconds per day of transition-related education (PSAs), in variable timeslots, including at least 22.5 minutes per month between 6 pm and midnight.

- (2) Noncommercial stations must also air a 30-minute informational program on the digital television (DTV) transition between 8 am – 11:35 pm on at least one day prior to ~~February 17, 2009~~ **June 12, 2009**.

4. Section 73.3598 is revised to read as follows:

§ 73.3598 Period of construction

(b) The period of construction for an original construction permit shall toll when construction is prevented by the following causes not under the control of the permittee:

- (1) Construction is prevented due to an act of God, defined in terms of natural disasters (e.g., floods, tornados, hurricanes, or earthquakes);
- (2) The grant of the permit is the subject of administrative or judicial review (i.e. , petitions for reconsideration and applications for review of the grant of a construction permit pending before the Commission and any judicial appeal of any Commission action thereon), or construction is delayed by any cause of action pending before any court of competent jurisdiction relating to any necessary local, state or federal requirement for the construction or operation of the station, including any zoning or environmental requirement; or
- (3) A request for international coordination, with respect to an original construction permit for a new DTV station, has been sent to Canada or Mexico on behalf of the station and no response from the country affected has been received, or the licensee or permittee is challenging the response from Canada or Mexico on the grounds that the facility as approved would not permit the station to serve the population that is both approved by the Commission and served by the station's TV (analog) facility to be vacated by ~~February 17, 2009~~ **June 12, 2009**.

Part 76 – MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 336, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. Section 76.1630 is revised to read as follows:

§ 76.1630 MVPD Digital Television Transition Notices

(a) Multichannel video programming distributors (MVPDs) shall provide subscribers with notices about the transition for over-the-air full power broadcasting from analog to digital service (the "DTV Transition") in the monthly bills or bill notices received by subscribers beginning ~~30 days after the effective date of these rules~~ **April 1, 2009**, and concluding ~~in March~~ **on June 30, 2009**.

(b) The notice must be provided as part of an information section on the bill or bill notice itself or on a secondary document mailed with the bill or bill notice, in the same language or languages as the bill or bill notice. These notices must:

(1) Be in clear and conspicuous print;

(2) Convey at least the following information about the DTV transition:

(i) ~~After February 17, 2009, a television receiver with only an analog broadcast tuner will require a converter box to receive full power over the air broadcasts with an antenna because of the Nation's transition to digital broadcasting. The nationwide switch to digital television broadcasting will be complete on June 12, 2009, but your local television stations may switch sooner. After the switch, analog-only television sets that receive TV programming through an antenna will need a converter box to continue to receive over-the-air TV. Watch your local stations to find out when they will turn off their analog signal and switch to digital-only broadcasting.~~ Analog-only TVs should continue to work as before to receive low power, Class A or translator television stations and with cable and satellite TV services, gaming consoles, VCRs, DVD players, and similar products.

(ii) Information about the DTV transition is available from **your local television stations**, www.DTV.gov, **1-888-CALL-FCC (TTY 1-888-TELL-FCC)**, or this MVPD at [telephone number and website if available], and from www.dtv2009.gov or **1-888-DTV-2009 (TTY 1-877-530-2634)** for information about subsidized coupons for digital-to-analog converter boxes;

(3) and explain clearly what effect, if any, the DTV Transition will have on the subscriber's access to MVPD service. It must also note that analog sets not connected to an MVPD service may need additional equipment (i.e. converter box) or may have to be replaced.

(c) To the extent that a given customer does not receive paper versions of either a bill or a notice of billing, that customer must be provided with equivalent monthly notices in whatever medium they receive information about their monthly bill.

Part 90 – PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

2. Section 90.528 is revised to read as follows:

* * * * *

(d) The term of the Public Safety Broadband License shall not exceed ten years from ~~February 17~~ **June 13, 2009**. The Public Safety Broadband Licensee is entitled to a renewal expectancy barring violations of

law, rules or policy warranting denial of renewal.

* * * * *

3. Section 90.1410 is revised to read as follows:

* * * * *

(j) The NSA must have a term, not to exceed 10 years from ~~February 17~~ **June 13**, 2009, that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.