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

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In the Matter of)	
Implementation of the DTV Delay Act)	MB Docket No. 09-17
DTV Consumer Education Initiative)	MB Docket No. 07-148
Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television)	MB Docket No. <u>07-91</u>
Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition "Analog Nightlight" Program)	MB Docket No. 08-255
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules)	WT Docket No. 06-169
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86

SECOND REPORT AND ORDER AND NOTICE OF PROPOSED RULEMAKING

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By the Commission:

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I. INTRODUCTION

1. In this Report and Order, the second in response to the Congressional extension of the digital television (DTV) transition period, we take a number of actions necessary to implement the “DTV Delay Act,” which was enacted into law on February 11, 2009.¹ In the DTV Delay Act, Congress extended the DTV transition deadline from February 17, 2009, to June 12, 2009, in an effort to provide consumers additional time to prepare for the transition from analog to digital broadcasting.² It afforded the FCC discretion to allow broadcasters to complete their transitions prior to June 12, 2009, subject to such rules as the Commission finds necessary or appropriate. The Act instructed the Commission to take any actions “necessary or appropriate to implement the provisions, and carry out the purposes” of the date extension, and to do so within 30 days.³ The Commission has already taken a number of steps to comply

¹ DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009) (“*DTV Delay Act*”).

² See, e.g., 155 Cong. Rec. E240-02.

³ DTV Delay Act § 4(c). In addition, the DTV Delay Act amends the Digital Television and Public Safety Act of 2005 (“*DTV Act*”), Pub. L. No. 109-171, 120 Stat. 4 (2006), to direct the Commission to “take such actions as are necessary (1) to terminate all licenses for full-power television stations in the analog television service, and to

(continued...)

with this directive. We issued a series of public notices (PNs) establishing and implementing the early transition process for stations that transitioned on February 17, 2009.⁴ In the first of these PNs, we also noted that early transitions are prohibited between February 18 and March 14.⁵ We also released the first Report and Order in the DTV Delay Act docket, extending the analog license terms and adjusting the construction permits for the full power television stations subject to the DTV Delay Act.⁶

2. As discussed in Section V below, we find that the matters addressed here are not subject to the rulemaking requirements of the Administrative Procedure Act (APA),⁷ Congressional Review Act (CRA),⁸ Regulatory Flexibility Act (RFA),⁹ or any other provision of law that otherwise would apply and would impede implementation of the statutory directives. As discussed below, we also find that there is good cause for departure from the rulemaking requirements of the APA under the circumstances here. Nevertheless, we are providing notice and an abbreviated opportunity for public comment regarding the issues addressed in Section IV below to allow interested parties to contribute to our consideration of these issues to the extent possible in the limited time Congress has provided.

II. EXECUTIVE SUMMARY

3. This Report and Order carries out the most time sensitive of the remaining actions necessitated by the delay in the transition deadline.¹⁰ The most fundamental change to our rules, licenses, etc., made necessary by the DTV Delay Act is that all references to the transition deadline must be revised to conform to the new date established in that Act.¹¹ Thus, for each rule or order addressed in this

(...continued from previous page)

require the cessation of broadcasting by full-power stations in the analog television service, by June 13, 2009; and (2) to require by June 13, 2009, ... all broadcasting by full-power stations in the digital television service, occur only on channels between channels 2 and 36, inclusive, or 38 and 51, inclusive (between frequencies 54 and 698 megahertz, inclusive)." 47 U.S.C.A. § 309 Note.

⁴ FCC Announces Procedures Regarding Termination of Analog Television Service On or After February 17, 2009, Public Notice, FCC 09-6 (Feb. 5, 2009) ("February 5th PN"); FCC Releases Lists of Stations Whose Analog Operations Terminate Before February 17, 2009 or that Intend to Terminate Analog Operations on February 17, 2009, Public Notice, DA 09-221 (MB Feb. 10, 2009) ("February 10th PN") (in addition to lists, reminded stations that the Commission reserved the right to limit or reconsider the waiver that allowed them to transition on February 17); FCC Requires Public Interest Conditions for Certain Analog TV Terminations on February 17, 2009, Public Notice, FCC 09-7 (Feb. 11, 2009) ("February 11th PN") (imposing additional public interest conditions and requirements on the stations whose termination of analog service on February 17 posed a significant risk of substantial public harm); FCC Releases Lists of TV Stations' Responses to Requirements for Analog Termination on February 17, 2009, Public Notice, DA 09-245 (MB Feb. 13, 2009) ("February 13th PN") (providing the responses of the 106 stations affected by the February 11th PN).

⁵ *February 5th PN* at 8 (Noting that we would reconsider these rules and procedures, if appropriate).

⁶ *Implementation of the DTV Delay Act*, MB Docket No. 09-17, Report and Order and *Sua Sponte* Order on Reconsideration, FCC 09-9 (rel. Feb. 13, 2009) ("*First DTV Delay Order*").

⁷ 5 U.S.C. §§ 551, *et seq.* (APA).

⁸ 5 U.S.C. §§ 801, *et seq.* (CRA).

⁹ 5 U.S.C. § 601, *et seq.* (RFA).

¹⁰ The revisions to our rules are shown in the Appendix to this document.

¹¹ The DTV Delay Act (to be *codified* at 47 U.S.C. §§ 309(j)(14) and 337(e)), amends Section 309(j)(14) of the Communications Act to establish June 12, 2009 as the new nationwide deadline for the end of analog transmissions by full-power stations. 47 U.S.C. § 309(j)(14)(A) ("A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond June 12, 2009."). *See also* 47 U.S.C. § 337(e)(1) ("Any full-power television station licensee that holds a television broadcast license to operate between 698 and 806 megahertz may not operate at that frequency after June 12, 2009.").

Omnibus order that refers to "February 17, 2009," or otherwise references the date of the transition deadline, we revise the rule to read "June 12, 2009" or make other revisions as appropriate.¹² In many cases, some additional revision is or will be necessary. We make additional revisions in the following areas in this Report and Order, and we intend to follow up quickly with additional rulemakings as needed.

4. *DTV Consumer Education Initiative rules*

- We extend the duration of the *DTV Consumer Education Initiative* requirements, including reporting requirements, so that most expire at the end of the second calendar quarter, in which the transition now ends, rather than at the end of the first calendar quarter, in which the transition originally ended.¹³
- We revise the guidance text that is used as the basis for multichannel video programming distributor (MVPD), eligible telecommunications carrier (ETC), and manufacturer notices to reflect that the transition deadline has been extended and that many stations will transition or have transitioned prior to that date. We also require these notices to include contact information for the FCC Call Center and the NTIA Coupon Program, as well as a suggestion that readers contact their local television station for additional information. These revised requirements take effect April 1, in order to provide affected parties with sufficient time to prepare revised notices.
- We find that Option One¹⁴ broadcasters must continue to provide viewers with the maximum level of consumer education, and revise the guidance text that is used as the basis for on-air notices to reflect that the transition deadline has been extended and that many stations will transition or have transitioned prior to that date.
- We find that Option Two broadcasters must begin a new 100-day countdown to the transition on March 4, 2009. Nevertheless, we also seek comment in the NPRM about whether this requirement should be modified to better educate and inform consumers. Pending any modifications as a result of our consideration of the comments filed in response to that NPRM, Option Two broadcasters must begin a new 100-day countdown on March 4.
- We find that Option Three broadcasters must continue to provide viewers with the maximum level of consumer education.
- We revise Form 388 to reflect the changes above, and remind broadcasters that they must continue to file it and post it online quarterly up to and including the final quarter in which they have education obligations under these rules.
- We provide notice that the DTV.gov Transition Partners program has been discontinued, and that as a result no additional filings will be required as a result of participation in the program.

5. *Third DTV Periodic Report and Order*

- We revise the analog service termination notification procedure contained in the *Third DTV Periodic Report and Order* and require all stations to notify the Commission no later than Tuesday, March 17 of the date they will terminate analog

¹² E.g., Section 2(c) of the DTV Delay Act extends certain license terms and construction deadlines for the recovered spectrum for 116 days. See Amended Rules Appendix to this document.

¹³ See 47 C.F.R. §§ 73.674(b)(3) (after June 30, 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).

¹⁴ 47 C.F.R. § 73.674(a) (Broadcast stations must comply with one of three sets of requirements for consumer education, choosing Options One or Two if they are a commercial station, or Options One, Two, or Three if they are a noncommercial station); see also ¶ 16, *infra*.

television service.

- Consistent with the *Third DTV Periodic Report and Order* and the timing adopted in this Order, we require all full-power television stations to update their DTV Transition Status Reports, FCC Form 387, no later than Thursday April 16, 2009 to reflect their transition plans as a result of the delay in the nationwide transition deadline.
- We revise our rules to reflect changes to construction deadlines and our rules for obtaining extensions of time to construct digital facilities.

6. ***700 MHz Band License Periods and Construction Requirements:***

- We extend the terms of the licenses for the “recovered spectrum,” including the applicable construction benchmark deadlines, for a period of 116 days pursuant to section 2(c) of the DTV Delay Act. We also modify sections 27.1310 and 90.1410 of the 700 MHz Public/Private Partnership rules to conform these provisions to the license term extension.

7. ***Analog Nightlight***

- We find that the Analog Nightlight program, implemented pursuant to the Analog Nightlight Act, will be in effect after the DTV transition deadline on June 12, 2009.

8. ***Notice of Proposed Rulemaking***

- We invite comments, in an expedited, one-round, five (5) day cycle, in the attached Notice of Proposed Rulemaking (NPRM) regarding additional amendments to our rules and regulations to carry out the purposes of the DTV Delay Act.¹⁵
- In particular, we propose to revise the analog service termination requirements for stations still operating in analog. We believe that these proposed revisions to the procedures in the *Third DTV Periodic Report and Order*, in addition to the notification changes adopted in the *Order*, are necessary to implement the DTV Delay Act.
- We also seek comment on possible revisions to the consumer education rules, particularly the adoption of a requirement that broadcasters notify viewers of predicted service loss. We ask whether broadcasters should provide information on rescanning with digital equipment, and, where applicable, information regarding the need for different equipment due to changes from UHF to VHF service, or vice versa. We also seek comment on amendments to the “100-Day Countdown” responsibility of Option Two broadcasters and the 30 minute informational video that is required in both Option Two and Option Three. Finally, we ask whether stations that participate in or support the post-transition analog nightlight program should be exempt from post-transition consumer education requirements.

III. DISCUSSION

A. Consumer Education

9. In early 2008, the Commission adopted a number of rules designed to educate viewers and consumers about the digital television transition.¹⁶ Many of these rules were specifically tied to the

¹⁵ See Section IV, *infra.*

¹⁶ *DTV Consumer Education Initiative*, MB Docket No. 07-148, Report and Order, 23 FCC Rcd 4134, (2008) (“*DTV Consumer Education Initiative*”).

original February 17, 2009 nationwide transition date, and all were set to expire on a schedule reflecting that the transition would conclude in the first quarter of 2009. Therefore, now that the transition has been extended, most of these rules must be revised to continue to serve their educational purpose.

10. The DTV Delay Act establishes a new "hard" deadline for the completion of the nation's transition to digital television for full power stations. However, unlike the Act establishing the original hard deadline,¹⁷ which left early transitions completely to the discretion of the Commission, the DTV Delay Act expressly contemplates a "rolling" transition, in which stations are permitted to cease providing analog service at various times prior to the nationwide conclusion of the transition consistent with the Commission's rules.¹⁸ Our revised consumer education rules therefore reflect not only the simple postponement of the transition deadline, but the fact that many consumers will begin to experience the switch to digital before June 12, if they have not already.¹⁹

1. Comprehensive Changes

11. In addition to updating references to the transition deadline in the Commission's rules and regulations, as discussed above, we must revise the rules governing the comprehensive consumer education campaign and its conclusion in response to the delay.

12. The Consumer Education rules, as originally adopted, remain in effect until the conclusion of the calendar quarter in which the transition ended; thus, because the transition originally would have ended in the first quarter of 2009, the consumer education requirements would have remained in effect only through the end of March, 2009. The DTV Delay Act has postponed the transition deadline to the second quarter of 2009, and recognized that for many stations, and some entire markets, the transition will occur even sooner. Therefore, we find that it is appropriate for the revised consumer education requirements to remain in effect until the conclusion of the second quarter of 2009. We encourage broadcasters to revise their messaging as appropriate after the conclusion of the transition.²⁰ In each case where the Consumer Education rules refer to "March 31, 2009," "in March 2009," etc., we are revising them to reflect that the rules will conclude at the end of June, 2009.²¹ As a result, each of the rules discussed below will remain in effect through June 30, 2009, even where we find that no other change is necessary to bring the rule into compliance with the DTV Delay Act.

2. Manufacturer, ETC, and MVPD Notices

13. Many of the rules in the *DTV Consumer Education Initiative* require industry stakeholders to provide their customers with paper or electronic notices that briefly explain the DTV transition. The rules governing manufacturers,²² ETCs,²³ and MVPDs²⁴ use identical language to describe

¹⁷ Deficit Reduction Act of 2005, Pub. L. No. 109-171, Title III, §§ 3002(a), 3003, 3004, 120 Stat. 21, 22 ("A full-power television broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond February 17, 2009.") ("DTV Act"). See also 47 U.S.C. § 337(e) and 47 U.S.C. § 309(j)(14).

¹⁸ See *Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, MB Docket No. 07-91, Report and Order, 23 FCC Rcd 2994 (2007) ("*Third DTV Periodic Report and Order*").

¹⁹ See generally, *February 10th PN*.

²⁰ We will exercise our prosecutorial discretion regarding the specific content of PSAs and crawls run pursuant to Option One.

²¹ See Amended Rules Appendix to this document.

²² 47 C.F.R. § 15.124.

²³ 47 C.F.R. § 54.418.

²⁴ 47 C.F.R. § 76.1630.

the minimum information that must be provided in these notices:

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. 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.

Although this text is not mandatory, we recognize that many of the affected stakeholders follow it closely. In order to carry out the purposes of the DTV Delay Act, we find that we must revise this guidance to reflect not only that all full-power analog broadcasting will conclude on June 12, 2009, but that it may conclude earlier in many cases.²⁵

14. Therefore, we adopt the following revised text to serve as guidance:

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.²⁶

In addition to information about the transition itself, the rules require that these notices also provide contact information that will allow the recipients to seek additional information about the transition.²⁷ We find that it is appropriate to revise this requirement to ensure that the notices include, at a minimum, the toll-free number and internet site for the FCC's Call Center, as well as NTIA's toll-free number and internet site for the coupon program, and a suggestion to contact local television stations.²⁸ Because of the delay of the final transition and the "rolling" transitions that will be taking place prior to June 12, 2009, it is even more important that citizens have access to locally targeted information about how the transition will affect them. We believe these requirements will help to ensure that consumers have access to up-to-date information in order to help them better prepare for the transition.

15. Manufacturers, ETCs, and MVPDs should include language based on this revised guidance in their notices as soon as practicable, but in any case no later than April 1, 2009.²⁹ Because the existing rules expire on March 31, 2009, a failure to begin distribution of revised notices by at least April 1 will create a gap in the information provided to consumers. The original *DTV Consumer Education Initiative* was released by the Commission on March 3, 2008, and the rules became effective on April 30,

²⁵ We note that stations participating in the statutory nightlight program will continue to provide some analog service after June 12, 2009. See § III.D, *infra*.

²⁶ See revised rule 47 C.F.R. § 15.124(b)(i) in the Appendix.

²⁷ 47 C.F.R. §§ 15.124(b)(2)(ii), 54.418(b)(2)(ii), and 76.1630(b)(2)(ii).

²⁸ See revised rule 47 C.F.R. § 15.124(b)(ii) in the Appendix.

²⁹ Thus, ETC and MVPD notices mailed in April must include updated language, and the notices included with television receivers and related devices manufactured in April must include updated language. We recognize that some companies may have already printed sufficient transition notices to meet their needs through March 31, 2009, the original conclusion of the education campaign, and have no desire to penalize these companies for being prepared.

2008, 30 days after OMB approval for the rules was published.³⁰ Therefore, ETCs and MVPDs had 58 days to prepare to fully comply. As discussed in the *Consumer Education Sua Sponte Reconsideration*, the Consumer Electronics Association argued that consumer electronics manufacturers need the "same time period for implementation of the notice requirement that is required of MVPDs" and ETCs.³¹ That order was released on April 23, 2008 and provided for a start date of May 30, 2008 for manufacturer rules, giving them 37 days to prepare to fully comply. Manufacturers had no difficulty doing so.³² A date certain of April 1, 2009 for all three groups will provide manufacturers with slightly more time to comply than they received in the reconsidered order, and MVPDs/ETCs with slightly less time, but we anticipate that the time provided will be sufficient to allow the parties to comply. All of the affected parties are already including DTV consumer education notices pursuant to the existing rules, so the only change will be to the text printed on those notices.³³

3. Broadcaster On-Air Consumer Education

16. Broadcasters are required to regularly provide on-air consumer education about the transition.³⁴ The Consumer Education Initiative offered broadcasters a choice of rules: Options One or Two, available to any broadcaster, or Option Three, available only to non-commercial stations.³⁵ Among and within these Options, broadcasters have a range of techniques to choose from, resulting in a mix of public service announcements (PSAs), graphics and text superimposed over programming, and longer form informational programming. Elements of each Option must be revised in response to the DTV Delay Act, and are addressed below. We remind broadcasters that whatever option they elected, these on-air education requirements are separate from and in addition to any viewer notification requirements imposed on a station by the *Third DTV Periodic Report and Order*,³⁶ the Commission's recent public notice addressing early transitions on February 17, 2009,³⁷ or any other rule or regulation. We also direct broadcasters to the companion NPRM, which raises questions about additional or revised requirements for broadcasters, including a requirement to provide viewers with notifications about any predicted service loss.³⁸

a. Option One

17. The rules require Option One broadcasters to air both PSAs and crawls, in every quarter

³⁰ *DTV Consumer Education Initiative*: Final Rule, 73 FR 15431 (March 24, 2008); Announcement of effective date, 73 FR 16763 (March 31, 2008).

³¹ *DTV Consumer Education Initiative*, MB Docket No. 07-148, Order on Reconsideration and Further Notice of Proposed Rulemaking, 23 FCC Rcd 7272, 7276-77 (2008) ("*Consumer Education Sua Sponte Reconsideration*"), citing *Ex parte* of the Consumer Electronics Association, March 6, 2008, at 1 (MB Docket No. 07-148).

³² The Commission is not aware of any violations of these rules on the part of manufacturers.

³³ As discussed in the *DTV Consumer Education Initiative*, a party responsible for manufacturer notices (such as, in some cases, retailers and distributors) can comply by placing a sticker on the outside of the packaging of a covered device (47 C.F.R. § 15.124(a)) that reflects the revised notice text and the change in the transition deadline. The party responsible for inclusion of the notice is the "manufacturer," or the party acting as the manufacturer under our rules; *i.e.*, the "responsible party" as defined in Section 2.909 of the Commission's Rules. *Consumer Education Sua Sponte Reconsideration*, 23 FCC Rcd 7272 at ¶¶ 8-9.

³⁴ 47 C.F.R. § 73.674.

³⁵ *DTV Consumer Education Initiative*, 23 FCC Rcd at 4139.

³⁶ See, e.g. *Third DTV Periodic Report and Order*, 23 FCC Rcd 2994 at 3033, 3044, 3050 and 3057.

³⁷ See note 4, *supra*.

³⁸ See § IV, *infra*.

of every day, with increasing frequency as the transition approaches.³⁹ During the first calendar quarter in which the rules were in effect, they were at a minimum level of only one PSA and one crawl aired in each quarter of each day. The rules increased to their maximum level for the final two quarters of the consumer education campaign. Beginning on October 1, 2008, and extending “through the conclusion of the campaign,” broadcasters were required to air three PSAs and three crawls in each quarter of the day. Thus, Option One broadcasters have already been engaged in this maximum level of consumer education, and have planned to continue to provide it through the conclusion of the first quarter of 2009. As discussed above, the conclusion of the nationwide consumer education campaign has now been extended to the end of the second quarter of 2009 (June 30, 2009). Given that this delay was driven by the need for greater consumer awareness, and the change to the “hard” transition date, it would be inappropriate to diminish the amount of information available to television viewers now. Furthermore, broadcasters are now in the final two quarters of the transition, and the Commission has previously found that providing the most extensive information to viewers is essential during this time period. Therefore, we do not revise this rule, and Option One broadcasters must continue to air three PSAs and three crawls in each quarter of the day.

18. Although the Commission did not dictate the content of the PSAs and crawls, Option One broadcasters do have to convey certain specific information to viewers, including describing changes in the geographic area or population served by the station during or after the transition. Some of this information is described using the same guidance text as the MVPD, ETC, and manufacturer rules.⁴⁰ We find that the revisions applied to this text in the MVPD/ETC/manufacture context are equally appropriate in this context, and revise the Option One rules accordingly.⁴¹

b. Option Two

19. The rules require broadcasters that selected Option Two to air a certain number of PSAs and crawls, snipes, or tickers each calendar quarter (25% of which must be in prime time), and to provide a “100-Day Countdown to the transition.”⁴² The 100-Day Countdown supplements the initial requirements and consists of an at-least-once-daily airing of a graphic or longer-form information segment that, at a minimum, gives the number of days remaining until the transition and provides a website or phone number viewers can call for more information.⁴³ Stations that elected Option Two have been airing these countdown reminders on a daily basis since November 10, 2008. Now, however, more than 100 days remain until the national transition. Therefore, barring any additional Commission action prior to March 4, 2009, we find that all Option Two stations must begin a new 100-day countdown to June 12, 2009 on March 4, 2009. Nevertheless, we are seeking comment in the attached NPRM on whether and how to modify the new 100-day countdown requirement to ensure that it provides the most accurate and useful information to viewers.⁴⁴ Pending any modification as a result of our consideration of the comments filed in response to that NPRM, we conform the 100-Day countdown to the new, June 12, 2009, transition date, and require all Option Two stations to begin a new 100-day countdown to June 12, 2009 on March 4, 2009.

³⁹ 47 C.F.R. § 73.674(c)(1).

⁴⁰ 47 C.F.R. § 73.674(c)(3)(vi)(A); *see also* ¶¶ 13-15, *supra*.

⁴¹ *See* revised rule 47 C.F.R. § 73.674(c) in the Appendix.

⁴² 47 C.F.R. § 73.674(d). We note that many of the Option Two requirements were proposed by the National Association of Broadcasters (“NAB”) and that the NAB has provided much of the material that broadcasters use to fulfill these requirements. *See DTV Consumer Education Order*, 23 FCC Rcd at 4148.

⁴³ 47 C.F.R. § 73.674(d)(6).

⁴⁴ *See* Notice of Proposed Rulemaking, §IV, *infra*.

c. Option Three

20. Option Three, available only to noncommercial educational broadcasters (NCEs), does not require airing of a certain number of PSAs or crawls. Instead, it requires broadcasters to air several minutes of DTV education daily, allocated between PSAs and longer form messages as the broadcaster chooses. However it is allocated, NCEs must devote an increasing number of minutes to consumer education as the transition approaches.⁴⁵ During the first period in which the rules were in effect, they were at a minimum level of only 1 minute of education daily, with 7.5 minutes a month in prime time. The rules increased to their maximum level for the final months prior to the transition. Beginning on November 1, 2008, and extending through March 31, 2009, broadcasters were required to air 3 minutes of education daily, with 22.5 minutes a month in prime time. Thus, Option Three broadcasters have already been engaged in this maximum level of consumer education, and have planned to continue to provide it through the conclusion of the first quarter of 2009. As discussed above, the conclusion of the nationwide consumer education campaign has now been extended to the end of the second quarter of 2009 (June 30, 2009). Given that this delay was driven by the need for greater consumer awareness, and the change to the "hard" transition date, it would be inappropriate to diminish the amount of information available to television viewers now. Furthermore, broadcasters are now in the final months of the transition, and the Commission has previously found that providing the most extensive information to viewers is essential during this time period. Therefore, we will change only the end date of this rule, and Option Three broadcasters must continue to air 3 minutes of education daily, with 22.5 minutes a month in prime time.⁴⁶

d. Broadcaster Reporting

21. The Consumer Education rules require that all broadcasters prepare reports summarizing their consumer education outreach efforts, file them with the Commission, and make them publicly available both online and in their public inspection forms. These reports must be prepared "up to and including the quarter in which a station concludes its education campaign."⁴⁷ This requirement needs no revision. Broadcasters must continue to file their reports through the second quarter of 2009 and, where appropriate, longer.⁴⁸ They must also continue to retain their reports in the public file, and make them available online, for one year from the date they are filed. To facilitate our timely review of those reports, we remind broadcasters that their reports should reflect all notices aired on a broadcaster's stations, including PSA and crawls, snipes, or tickers originated by broadcast networks. We encourage the networks and their affiliates to cooperate to compile this information, to the extent they have not done so already. The instructions attached to Form 388, *DTV Quarterly Activity Station Report*, have been amended to reflect the changes to the 30 minute informational program and 100-day countdown requirements. The Commission has received approval from OMB for these minor changes to the forms.⁴⁹

22. Further, we take this opportunity to remind broadcasters of their continued responsibility in ensuring an effective and seamless DTV transition for consumers. We applaud the substantial efforts that broadcasters have made in educating consumers about the DTV transition to date, but we reiterate the importance of their full compliance with the DTV consumer education requirements. As we continue to monitor the consistency of the DTV consumer education efforts by broadcasters via the review of the consumer education campaign selected in their respective FCC Form 388s, we emphasize that full

⁴⁵ 47 C.F.R. § 73.674(c)(1).

⁴⁶ See revised rule 47 C.F.R. 73.674(e) in the Appendix.

⁴⁷ 47 C.F.R. §§ 73.3526(e)(11)(iv), 73.3527(e)(13).

⁴⁸ See 47 C.F.R. §§ 73.674(b)(3) (after June 30, any station that has filed a request for an extension to complete construction of its full, authorized, post-transition facility 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).

⁴⁹ See OMB Control No. 3060-1115 (Form 388).

compliance with each and every element of the consumer education campaign option selected is required. We believe that a failure to meet each element of the option selected would significantly jeopardize the successful transition to DTV by consumers.

4. Other Reporting

a. 700 MHz Auction Winner Consumer Education Reporting

23. The rules governing 700 MHz auction winners do not require particular outreach efforts, but they do specify that auction winners must, for "the remaining period of the DTV transition," file a report on a quarterly basis. This report must detail what, if any, DTV transition consumer education efforts they undertook in the previous quarter. The rules provide that the reporting requirement terminates with the filing of the report for the first quarter of 2009.⁵⁰ We revise the rules to reflect the extension of the remaining period of the transition by noting that auction winner reports must be filed for the second quarter of 2009.⁵¹

b. DTV.gov Partner Consumer Education Reporting

24. The Commission is working closely with stakeholders from industry and federal, state, local, and tribal governments, all of whom are active partners in the DTV outreach and education effort. We find that the limited DTV.gov Transition Partners program, as part of the DTV.gov website, is no longer an accurate reflection of our extensive work with outside groups, and therefore discontinue the program, effective immediately. As a result, there is no further obligation for Partners to file quarterly outreach updates as originally required in the *DTV Consumer Education Order*.⁵²

B. Changes to *Third DTV Periodic Report and Order*

25. We make the following revisions to the *Third DTV Periodic Report and Order*⁵³ in order to implement the extension of the DTV transition date to June 12, mandated by the DTV Delay Act.

1. Analog Service Terminations

26. We revise our analog (and pre-transition digital) service termination and reduction procedures to require all stations to file a binding notice of their proposed analog service termination date by March 17, 2009.⁵⁴ This notification, and the procedures that will be adopted in this docket, supersede the early analog termination procedures established in the *Third DTV Periodic Report and Order*. As a result, no service termination notifications may be filed prior to the adoption of the new procedures and form proposed in the companion NPRM. We find that this revision is necessary to implement and carry out the purposes of the DTV Delay Act. We establish March 17, 2009, as the date certain by which stations must notify us of the date on which they intend to terminate analog service. In this notification, stations must either commit to terminating on June 12, 2009, or on a date prior to the nationwide DTV transition deadline subject to the procedures to be adopted in this proceeding. Any station that does not notify us by March 17, 2009, will be assumed to be terminating on June 12, 2009, and will not be permitted to terminate their analog service prior to June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency). We seek comment in the companion NPRM on

⁵⁰ 47 C.F.R. §§ 27.20(c).

⁵¹ See revised rule 47 C.F.R. 27.20 in the Appendix.

⁵² See *DTV Consumer Education Order*, 23 FCC Rcd at 4160.

⁵³ See *Third DTV Periodic Report and Order*, 23 FCC Rcd 2994.

⁵⁴ The rule changes herein apply to analog service terminations and substantial reductions to analog service. In general, a "substantial" reduction is one that would affect 10 percent or more of the population in a station's service area, as represented by the predicted Grade B contour. References to "termination" here are intended to apply to such substantial reductions as well as to terminations.

proposed procedures and requirements for stations seeking to complete their transition prior to June 12, 2009. We expect to adopt an Order finalizing the requirements no later than March 13, 2009. We strongly encourage major network affiliates that intend to transition prior to June 12 to communicate with the other affiliates serving the same viewing area as early as possible.

27. Congress extended the nationwide DTV transition deadline to allow time for consumers to be prepared for the transition.⁵⁵ In particular, Congress and the President took note that the digital converter box program administered by the National Telecommunications and Information Administration of the Department of Commerce ("NTIA") has a backlog of applications for coupons, now numbering more than four million.⁵⁶ Moreover, the Commission and industry partners have recently undertaken to provide a unified toll-free number for consumers seeking assistance with the transition (1-888-CALL-FCC), and we have arranged through contractors and volunteers to provide hands-on assistance for consumers across the country. If stations plan to transition before June 12, 2009 despite the significant benefits to consumers of continuing analog service through the transition deadline, it is essential that the Commission, industry, and the public be fully informed well in advance. We conclude that the 30-day advance notice procedure adopted in December 2007 in the *Third DTV Periodic Report and Order* is insufficient for the present circumstances. We cannot forecast and deploy resources to prepare and assist consumers based on rolling, uncoordinated notifications. We believe that allowing any or all stations to terminate or substantially reduce analog service under the existing *Third DTV Periodic Report and Order* procedures would squander the time given to us and the country by the delay enacted by Congress and the President. Accordingly, we require all full-power television stations that have not terminated their analog service as of February 17, 2009 to decide on a firm date by which they intend to terminate their regular analog television service and to notify us of that date no later than Tuesday, March 17, 2009. By this date, stations will have had ample time to consider their plans in light of other broadcasters' plans and the circumstances in their markets, and can finalize their own transition plans accordingly. Furthermore, as explained above, we need to establish an orderly and predictable process for any transitions prior to the statutory deadline. In order to establish and maintain such a process, we must know stations' firm dates for analog service termination in order to focus and deploy consumer education resources appropriately; and viewers, industry and other interested parties also need to know the relevant date for stations in their markets so they can appropriately prepare for the change in television service.

28. In the companion NPRM, we seek to develop revised service termination procedures that will best enable us to evaluate and adjust deployment of our resources and to coordinate with other entities in order to prepare for stations' analog service terminations and protect the public interest while preserving broadcasters' flexibility to terminate analog operations. The Commission must make, adjust and prioritize arrangements for consumer outreach, call center staffing, and converter installation assistance and coordinate with contractors, partners, volunteers, and organizations throughout the country to address areas where stations will terminate their analog signals throughout the transition period. In addition, other broadcasters, cable operators, satellite carriers and other MVPDs, equipment manufacturers, and tower crews will be relying on stations' notifications of their analog service termination dates for their own planning purposes. The establishment of this date certain for notifications and the brief hiatus before notifications may be filed are essential steps that must be undertaken now to enable the Commission to implement the new procedures.

29. As discussed below in the NPRM, we encourage stations that wish to transition before June 12, 2009 to file comments in the DTV Delay Act rulemaking docket (No. 09-17) indicating the date they would like to transition, why they need to transition early and the basis for the particular date they

⁵⁵ See, e.g., 155 Cong. Rec. E240-02.

⁵⁶ Letter from John Podesta, Co-Chair, Obama-Biden Presidential Transition Team, to John D. Rockefeller, IV, Chairman, and Kay Bailey Hutchison, Ranking Member, Committee on Commerce, Science, and Transportation, United States Senate, and Henry A. Waxman, Chairman, and Joe Barton, Ranking Member, Committee on Energy and Commerce, United States House of Representatives (January 8, 2009).

prefer. Such comments will be helpful to us in formulating the final procedures. However, dates listed in a station's comments will not represent binding commitments, and will not replace the March 17 notices that all stations must file. Indeed, any notifications filed with us before the adoption of new procedures through this rulemaking, including notices filed prior to the release of this Order, will be for informational purposes only and will not serve as official notice authorizing stations to terminate.⁵⁷ Any stations that have already filed termination notifications will be required to re-file pursuant to the new procedures and form to be adopted. Nonetheless, we believe that having more information available to the Commission when drafting the specific requirements for early termination will result in a better outcome, and will consider all comments from stations in crafting revised procedures.⁵⁸

30. We find that the DTV Delay Act, taken as a whole, authorizes the Commission to change the procedures established in the *Third DTV Periodic Report and Order* as necessary to implement and carry out the purposes of the DTV Delay Act. Section 4(a) of the Act provides that “[n]othing in this Act is intended to prevent” early termination “in accordance with the [FCC’s] requirements in effect on the date of enactment of this Act, including the flexible procedures established in the [*Third DTV Periodic Report and Order*].” Section 4(c) of the Act authorizes the Commission to “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.” Because Section 4(a) is written in permissive terms with a limiting proviso (“Nothing in this Act is intended to prevent ...”), and does not prohibit the Commission from modifying its early termination procedures, and because Section 4(a) grants the Commission broad discretion to revise its rules “as necessary or appropriate” to carry out the Act’s purposes, we find that the Act, as a whole, authorizes the Commission to modify the analog (and pre-transition digital) service termination procedures initially established in the *Third DTV Periodic Report and Order*.⁵⁹ We find that Congress simply intended in Section 4(a) of the DTV Delay Act to make it clear that it was not overriding the FCC’s existing termination procedures – not to prevent the FCC from modifying those procedures.⁶⁰ We note, however, that the new procedures that we adopt herein and propose in the companion NPRM will provide stations with flexibility to terminate analog (and pre-transition digital) television service before the new transition deadline of June 12, 2009.⁶¹

31. The *Third DTV Periodic Report and Order* established streamlined notification procedures for stations planning to terminate analog service on a date 90 days or less before the transition date.⁶² Such early terminations were permitted if “necessary for purposes of the transition,” and with

⁵⁷ Stations are required to update their Form 387, but such status reports do not constitute official notifications or requests for approval. See, *supra*, ¶ 26.

⁵⁸ See Notice of Proposed Rulemaking, §IV, *infra*.

⁵⁹ 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).

⁶⁰ Supreme Court precedent makes it clear that when Congress ratifies prior agency action, as it did here, such ratification does not impair the agency’s authority to modify its rules in the future where Congress has not restricted the agency’s rulemaking authority. See, e.g., *Zemel v. Rusk*, 381 U.S. 1, 9-13 (1965) (Secretary of State had statutory authority to impose new area restrictions on passports in 1961 under the Passport Act of 1926 because Congress had ratified the Secretary’s authority to impose such restrictions in 1952 by enacting passport legislation without tampering with the rulemaking authority granted to the Secretary in the 1926 Act). See also *City of New York v. FCC*, 486 U.S. 57 (1988) (Congressional ratification of FCC preemption of state and local cable technical standards). In the DTV Delay Act, Congress not only did not restrict the agency’s general rulemaking authority, it granted the agency expansive new authority to implement that legislation.

⁶¹ As discussed in detail below, we also conclude that section 4(c) of the DTV Delay Act exempts rulemaking and other actions necessary to implement the Act from legal requirements that otherwise would apply but would impede the Commission’s ability to implement the statutory directives in a timely manner. See *infra*, § IV.

⁶² *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3058, ¶¶ 133-134.

notification to the Commission as well as to viewers.⁶³ In the *February 5 Public Notice*, we stated that for analog terminations on or after March 14, stations must notify us at least 30 days prior to the termination date and provide viewer notifications for at least 30 days prior to their termination of analog service pursuant to the *Third DTV Periodic Report and Order* procedures. Except in the case of equipment failure, we said we would not permit stations to terminate analog service with less than 30 days notice to the Commission and the stations' viewers. We reserved the right, however, to amend these rules and procedures, if necessary, and we do so here in order to carry out the purposes of the DTV Delay Act.⁶⁴

32. Accordingly, only notifications filed prior to March 17, 2009, and in compliance with the procedures adopted in this docket will be accepted. Stations should not file 30-day advance notifications of intent to terminate analog service, and will not be authorized to terminate analog service prior to June 12, 2009 based upon the filing of any notification submitted before we finalize and release the analog service termination procedures. In the companion NPRM, we tentatively conclude that stations may terminate no earlier than April 16, 2009, to provide at least 30 days from the notification date for all parties to prepare and educate consumers.⁶⁵ As required by the DTV Delay Act, we will establish final analog service termination procedures no later than Friday, March 13, 2009 (which date is 30 days after enactment of the DTV Delay Act).⁶⁶

2. Transition Status Reports (FCC Form 387)

33. Consistent with the *Third DTV Periodic Report and Order* and the timing adopted in this Order, we require all full-power television stations to update their DTV Transition Status Reports, FCC Form 387, no later than Thursday April 16, 2009⁶⁷ to reflect their transition plans as a result of the delay in the nationwide transition deadline.⁶⁸ In the *Third DTV Periodic Report and Order*, the Commission established the Form 387 to require all full-power television stations to detail (1) their current transition status, (2) any additional steps needed to commence their full, digital operations, and (3) their timeline to meet the transition deadline.⁶⁹ In addition to two mandatory filing dates in February and October of 2008, the Commission required stations to promptly update their forms as events warrant, until they reported the completion of their transition.⁷⁰ Because all stations must reevaluate and adjust their plans in light of the delay of the transition date, we are requiring this mandatory update to the Form 387 for stations to provide the details of their revised transition plan, including if they intend to continue broadcasting an analog signal until June 12, 2009.⁷¹ We are also revising Form 387 to conform to the DTV Delay Act and

⁶³ *Id.* at ¶ 133.

⁶⁴ *February 5th PN*.

⁶⁵ *See* § IV.A, *infra*.

⁶⁶ The DTV Delay Act was enacted February 11, 2009.

⁶⁷ This date is 30 days after stations must notify the Commission of the date they will terminate their analog television service. *See supra* §III.B. Stations are responsible for the continuing accuracy and completeness of the information furnished in their Form 387 and whenever that information is no longer substantially accurate and complete in all significant respects, the station must file an updated form as promptly as possible and in any event within 30 days to furnish such additional or corrected information as is appropriate. *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3012-14, ¶¶ 34-35.

⁶⁸ Stations that already filed an update since enactment of the DTV Delay Act to show that they terminated analog television service on or before February 17, 2009 need not file this update.

⁶⁹ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3012-14, ¶¶ 34-35.

⁷⁰ *See id.*

⁷¹ We remind stations that the Form 387 is a status form and is not a substitute for required filings to the Commission regarding notification or requests for permission. *See, infra*, discussion of procedures for stations wishing to terminate analog service prior to June 12, 2009, and accompanying NPRM.

reflect the new June 12, 2009 transition deadline. The Commission has received approval from OMB for these minor changes to the form.⁷² The Form 387 must be updated electronically using the Commission's Consolidated Database System ("CDBS") Electronic Filing System.⁷³

3. Construction Deadlines, Extension Requests, and Tolling Notifications

34. In the *Third DTV Periodic Report and Order*, the Commission established deadlines for full-power television stations to construct digital facilities⁷⁴ and stricter standards for stations to obtain extensions of these deadlines.⁷⁵ The Commission set construction deadlines of May or August 2008 for stations that were going to use their current (pre-transition) DTV channel for post-transition operations,⁷⁶ but established a deadline of February 17, 2009 (the previous transition date) for stations that: (1) were building digital facilities based on a new channel allotment in the post-transition DTV Table of Allotments, *i.e.*, the station would be either returning to its analog channel or moving to a new digital channel for post-transition operations; or (2) demonstrated that a unique technical challenge, such as the need to reposition a side-mounted antenna, prevents them from completing construction of their final DTV facilities.⁷⁷ The Commission also established stricter standards for granting extensions of time to construct digital facilities.⁷⁸ More specifically, the Commission required stations with a construction deadline on or before February 17, 2009 to apply for an extension under the revised extension request standard in Section 73.624(d)(3) of the rules and required stations with a construction deadline occurring February 18, 2009 or later to seek an extension under the even stricter tolling standard set forth in Section 73.3598(b) of the rules.⁷⁹

35. In the First DTV Delay Order, we extended until June 12, 2009 (the new transition deadline) the construction deadline for stations with a deadline of February 17, 2009 (the previous transition deadline).⁸⁰ We now revise Section 73.624(d)(1)(vii) of the rules to reflect this change.⁸¹ Accordingly, these stations must complete construction of their digital facility no later than June 12, 2009. In addition, in the First DTV Delay Order, we also extended until June 12, 2009 the analog license terms⁸² and adjusted the construction permits for full power television stations.⁸³ By this Order we also

⁷² See OMB Control No. 3060-1105 (Form 387).

⁷³ To access CDBS, visit the Media Bureau's website at: <http://www.fcc.gov/mb/cdbs.html> or http://fialfoss.fcc.gov/prod/cdbs/forms/prod/cdbs_ef.htm. For more information, contact the Media Bureau's Video Division: Nazifa Sawez, Nazifa.Sawez@fcc.gov, at (202) 418-7059, or Shaun Maher, Shaun.Maher@fcc.gov, at (202) 418-2324. TTY: (202) 418-7172.

⁷⁴ See 47 C.F.R. § 73.624(d)(1); see also *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3027-3035, ¶¶ 61-84.

⁷⁵ See 47 C.F.R. §§ 73.624(d)(3) and 73.3598(b); see also *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3034-3036, ¶¶ 81-84.

⁷⁶ 47 C.F.R. § 73.624(d)(1)(v) and (vi).

⁷⁷ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3017-3019; 3022-3024, ¶¶ 42-46; 53-60.

⁷⁸ See 47 C.F.R. §§ 73.624(d)(3) and 73.3598(b).

⁷⁹ *Id.*

⁸⁰ Implementation of the DTV Delay Act, Report and Order and *Sua Sponte* Order on Reconsideration, MB Docket No. 09-17, FCC 09-9 (rel. Feb. 13, 2009) ("*First DTV Delay Order*").

⁸¹ See revised rule 47 C.F.R. 73.624(d)(1)(vii) in the Appendix.

⁸² In the First DTV Delay Order, we noted that a number of stations are operating with reduced analog facilities pursuant to special temporary authority, based upon a showing that the service reduction was directly related to the construction and operation of their post-transition facilities, and extended the date of termination for these STAs from February 17, 2009 to June 12, 2009 (11:59:59 pm local time). This extension, however, does not apply to

(continued...)

extend until June 12, 2009 (11:59:59 pm local time) the license terms for pre-transition digital operations and adjust the pre-transition digital authorizations, accordingly. Stations' construction permits expire on June 12, 2009 at 11:59:59 local time.⁸⁴ We also note that a station which has a maximized construction permit that expires on June 12, 2009, and which completes construction of its initial post-transition authorized facility by that date may file an application for a license to cover the constructed initial facility, and may also request that the construction deadline for its maximized construction permit be extended to three years from the date its maximized construction permit applications was granted. Such requests should be directed via email to Kevin Harding of the Media Bureau's Video Division at Kevin.Harding@fcc.gov

36. Consistent with our extension of the construction deadlines, we extend to June 12, 2009 the date for granting extensions of time to construct digital facilities. Accordingly, we revise Sections 73.624(d)(3)(ii) and (iii) of our rules and will apply the extension request standard contained in Section 73.624(d)(3) to stations with construction deadlines on or before June 12, 2009 and the tolling standard set forth in Section 73.3598(b) to all construction deadlines occurring June 13, 2009 or later.⁸⁵ This extension is consistent with the decision made in the *Third DTV Periodic Report and Order* to allow stations building their authorized post-transition facility to rely upon the extension standards until the date of the transition deadline and thereafter to apply the tolling standard that applies to other broadcast facilities.⁸⁶ We take this opportunity to remind stations that if their construction deadline is extended beyond June 12, 2009, the tolling standard applies to the extended construction deadline, and stations may use only the tolling criteria as a basis for failing to complete construction. We revise Section 73.3598(b)(3) of our rules to reflect the new transition deadline.⁸⁷

37. **Phased Transition Provisions.** We find there is no need to extend the Special Temporary Authority (STA) deadlines established for stations through the phased transition provisions of the *Third DTV Periodic Report and Order*.⁸⁸ In the *Third DTV Periodic Report and Order*, the Commission adopted two provisions for a "phased transition" in an effort to offer broadcasters regulatory flexibility in meeting their post-transition construction deadlines without disappointing viewer expectations after the transition deadline.⁸⁹ First, the Commission granted a six month STA to stations to temporarily remain on

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STAs granted to stations for reasons not related to the DTV transition including those STAs filed for emergency reductions in power. These other stations must request Commission approval for an extension to remain at reduced power by filing an analog engineering STA. These STAs will be reviewed on a case-by-case basis.

⁸³ *First DTV Delay Order*, FCC 09-9 (rel. Feb. 13, 2009). In the *First DTV Delay Order*, the Commission made the following changes to existing licenses and construction permits: (1) the date of termination for a station's analog license was extended from February 17, 2009 to June 12, 2009 (11:59:59 pm local time); (2) the construction permit deadline to construct a station's full-authorized post-transition (DTV) facility was extended from February 17, 2009 to June 12, 2009 (11:59:59 pm local time); and (3) the date on which a station can commence operation of a facility authorized for post transition service without further Commission authorization was extended from 12:00 am February 18, 2009 to 12:00 am June 13, 2009 (local time).

⁸⁴ Accordingly, the authorized facility must be constructed no later than that date and time. Stations may then commence program tests upon notification to the Commission, and are required to file a license application within 10 days from beginning program tests. See 47 C.F.R. § 73.1620(a).

⁸⁵ See revised rules 47 C.F.R. 73.624(d)(3)(ii), (iii) and 47 C.F.R. 73.3598(b) in the Appendix.

⁸⁶ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3028, ¶ 63.

⁸⁷ See revised rule 47 C.F.R. 73.3598(b)(3) in the Appendix.

⁸⁸ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3036-3042, ¶¶ 88-97.

⁸⁹ *Id.*

their pre-transition DTV channel with an option to seek another six months, provided the station continues to satisfy the conditions for this STA. These stations must commence operations on their final, post-transition (digital) channel no later than February 18, 2010. Second, the Commission granted a one-time six-month STA to stations to build less than their full, authorized facility by their construction deadline. These stations must commence operations at full, authorized digital facilities no later than August 18, 2009.⁹⁰ To qualify for these provisions, stations were required to meet a service requirement to minimize the loss of service after the transition deadline, were prohibited from causing impermissible interference to other stations or preventing other stations from making their transition, and were required to comply with a viewer notification requirement.⁹¹ We find it unnecessary at this time to automatically extend these STAs. In many cases, these phased transition STAs were granted to address construction impediments due to weather-related concerns. To the extent additional time is needed, stations with a phased transition STA must comply with Section 73.3598(b) tolling standard established the *Third DTV Periodic Report and Order*.

C. 700 MHz Band License Periods and Construction Requirements

38. Section 2(c)(1) of the DTV Delay Act states that the Commission "shall extend the terms of the licenses for the recovered spectrum, including the license period and construction requirements associated with those licenses, for a 116-day period."⁹² Section 2(c)(2) defines "recovered spectrum" as both "the recovered analog spectrum, as such term is defined in section 309(j)(15)(C)(vi) of the Communications Act of 1934" and "the spectrum excluded from the definition of recovered analog spectrum by subclauses (I) and (II) of such section."⁹³ Thus, "recovered spectrum," as defined in the DTV Delay Act, includes all spectrum between frequencies 698 and 806 megahertz, inclusive (700 MHz Band).

39. In this Report and Order, we conform the license period in section 27.13, and construction deadlines provided in section 27.14, to the provisions of section 2(c) of the DTV Delay Act. Section 27.13 of our rules currently provides that the license period for the licenses associated with the

⁹⁰ *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3041.

⁹¹ Pursuant to the first phased transition provision, the Commission allowed stations that are moving to a different DTV channel for post-transition operations to temporarily remain on their pre-transition DTV channel while they complete construction of their final digital facilities, provided: (1) They build facilities that serve at least the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service; and (2) They do not cause impermissible interference to other stations or prevent other stations from making their transition. Pursuant to the second phased transition provision, the Commission allowed stations to operate their post-transition facilities at less than their full, authorized facilities, provided they demonstrated either: (1) A "unique technical challenge" (as defined in the *Third DTV Periodic Report and Order*) and could serve at least 85 percent of the same population that receives their current analog TV and DTV service; or (2) A significant technical impediment to the construction of their full, authorized facilities that would not otherwise qualify for an extension of time to construct facilities under the new, stricter standard adopted in the *Third DTV Periodic Report and Order* and could serve at least 100 percent of the same population that receives their current analog TV and DTV service so that over-the-air viewers will not lose TV service. Both phased transition provisions also require the station to notify viewers on its analog channel about the station's planned delay in construction and operation of post-transition (DTV) service. The viewer notifications must occur every day on-air at least four times a day including at least once in primetime for the 30 days prior to the station's termination of full, authorized analog service. *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3039, ¶ 91. We note that stations that started these viewer notifications in advance of a previously planned February 17, 2009 termination that did not occur must restart airing these notifications 30 days in advance of their phased transition.

⁹² DTV Delay Act, § 2(c)(1).

⁹³ DTV Delay Act, § 2(c)(2); 47 U.S.C. § 309(j)(15)(C)(vi) (defining the term "recovered analog spectrum" as the spectrum between frequencies 698 and 806 megahertz, inclusive, other than spectrum bands excluded by subclauses (I) and (II) of Section 309(j)(15)(C)(vi)).

698-763 MHz and 776-793 MHz bands are for a term not to exceed ten years from February 17, 2009, the previous digital television transition date. Section 27.14 of our rules similarly ties the construction benchmarks and associated reporting requirements to February 17, 2009. Accordingly, we modify these dates to implement the 116 day extension required by the DTV Delay Act.⁹⁴

40. In addition, we conform sections 27.1310, 90.528, and 90.1410 of the 700 MHz Public/Private Partnership rules to the provisions of section 2(c) of the DTV Delay Act. We note that these rules are under consideration in a pending rulemaking proceeding and may be further revised in that proceeding.⁹⁵

D. Analog Nightlight Program

41. The Short-term Analog Flash and Emergency Readiness Act was enacted on December 23, 2008, prior to the enactment of the DTV Delay Act.⁹⁶ It required the Commission to develop and implement a program to “encourage and permit” continued analog television service during the 30-day period after the DTV transition for the purpose of providing emergency and DTV transition information to viewers who had not obtained the necessary equipment to receive digital broadcasts by the transition deadline, which was then February 17, 2009. The Analog Nightlight Act specified that the analog nightlight program is to occur “during the 30-day period beginning on the day after the date established by law under section 3002(b) of the Digital Television Transition and Public Safety Act of 2005 for termination of all licenses for full-power television stations in the analog television service and the cessation of broadcasting by full-power stations in the analog television service.”⁹⁷ On January 15, 2009, the Commission adopted and released the “Analog Nightlight Order” implementing the Analog Nightlight Act and listing stations eligible to participate in the Analog Nightlight program.⁹⁸ The DTV Delay Act amends Section 3002(b) of the Digital Television Transition and Public Safety Act of 2005 by striking “February 18, 2009” and inserting “June 13, 2009.”⁹⁹ In light of the fact that the Analog Nightlight Act’s

⁹⁴ See revised rules 47 C.F.R. 27.13 and 47 C.F.R. 27.14 in the Appendix. We also revise section 27.13(b) to specify that initial authorizations for the 775–776 MHz and 805–806 MHz bands shall not exceed April 27, 2015. The April 27, 2015 expiration date will also be applied to the 700 MHz Guard Band licenses, Call Signs WPRV448 and WPRV449, held by PTPMS II Communications, L.L.C. See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289, 15342-15344 ¶¶ 128-134 (2007).

⁹⁵ See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Further Notice of Proposed Rulemaking*, 23 FCC Rcd 8047 (2008) (*Second Further Notice*); Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 (2008).

⁹⁶ *Id.*

⁹⁷ *Analog Nightlight Act*, 122 Stat. 5121, Sec. 2(a).

⁹⁸ *Implementation of Short-term Analog Flash and Emergency Readiness Act; Establishment of DTV Transition “Analog Nightlight” Program*, MB Docket No. 08-255, Report and Order, FCC 09-2 (rel. Jan. 15, 2009) (“*Analog Nightlight Order*”).

⁹⁹ DTV Delay Act, § 2(a)(1).

language ties the provision of "Nightlight" service to the nationwide DTV transition deadline provided for by statute, rather to the original statutory deadline of February 17, 2009, we conclude that the 30-day period applicable to the Analog Nightlight program will begin following the new transition deadline and will run from and including June 13 through July 12, 2009. We note that this statutory post-transition Nightlight is distinct from the 60-day pre-transition "enhanced nightlight" adopted for some network affiliates that transitioned on February 17, 2009, and proposed in the companion NPRM.¹⁰⁰

42. We find that our interpretation of the Analog Nightlight Act is also the most practical and logical approach to fulfilling the purpose of the analog nightlight program. We expect that the additional time afforded by the DTV Delay Act will enable many more people to be fully prepared for the final transition of full-power analog to digital-only broadcasting on June 12. Nevertheless, we recognize that some people may not have their equipment in place even by June 12 and, therefore, could benefit from the continuing availability of analog television service for a limited period of time to provide information about the DTV transition and, if necessary, emergency information. Accordingly, we find that allowing analog nightlight operation pursuant to the Analog Nightlight Act during the 30-day period after June 13 is consistent with section 4(c) of the DTV Delay Act, which authorizes the Commission to take such actions as it deems necessary or appropriate to carry out the purposes of the DTV Delay Act and ensure a smooth transition.

43. We see no reason to revise the Analog Nightlight program as we implemented it in the *Analog Nightlight Order* and will retain the parameters of the program without change except for the delay in timing. We note, however, that it is necessary to correct Appendix A to the *Analog Nightlight Order* by deleting three stations that were listed in error and correcting the column headings in that appendix for the "pre-" and "post-" transition channels.¹⁰¹

44. The following stations were incorrectly listed in Appendix A of the *Analog Nightlight Order* as pre-approved to be eligible for the analog nightlight program: KXGN, Glendive, MT and KALO, Honolulu, HI, both of which have been authorized to use their analog channels for post-transition digital operation, and therefore cannot remain on their analog channels after the transition; and KPBS, San Diego, CA, whose analog channel 15 has been authorized for public safety use following the transition, thus eliminating it from eligibility as a nightlight.¹⁰²

45. We intend to reevaluate the stations listed as eligible in Appendix A of the *Analog Nightlight Order* as we near the new June 12, 2009 transition deadline to determine if there are changes in circumstances and facilities that call for adjustments to those listed. Stations that want to provide nightlight service may notify us in accordance with the filing procedures established in the *Analog Nightlight Order*.¹⁰³ We delegate to the Media Bureau or Office of Engineering and Technology, as

¹⁰⁰ February 11th PN.

¹⁰¹ The titles of columns G and H in Appendix A were reversed. Column G, which was titled Post-Transition Channel, should be "Pre-Transition Channel" and Column H, which was titled Pre-Transition Channel, should be "Post-Transition Channel." See *Analog Nightlight Order*, *supra* note 80, at app. A (List of Stations Eligible for Analog Nightlight Program).

¹⁰² That channel has been authorized for use by the County of Los Angeles for Public Safety Communications after February 17, 2009, and the Commission determined that the KPBS signal is likely to interfere with public safety land mobile radio communications in the Los Angeles County area.

¹⁰³ Stations that are pre-approved by the Commission to be eligible to participate in the analog nightlight program may notify the Commission of their intent to participate in the analog nightlight program by either filing a Legal STA electronically through the Commission's Consolidated Database System ("CDBS") using the Informal Application filing form or by sending an e-mail to nightlight@fcc.gov; stations that are not pre-approved for the program by the Commission may, nonetheless, request Commission approval to participate in the analog nightlight program by filing an Engineering STA notification electronically through CDBS using the Informal Application filing form. See *Analog Nightlight Order*, *supra* note 99.

appropriate, the authority to revise and adopt amended lists of pre-approved stations, as may be necessary, including issuing an Erratum to correct the Appendix A of the *Analog Nightlight Order*, consistent with the preceding paragraphs above.

IV. NOTICE OF PROPOSED RULEMAKING

46. In this Notice of Proposed Rulemaking, we seek comment on possible additional amendments to our rules that may be necessary or appropriate to carry out the purposes of the DTV Delay Act. In particular, we seek comment on revisions to the early analog termination procedures for stations that prefer to complete their transition before the new deadline of June 12, 2009. We also seek comment on whether to revise our consumer education rules, particularly by requiring broadcasters to provide service loss notices to viewers. We ask whether broadcasters should provide information on rescanning with digital equipment, and, where applicable, information regarding the need for different equipment due to changes from UHF to VHF service, or vice versa. We also seek comment on amendments to the "100-Day Countdown" that is required in Option Two and the 30 minute informational video that is required in both Option Two and Option Three. Finally, we ask whether stations that participate in or support the post-transition analog nightlight program should be exempt from post-transition consumer education requirements.

A. Analog Service Terminations Prior to June 12, 2009

47. As discussed above, we find that revising the analog (and pre-transition digital) service termination procedures established in the *Third DTV Periodic Report and Order* is necessary to implement and carry out the purposes of the DTV Delay Act.¹⁰⁴ We seek to develop revised service termination procedures that will best enable us to evaluate and adjust deployment of our resources and to coordinate with other entities in order to prepare for stations' analog service terminations and protect the public interest. The Commission must make, adjust and prioritize arrangements for consumer outreach, call center staffing, converter installation assistance and coordinate with contractors, partners, volunteers, and organizations throughout the country to address areas where stations will terminate their analog signals throughout the transition period. We therefore propose to allow stations to proceed with their planned terminations, as described in their March 17 notification to the Commission, without the need for action by the Commission; provided, however, that if a major network¹⁰⁵ affiliate intends to terminate service early, it must certify that: 1) at least 90% of its analog viewers will receive some analog service (full service or enhanced nightlight) until June 12, 2009; and 2) it will comply with the other public interest conditions described below on or before the day it terminates analog service and through June 12, 2009. Any major network affiliate that does not certify to both requirements must continue providing full analog service until June 12, 2009 (except in the case of equipment failure, natural disaster, or other unforeseeable emergency).

48. In the companion Order, we require all full-power television stations that have not terminated their analog service as of February 17, 2009, to decide on a firm date by which they intend to terminate their regular analog television service and to notify us of that date no later than Tuesday, March 17, 2009.¹⁰⁶ We tentatively conclude that stations may terminate no earlier than April 16, 2009, to give all parties at least 30 days from the notification date to prepare and educate consumers. Our proposals here are influenced by our experience planning for the partial transition by one-third of the full power stations on or just before February 17, 2009. We have found that advance planning and station commitment to nightlight service and public interest outreach contribute to a smoother transition.

49. For the same reason, we also tentatively conclude that stations will not be permitted to

¹⁰⁴ See § III.B.1, *supra*.

¹⁰⁵ ABC, CBS, FOX, and NBC.

¹⁰⁶ See, Sec. III. B.1., *supra*.

change their date for analog service termination without a strong justification and express Commission approval. We propose that, except in the case of equipment failure, natural disaster, or other unforeseeable emergency, stations would only be permitted to terminate analog service on the date they elect. In addition, we propose that the timing and advance notice for analog terminations to be adopted in this proceeding will supersede the provisions of Section 73.1615.¹⁰⁷ Stations would be able to rely on the flexibility of Section 73.1615 for brief terminations or reductions of service for technical reasons, as originally contemplated by that section. They would not, however, be permitted to rely on this provision to terminate analog service altogether, even in the days immediately prior to June 12, 2009. A station's analog service termination would only be permissible on the date permitted for it by the Commission. We seek comment on our tentative conclusion and proposals.

50. The *Third DTV Periodic Report and Order* required stations to notify their viewers about a planned analog service termination at least 30 days prior to the termination. These "viewer notifications" are required to describe how viewers can continue to receive service from the station, and continue to apply to any station terminating prior to June 12. They are not limited to major network affiliates. We do not propose to modify the 30-day on-air viewer notification requirement for early service terminations,¹⁰⁸ although we do encourage early transitioning stations to start viewer notifications as soon as their plans are set. We seek comment on whether to require a longer viewer notification period for early transitioning stations, up to 60 days when possible, or if we should require that notifications commence uniformly on a date certain or, instead, as soon as the station's intended termination date is finalized. Under no circumstances will a station be permitted to air notifications for fewer than 30 days. Each station's on-air viewer notifications must include the specifics of the station's firm termination date. We also seek comment on whether to require all stations that are terminating prior to June 12, 2009, to air a crawl for the seven days prior to their termination, as was required for stations terminating on February 17, 2009.¹⁰⁹

51. The *Third DTV Periodic Report and Order* required stations to make a showing with their notification that the analog service termination "is necessary for purposes of the transition." Consistent with this requirement, we propose to require stations to provide us with sufficient information to enable us to determine whether an early analog termination is necessary and in the public interest. As described in the companion Order, no service termination notifications may be filed prior to the release of the new procedures and form to be adopted in response to this NPRM. We propose to allow stations that notify us by March 17, 2009 to proceed with their planned terminations without specific individual approval, with limited exceptions. Under this proposal, we would review the termination notifications of major network affiliates. We propose that, in order to terminate analog service on their proposed early date, these stations will be required to certify both that there will be continuing analog service to a substantial portion

¹⁰⁷ 47 C.F.R. § 73.1615.

¹⁰⁸ The *Third DTV Periodic Report and Order* required stations terminating analog service within the 90-day period prior to the transition date to air viewer notifications on their analog channel at least four times a day, including at least once in primetime, for at least 30 days prior to the date of their early termination. *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3058, ¶¶ 133-134. See also *id* at 3044-45, ¶ 106 (regarding termination within 30 days of the transition date via Section 73.1615 notification). These viewer notifications must include: (1) the station's call sign and community of license; (2) the fact that the station is planning to or has reduced or terminated its analog or digital operations before the transition date; (3) the date of the planned reduction or termination; (4) what viewers can do to continue to receive the station, i.e., how and when the station's digital signal can be received; (5) information about the availability of digital- to-analog converter boxes in their service area; and (6) the street address, email address (if available), and phone number of the station where viewers may register comments or request information. *Id.* at 3058, ¶ 134. We note that these viewer notifications are in addition to, and separate from, the notification requirements established in the Commission's DTV Consumer Education Initiative proceeding. *Id.*

¹⁰⁹ See February 5th PN at 5.

of their analog audience until June 12, and that they will comply with the other public interest conditions proposed below.¹¹⁰

52. We propose that these stations must certify that at least 90 percent of the population within their Grade B analog contour will continue to receive analog service through June 12, 2009. Analog service, for this purpose, may be full service analog programming from a major network affiliate or enhanced analog nightlight service, because either of these will include local news, public affairs and emergency information, as well as DTV educational information. Any major network affiliate that is certifying in order to terminate analog service early must include with its filing a list of the stations that will continue to provide such analog service to at least 90 percent of its analog viewers through June 12, 2009.¹¹¹ Stations may cooperate to share responsibility for providing this analog service, but each station is individually responsible for its own analog viewers.

53. We further propose that these stations must also certify that they will comply with the other public interest conditions detailed below. The "On-Air Crawl Prior to Termination" requirement goes into effect, by its own terms, prior to the termination of the station's analog service. The "DTV Educational Information" and "Market Outreach" obligations must be undertaken so that they are in place no later than the day on which the station terminates full service analog programming. The "Market Outreach" requirements contemplate collective effort, in a market where more than one broadcaster has certified compliance with these conditions, but we remind major network affiliates who terminate early of their joint and several responsibility for compliance with these requirements. Due to different analog termination dates, each broadcaster in an area may become subject to these conditions at different times. Therefore, we will hold a broadcaster responsible for compliance with these requirements only during the period after the termination of its analog service. We emphasize that broadcasters that continue providing analog service through June 12, 2009, are not responsible for compliance with any of the requirements associated with early termination, or for any shared efforts or expenses incurred by early termination stations as a result of these requirements.

54. We propose to require certification to the following conditions, which generally track the conditions that we applied to the network affiliates that sought to terminate on February 17, 2009:

Enhanced Analog Nightlight

- Ensure that at least one station that is currently providing analog service to an area within the DMA that will no longer receive analog service after the early termination date will continue broadcasting an analog signal providing, at a minimum, DTV transition and emergency information, as well as local news and public affairs programming ("enhanced nightlight" service) for 60 days following the early termination date, but not beyond June 12, 2009; for the purposes of these early terminations, therefore, the enhanced nightlight must begin as soon as there is no network affiliate serving the area, and be provided only through June 12, 2009. The local news, public affairs, or other programming may include commercial advertising.
- Ensure that enhanced nightlight service concerning the DTV transition will be provided in Spanish and English and that both DTV transition and emergency information is accessible to the disability community (e.g., silent scrolls or slates do not provide information to the visually impaired, and therefore, broadcast notices must have an aural component, as well as being closed or open captioned).

Other Public Interest Conditions

¹¹⁰ These public interest conditions are based on the requirements established in the *February 11th Public Notice*.

¹¹¹ Stations filing for early termination must demonstrate that the requisite analog coverage will be provided. We intend to rely on the stations' filings to determine whether the termination is in the public interest.

DTV educational information

- Ensure that on-air educational information (prior to the early termination date and thereafter as part of “enhanced nightlight” service) will include demonstrations of converter box installations, antenna setups, and other helpful information.¹¹²
- Ensure that the DTV educational information, both on-air and through other means, will provide information describing areas that may be losing over-the-air signal coverage temporarily or permanently as the station transitions to digital-only broadcasting. Such information may include detailed maps, listings of affected communities, and instructions on how to assess what type of antenna may be necessary to retain or regain the station’s digital signal, as well as identifying specific locations that will not be able to receive a digital signal regardless of antenna. If educational information is prepared jointly, it must still specify the signal loss or change as relevant to each station.

Market outreach

- Each station individually or collectively in the market commits to assisting viewers by providing local or toll-free telephone assistance, including engineering support. Such assistance may be provided jointly with other stations, organizations, and businesses in the area, but the certification must specify which station or stations are responsible. If no station is specified, the station making the certification is presumed responsible.
- Each station alone or together with other stations or local businesses and organizations in the market will provide a location and staff for a consumer “walk-in” center to assist consumers with applying for coupons and obtaining converter boxes, to demonstrate how to install converter boxes, to provide maps and lists of communities that may be affected by coverage issues, and to serve as a redistribution point for consumers who are willing to donate coupons, converter boxes, televisions and for those in need of these items. The certification must specify which station or stations are responsible for operating the walk-in center. If no station is specified, the station making the certification is presumed responsible.
- Each station will consider and is encouraged to coordinate with and use community resources to provide consumer outreach and support, including in-home assistance.

On-air crawl prior to termination

- Each station, individually, will broadcast a crawl on their analog channel regarding the station’s termination of analog service, for the seven day period just prior to the date of early termination. For the first five days, the crawl must be aired for 5 minutes of every hour of the station’s analog broadcast day, including during primetime. For the final two days, the crawl must be aired for 10 minutes of every hour of the station’s analog broadcast day, including during primetime. Each station will include in the crawl the FCC toll-free number (1-888-CALLFCC, 1-888-225-5322). Stations that cannot broadcast a crawl because it is technically unfeasible may provide substitute information on an hourly basis, which should be indicated in their certification.

55. We recognize that major network affiliates subject to the certification requirement may not be able to certify that they and the other stations in their market will provide continuing analog service and compliance with the other necessary public interest obligations discussed above. In such cases, these licensees may make an alternative showing to the Commission that extraordinary, exigent circumstances,

¹¹² Including the location of walk-in centers in the market and the phone number for the local or toll-free telephone assistance provided to the market, discussed in this section. The Commission will continue to publicize the location of local walk-in centers via our website at <https://dtvsupport.fcc.gov/dtvtools>.

such as the unavoidable loss of their analog site or extreme economic hardship, require that they terminate their analog service on their proposed date. This showing must also include information regarding analog service that will be available for the station's viewers.¹¹³ The showing should not exceed five (5) pages, not including attachments.¹¹⁴ Stations attempting to make this showing bear a heavy burden of proof. Any station electing to make this showing must await a determination by the Commission that its showing is sufficient before terminating analog service. The Commission will endeavor to resolve all of these cases prior to the stations' proposed termination date.

56. Under our proposed approach, we would also retain the right to prevent any station from going forward with early termination if we find it in the public interest to do so. As the Commission did in the case of stations seeking to terminate on February 17, we would expeditiously provide notice to stations via public notice if major network affiliates subject to the certification requirement decline to certify, or if any other station will not be permitted to transition on its proposed date. After broadcasters have had an opportunity to review the Commission's decisions regarding the early termination of stations in their market and surrounding markets, they would have an opportunity to revoke their early termination decision and continue to broadcast analog service through June 12. Notice of this decision would have to be provided to the Commission and viewers, however, not later than 5 days prior to the station's scheduled termination date.

57. We believe that our proposals are consistent with the DTV Delay Act. They retain stations' flexibility to choose a transition date prior to June 12 that works for them, while also taking into consideration the needs and readiness of viewers in their markets. These proposals afford flexibility for stations consistent with consumer readiness and assistance. We require that stations decide and select a final transition date that will enable other interested parties to make their plans and preparations for the station's transition. We expect that network affiliates and other stations serving the same viewing area will closely coordinate if they intend to terminate analog service before June 12, 2009. We seek comment specifically on the benefits and hazards of allowing all or virtually all stations in a market to transition prior to June 12. We are concerned that doing so would deprive unprepared consumers of access to vital local news, public affairs and emergency information. We also seek comment from affected industry groups and, particularly, from consumers on the relative benefits and harms of our proposal.

58. We also seek comment on whether stations should be allowed to terminate analog service at any time on June 12, 2009, or be required to continue broadcasting an analog signal until 11:59:59 pm local time. As noted in the *First Report and Order* implementing the DTV Delay Act, full power stations' analog licenses expire at 11:59:59 pm on June 12, 2009.¹¹⁵ As explained above, stations may continue analog broadcasting after 11:59:59 pm only to the extent that they are participating in the Analog Nightlight program.¹¹⁶ However, the DTV Delay Act and the other relevant statutory provisions are silent as to the time of day on June 12, 2009 on which analog termination may occur. We do not believe it is necessary to treat analog termination on June 12 but prior to 11:59:59 pm as an "early" termination and propose to leave it to stations to determine what time of day is most appropriate for their viewers.¹¹⁷

¹¹³ For example, a network affiliate might partner with another station serving the same area to ensure that its viewers may view local news, public affairs and emergency information. Some network affiliates transitioning on February 17 partnered with local PBS stations to provide local news programs, which the PBS station aired without commercials.

¹¹⁴ These explanatory filings may also be made using the procedure and form described in footnote 10, above.

¹¹⁵ *First DTV Delay Order*, FCC 09-9, §II.A. ¶ 3.

¹¹⁶ See *Analog Nightlight Order*, *supra* note 99. We also note that no regular analog programming may continue after 11:59:59 pm on June 12, 2009.

¹¹⁷ We remind stations that they must obtain Commission approval for operation of a post-transition digital facility at anytime prior to June 12 at 11:59:59 pm. See *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3041-58, ¶¶ 98-134 (Section V.C.); see also *February 5th Public Notice* at 2.

However, we propose to require that stations inform the Commission of the time of day they plan to terminate when they file the required notification on March 17, 2009 and notify viewers through their required PSAs, crawls and other consumer education broadcasts if they are planning to end analog service before 11:59:59 pm.

B. Consumer Education Initiative Rules

1. 100 Day Countdown

59. We also seek comment on whether we should revise the "100 day countdown" requirement that applies to Option Two broadcasters. As originally conceived, and as revised in this 2nd Report and Order, each Option Two broadcaster must air a daily reminder of the number of days until the conclusion of the DTV transition, beginning 100 days prior to the transition. A simultaneous nationwide countdown was appropriate when we expected that the vast majority of stations were planning to continue analog programming until the conclusion of the transition. Now that the transition has been delayed, however, many of the roughly 64% of stations that did not transition on or before February 17 may transition prior to or on June 12. Under the circumstances, we recognize that requiring an identical and simultaneous countdown to June 12 by all Option Two stations, including those that have already transitioned, may create more confusion than it would alleviate. We therefore seek comment on whether and how to revise this requirement.

60. Should a station that will be transitioning before June 12 be required to count down to the date on which that station will terminate analog service? Should it provide a second countdown (simultaneous with the first?) that demonstrates the distinction between the station's and the nation's transitions? Should the requirement vary depending on whether a station's entire market is transitioning? If so, how should we define "entire market" for the purposes of these rules? Once a station has transitioned early, should it be required to run a countdown of any kind? We note that the educational obligation placed on pre-transition television stations arose not merely from their position as television stations watched by analog-only viewers, but also from their important position as an authoritative source of information for the affected community. Even when one station has completed its move to digital, it can still provide valuable information and education to its viewers regarding the transition by other stations.

2. 30 Minute Informational Videos

61. Under the rules as revised in the companion Report and Order, Option Two and Three broadcasters must, on at least one day prior to June 12, 2009, air "an informational program on the digital television transition."¹¹⁸ Many, if not most, of the affected broadcasters complied with this requirement when the transition was to take place on February 17, and their informational programs necessarily reflected that date. For stations that have already transitioned, we find that such a program would have met the needs of their viewers. We seek comment, however, concerning whether such a pre-DTV Delay Act program should be considered sufficiently accurate and helpful to viewers of stations that have not yet transitioned, or if these stations should be required to air an up-to-date 30 minute informational program before they cease analog programming.

62. We also seek comment on what specific information would need to be included in such a program for it to serve the consumer educational purposes of the DTV Delay Act. Specifically, we seek comment on whether this up-to-date 30-minute informational video should explain: 1) the change in the transition date; 2) when that particular station is transitioning; 3) when other stations in the market are transitioning; and/or 4) any change in the coverage area of the station.

3. Service Loss Notices

63. The Commission's experience with stations that have already terminated analog service,

¹¹⁸ 47 C.F.R. § 73.674(d)(5).

particularly in those areas where an entire market has transitioned, is that loss of a station due to a change in the digital coverage area creates the greatest consumer confusion and distress. This will be true for stations that transition at any time, up to and including June 12. Indeed, it is true even before stations terminate their analog service as more and more viewers come to rely on digital service.¹¹⁹ Therefore, we seek comment on whether every station should be required to provide specific notice to analog viewers who are likely to lose over-the-air service from the station due to changes in the stations' coverage area.

64. Broadcasters electing Option One are already required to provide information to their viewers, at least once per week, about any "[c]hanges in the geographic area or population served by the station during or after the transition." They must do so via their regularly-aired PSAs.¹²⁰ We propose to require broadcasters who have elected Options Two or Three to provide similar information to their viewers via PSAs, if 2 percent or more of their analog viewers are predicted to lose service as a result of a change in their geographic coverage area (even if the station gains viewers elsewhere).¹²¹ Stations would be required to provide geographically specific information detailing areas that are covered by the Grade B analog contour but are not predicted to receive digital service. We would also require stations to provide educational information describing areas where analog signal strength is generally sufficient for viewers to rely on an indoor antenna but where it is likely that they will need an outdoor antenna to receive the digital signal.

65. We seek comment on how the information should be presented in a manner that is both accurate and understandable to viewers. Should we permit stations to convey the geographic specificity in different ways? For example, would PSAs referencing particular communities, ZIP codes, or neighborhoods be sufficient, or should stations be required to show maps demonstrating their changed service area? Should service area information be provided to viewers more frequently than once per week? Alternatively, should broadcasters be required or permitted to provide information directly to populations expected to lose service, via, for instance: direct mail to addresses in the affected area? We note that radio broadcasts and local newspapers are another means of targeting viewers who are likely to experience loss. Stations may also point out to their viewers any areas in which their over-the-air service will improve or expand. There may well be viewers who currently rely on subscription service who may be able to rely, instead, on free over-the-air broadcasting and thus realize one of the benefits of the DTV transition, particularly where the station offers multicast channels.¹²²

66. We also propose to require all stations to provide information to consumers about the need to periodically "rescan" when using over-the-air digital reception equipment, particularly through the end of the transition. We propose to further require stations that are changing their broadcast frequency from VHF to UHF (or vice versa) to include as part of their required consumer education activities notice about the need for additional or different equipment to avoid loss of service.¹²³

¹¹⁹ This difficulty is exacerbated for consumers relying on converter boxes that do not have analog pass-through.

¹²⁰ An example of such a "change to service area" notice is provided by WUTB in Baltimore.

¹²¹ The Commission has created a tentative list of stations anticipated to lose 2 percent or more of their analog viewers, which can be found on the FCC website at <http://www.fcc.gov/dtv/markets/report2.html>. For purposes of the notice requirement, we would not include those stations where the losses are due solely to propagation effects such as a change from a VHF to UHF channel.

¹²² See www.FCC.com/DTV/markets (Gains significantly outweigh losses nationwide).

¹²³ The implementation of Major Channel Numbers as part of the Program System Information Protocol (PSIP) makes it more difficult for consumers to determine this information on their own, because a station's "channel" no longer necessarily reflects its over the air frequency. See *Third DTV Periodic Report and Order*, 23 FCC Rcd at 3079-3082, ¶¶ 185-189.